



An
Bord
Pleanála

Inspector's Report

ABP-305585-19

Development

PROTECTED STRUCTURE: A 36 No. bedroom aparthotel part 1 to part six storey (over a part double basement car parking spaces; vehicular access to the basement car park via the existing ramp to the west; pedestrian access via the existing laneway at the south east of the site; a screened roof terrace (facing all directions) at fourth floor level; bicycle parking; hard and soft landscaping including a green wall; loading bay; boundary treatments, plant and all associated site development works above and below ground.

Location

Charlemont Place, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3549/19

Applicant(s)

Strandmount Ltd.

Type of Application

Permission.

Planning Authority Decision

Grant Permission subject to conditions

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|--------------------------------|---|
| Type of Appeal | Third Party |
| Appellant(s) | Mr John Kiefel Ms Orla Brady Mr Declan Ryan |
| Observer(s) | Transport Infrastructure Ireland TII |
| Date of Site Inspection | 9 th January 2020. |
| Inspector | Bríd Maxwell |

1.0 Site Location and Description

1.1. The appeal site (1,024m²) is irregular in shape and is located close to Charlemont Luas stop on the northern banks of the Grand Canal in Dublin 2. The site consists of an infill site bounded by the Luas line to the west, houses and rear gardens of Peter Place to the north, the rear gardens of Hilton Mews and 8 Harcourt Terrace to the north east and east. The Grand Canal flows to the south-east opposite the site access. The site also incorporates an access lane bounded by newly completed office building (21 Charlemont Place) to the west and Charlemont House (Glennon) to the east. The access also serves as access to car parking serving these adjacent buildings. The site includes a historic well Protected Structure 3536 – Rear of 8 Harcourt Terrace, Spring Well, likely to be the well that Lord Edward Fitzgerald hid in while on the run during the rebellion of 1798. The top of the well is .4m below ground level and the area in which it is located is sealed off and overgrown. The immediate area comprises a strong mix of commercial and residential uses.

2.0 Proposed Development

- 2.1. The proposal involves permission for a 36 no bedroom part one to part six storey (over a part double basement) aparthotel (1,763 sq.m over 660 sq.m at basement level); 9 no ancillary basement car parking spaces; vehicular access to the basement car park via the existing ramp to the west; pedestrian access via the existing laneway at the south-east of the site; a screened roof terrace (facing all directions) at fourth floor level; bicycle parking; hard and soft landscaping including a green wall; loading bay; boundary treatment, plant and all associated site development works above and below ground level.
- 2.2. Vehicular access is proposed to the basement car park via the existing ramp servicing the Hilton Hotel to the west which runs beneath the Luas Track.
- 2.3. The proposal is outlined in its detail within the drawings and documents accompanying the application including:
- Planning Report by Thornton O' Connor Town Planning
 - Desk Study and Impact Statement on an historic well by Linzi Simson Archaeology

- Screening for Appropriate Assessment by Openfield Ecological Services
- Daylight Assessment by BPG3
- Design Statement by Cantrell and Crowley Architects
- Civil Engineering Infrastructure Report by Barrett Mahony Consulting Engineers

3.0 **Planning Authority Decision**

3.1. **Decision**

3.1.1 By order dated 12th September 2019 Dublin City Council decided to grant permission for the development and 17 no conditions were attached which included the following of particular note:

- Condition 2. Development Contribution €181, 967.30 in accordance with the S48 Development Contribution Scheme.
- Condition 3. Development contribution €92,074 in respect of Luas C1 Line Supplementary S49 Development Contribution Scheme.
- Condition 4. Roof terrace at third floor level shall be omitted from the proposal.
- Condition 5. Details of materials colour and texture of all external finishes shall be submitted to and agreed with the planning authority.
- Condition 6. Aparthotel units shall only be occupied for short term letting periods of no more than 2 months and shall operate within the definition of aparthotel as set out in Appendix 15 of the Dublin City Plan 2016-2022.
- Condition 7. Proposed units shall not be used for the purpose of providing student accommodation. Planning permission will be required for change of use from commercial short-term accommodation to residential.
- Condition 17. Archaeological assessment and monitoring.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

3.2.1.1. Planner's report considers the proposal to be acceptable in principle. Given concerns regarding noise impact it is considered that the roof terrace should be omitted. Daylight/sunlight overshadowing impact significantly reduced. Design and materials are considered appropriate. Permission was recommended.

3.2.2. Other Technical Reports

3.2.2.1 Architectural Conservation Officer's report indicates no review of the file by the Conservation Officer however the proposal has been discussed with the planning officer.

3.2.2.2 City Archaeologist report notes the location outside the border of zone of archaeological constraint for recorded monument DU018-020 (Dublin City). Area of Charlemont Street / place has been subject to development since the mid 18th century. Recent excavation undertaken by Faith Bailey of IAC, on the western side of Charlemont Street revealed both a post medieval well and pit features (excavation license 13EO313) Scale of proposal also heightens the chance of subsurface archaeology. Recommend condition regarding archaeological monitoring.

3.2.2.3 Engineering Department Drainage Division report – no objection subject to developer complying with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0. Separate foul and surface water system with combined final connection discharging to Irish Water's combined sewer system.

3.2.2.4 Transportation Planning Division report asserts that the proposed 900mm footway access is not acceptable and alterations are required. No objection subject to conditions including construction management plan, service and waste management plan. Alterations to access lane to requirements of Traffic Advisory Group TAG.

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland TII recommends a number of conditions including prior agreement of Construction Traffic Management Plan and Demolition and Construction Method Statement to resolve luas interface issues. Vibration and settlement monitoring regime to be implemented. S49 Development Contribution to apply. Developer responsible for any loss of Luas revenue or other costs associated with suspension of passenger service arising as consequence of design or construction. Impact on luas service or alterations to luas infrastructure to accommodate the development to be managed and facilitated at developer's expense. Works permit required by virtue of Light Railway (Regulation of Works) Bye laws 3005 regarding works in proximity to luas overhead conductor system. No adverse impact on luas operation or safety.

3.4. Third Party Observations

- 3.4.1 Submissions from a number of local residents object on grounds of scale and design resulting in overshadowing and light deprivation, construction impact and noise disturbance. Traffic congestion & cycle pedestrian safety. The potential for conflict arising from transient hotel accommodation use and permanent residential amenity. Noting the previous refusals on the site significant concerns remain regarding scale an impact on established amenity. Proposal represents overdevelopment resulting in overbearing impact on residential amenity. Legal interest in access via Hilton hotel basement car park is not clear. Inadequate control over aparthotel use.
- 3.4.2 Submission from Savills Commercial Ireland Limited on behalf of LF Ireland Office, owners of 21 Charlemont outline no objection to development however concerns issues arise with regard to proposed pedestrian access to hotel and potential conflict with established vehicular use.
- 3.4.3 Submission by Viasat Ireland Ltd having its registered office at 21 Charlemont Place Dublin 2. Leasehold owner and occupier. No objection in principle however concerns arise regarding the the intended use of the laneway given potential for vehicular /pedestrian conflict. It is contended that the laneway has been taken in charge by Dublin City Council. The proposal is a material interference with clients enjoyment of the property.

4.0 Planning History

ABP303204 3764/18 The Board refused permission following third party appeal of decision of permission granted by Dublin City Council for a 43 no bedroom aparthotel, 10 basement car spaces, vehicular access to the basement car park via the existing ramp to the west and pedestrian access via the laneway to the south east of the site. Refusal was for the following reason:

“Having regard to the scale and proximity of the proposed development relative to residential property to the north, the Board considered that the proposed development would be overbearing and would negatively overshadow these properties and their gardens. The proposed development would seriously injure the amenities of residential property in the vicinity and would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector’s recommendation to grant permission the Board did not consider that the design of the proposed development, as submitted, had addressed the previous reasons for refusal for a development on this site in relation to residential amenity (PL29S218778) and considered that the overshadowing and obtrusiveness of the development remained unacceptable and that permission should be refused accordingly.”

231603 (4087/08) Grant mixed use development including offices, café hotel extension and conference facility. Hilton and McConnell House Charlemont Place Dublin 2.

218778 McConnell House and adjoining lands at Charlemont Place, Dublin 2 which included the appeal site.

Refused by An Bord Pleanála following third party appeal of decision to grant Mixed use development including office, retail and residential. Reasons for refusal related to the massing and height and overshadowing and obtrusiveness / impact on residential amenity in particular in relation to property to the north.

Adjacent sites

2279/16 18-21 Charlemont Place Permission granted for modifications to development permitted under 2502/12 PL29S240817 comprising extension of the site area to include adjoining lands to the west to accommodate revised western boundary proposals including the provision of a new western boundary wall, gate, ancillary landscaping and site development works and the erection of 1 no back lit stainless steel sign with low energy mounted on the revised western boundary wall.

240817 (2502/12) Permission granted for demolition of existing office building, Charlemont House with a gross floor area of 1,598 sq.m and construction of a part four and part six storey over basement office building.

Hilton Hotel

2661/18 Permission for modifications to 246976 2209/16.

246976 2209/16 Permission for construction of a seven-storey hotel extension, additional extension of the 7th storey to existing hotel and reconfiguration and alterations.

248260 2019/17 (Adjacent mews dwelling) Retention permission granted for change of use from residential to office.

5.0 Policy Context

5.1.1 Project Ireland 2040 – National Planning Framework

5.1.1.1 The National Planning Framework represents the overarching national planning policy document, setting a course for planning and includes a number of strategic outcomes including Compact Growth, careful management of existing public landbanks and brownfield sites to create attractive places for people to live and work while preventing sprawl.

5.1.2 S28 Ministerial Guidelines.

- Urban Design Manual A best practice Guide. May 2009.
- Design Manual for Urban Roads and Streets, DMURS
- The Planning System and Flood Risk Management (including the associated 'Technical Appendices') Dept Environment Heritage and Local Government November 2009.
- Urban Development and Building Height Guidelines, Department of Housing Planning and Local Government, December 2018
- Architectural Heritage Protection Guidelines for Planning Authorities (2011)

5.2 Development Plan

5.2.1 The operative Development plan is the Dublin City Development Plan 2016-2022.

- The site is located within an area subject to zoning objective Z4 – District Centres “To provide for and improve mixed services facilities”,
- Adjacent is Z8 Georgian Conservation Area. – “To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.”
- The eastern and south-eastern part of the site is within a conservation area.
- The site is within SDRA 18 National Concert Hall Quarter
- Appendix 16 provides Guidance on Aparthotels and sets out the relevant considerations in the assessment of an application for an aparthotel.

5.3 Natural Heritage Designations

5.3.1 The site is not within a designated site. The grand Canal Dock pNHA is within 10m to the south of the site.

5.4 EIA Screening

5.4.1 On the issue of Environmental Impact Assessment screening I note that the relevant class for consideration is class 10(iv) "*Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere*". Having regard to the size of the development site (.1024ha) and scale of the development, it is sub threshold and does not the proposal does not require mandatory Environmental Impact Assessment. Having regard to the nature and scale of the proposed development, the brownfield nature of the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment . The need for EIA can therefore be excluded at preliminary examination and a screening determination is not required.

6 The Appeal

6.1 There are three third party appeals by the following

- John Kiefel, Flat 1 11 Harcourt Terrace, Dublin 2
- Orla Brady, Flat 3, 11 Harcourt Terrace, Dublin 2.
- Marston Planning Consultancy on behalf of Mr Declan Ryan, 9 Harcourt Terrace, Dublin 2.

6.1.1. The appeals raise a number of common issues which I have summarised as follows:

- Grounds of previous refusal remain.
- Proposal represents a gross overdevelopment of the site and lacks considered assessment of its context and impact on neighbours
- Significant overshadowing of the houses along Peter Place and Hilton Mews.
- Lack of breakdown of the mass of the building to address negative impact on surrounding residential properties.

- Façade fins proposed to the north and east elevation are inadequate to protect residential amenity of adjacent permanent residents.
- Legal interest in gaining access to basement car park is not demonstrated.
- Inadequate control of aparthotel use.
- Proposal remains 16m wide and extends up to six storeys in height and some 21.3m above the garden level of properties at Peter's Place which have extremely restricted gardens resulting in a profound negative impact on sunlight.
- Analysis undertaken on behalf of the applicant indicates the impact of the proposal on the levels of sunlight reaching the rear gardens of properties on Peter Place will be significantly reduced below required standards.
- Applicant's argument that the development potential of the site should outweigh the residential amenity of adjoining residential properties where the dwellings already achieve low levels of residential amenity flawed.
- Significant noise disturbance from roof terrace.
- Unit 26 at third floor and both units at 2nd and 1st floor to east elevation are not opaquely glazed resulting in overlooking within 20m of garden of 9 Harcourt terrace.
- Question legal interest and feasibility of gaining vehicular access to the Hilton hotel basement car park.
- Inadequate control of aparthotel use

6.2 Applicant Response

6.2.1 The response by Thornton O Connor, Town Planning on behalf of the first party addresses the grounds of appeal as follows:

- Substantive revisions made to the design, bulk and massing of the scheme including additional setbacks of c 4.55m from the northern boundary of the site at first floor level providing an overall setback of c 7.58m-8.89m and introduction of a green roof and removal of the top floor.

- Revised scheme has resulted in significant improvement in daylight sunlight results.
- Low rise dwellings should not dictate the future form of development having regard to the location of the site and proximity to transport infrastructure.
- The amenity of the adjacent dwellings will not be materially impacted by the proposed development.
- Recently constructed 21 Charlemont Place office development adjacent to the south and permitted with a maximum height of 24.555m. The proposal has max height of 18.95m with plant over of 1.35m.
- Proposal responds to recently adopted national planning framework - Project Ireland 2040 and Urban Development and Building Height Guidelines
- A certain degree of overshadowing is inevitable in an urban context. Daylight assessment by BPG3 notes that some element of overshadowing will occur on dwellings to the north in spring equinox. The impacts will not materially impact the residential amenities of neighbouring dwellings.
- As a result of the design changes the average reduction of typical sunlight access to neighbouring gardens is 63% lower than it had been in the refused scheme. The level of non-compliance has significantly reduced by 50%.
- Opaque glazing provided behind the horizontal fins to mitigate potential overlooking. This is provided to bedrooms on third floor plan to the fifth-floor plan to negate any potential for overlooking to residential properties. Ground, first and second floor plans along the eastern elevation do not require fins or opaque glazing as units 12 and 19 are provided with a smaller angled window which direct views away from residential properties towards commercial buildings and unit 13 and 20 are provided with windows located 12.78m from the eastern boundary of the site.
- Screening and set back on third floor terrace will mitigate potential overlooking.
- Rear garden of No 9 Harcourt terrace is at least 26m from the eastern elevation of the proposed building with the existing commercial Glennon

building located between and which contains unobscured windows on the eastern elevation.

- Regarding the control of the development use any modifications to the definition aparthotel as per development plan is a reserved function.
- Letter from Peter O Sullivan and Associates Solicitors demonstrates that the applicant holds sufficient legal entitlement to access the basement access ramp for car parking, cycle park and such ancillary uses.
- Proposal represents a significant investment in a strategically located site in Dublin 2, which is currently vacant and underutilised. Will provide a high-quality contemporary aparthotel development that has been designed to assimilate into its surrounding context.

6.3 Planning Authority Response

6.3.1 The Planning Authority did not respond to the grounds of appeal.

6.4 Observations

6.4.1 Submission from Transport Infrastructure Ireland reiterates submissions made to the local authority indicating no objection subject to conditions.

7 Assessment

7.1 I propose to consider the appeal in similar format to the broad headings as set out in the previous appeal ABP303204-18 as follows:

- Principle of Development
- Design and Conservation Impact
- Access and Parking

- Impact on Residential Amenity and degree to which the proposal addresses the previous grounds of refusal
- Appropriate Assessment

7.2 Principle of Development

7.2.1 The site is within an area zoned Z4 (District Centre) The stated objective is “*To provide for an improve mixed services facilities*”. The district centre can provide a focal point for the delivery of integrated services and the designated key district centres have, or will have in the future, the capability to deliver on a range of requirements, the most important of which are an increased density of development, a viable retail and commercial core, a comprehensive range of high-quality community and social services and a distinctive spatial identity with a high-quality physical environment.

7.2.2 Aparthotel falls within the definition of hotel as defined within Appendix 21 of the Dublin City Development Plan and Hotel use is a ‘permissible use’ within Z4 zoning. The site is within SDRA 18 ‘National Concert Hall Quarter’ which seeks *interalia* to “*Create a critical mass of employment generating land uses to utilise the investment in public transport in the area and to facilitate the delivery of additional planned public transport services.*

To promote the development of vacant and underutilised sites in the character area for high quality commercial development and other uses,

To promote the development of buildings up to 9-storeys commercial to ensure critical mass is achieved to support public transport services and ensure the most efficient use of scarce urban land, subject to preparing visual impact assessment and photomontages to verify the appropriateness of any proposed development in this city-wide and local context.

To ensure that the architectural composition and design of buildings and clusters of buildings contribute to the sense of place and identity and character of the area.”

I consider that the proposed development can be viewed positively in the policy context. The proposal is in accordance with the overall objectives for Z4 areas and in line with the objectives for the SRDA 18 National Concert Hall Quarter. On this basis it is clear that the proposed development is acceptable in principle.

7.3 Design and Conservation Impact

7.3.1 As regards the design concept and evolution this is set out in the Design Statement by Cantrell and Crowley Architects. I note that in terms of the scale, bulk and mass of the proposal it refers in context to the recently completed office development at 21 Charlemont to the south. The building is at its highest adjacent to no 21 and reduces in height significantly from 6 levels to 3 to 1 stepping down towards rear gardens of dwellings at Peter Place to the north. The maximum height of the building is 18.95m relative to 24m height of 21 Charlemont Development. The glazed elements seek to lighten the appearance of the structure. The main entrance faces onto Charlemont Place with access from the laneway. A courtyard is incorporated to include the historic well (protected structure) as its focal point. As regards material finish to the façade a mixed palette of materials is proposed including brick, aluminium glass render and wood composite battens. A green wall is provided to the upper floors on the northern elevation. The design incorporates extensive glazing which seeks to reduce the bulk of the structure with a horizontal aluminium fin system to direct line of view to the horizon and upwards to the east and north and protect residential amenity.

7.3 I consider that in terms of the height, scale and design when considered in light of the wider strategic and national policy parameters set out in the national planning framework and the Urban Design and Building Height Guidelines for Planning Authorities, Department of Housing Planning and Local Government, December 2018, the proposal is justified. I note also that the development plan provides for “buildings of up to 9 storeys commercial” within the National Concert Hall Quarter. The proposed design is in my view appropriate to its immediate context and is at a

scale which is consistent with the objectives of the development plan in terms of SDRA 18.

7.3.3 As regards impact on protected structures the appeal site includes the historic well Protected Structure (RPS No 3536). The well discovered in 1977 was identified as likely to represent the well that Lord Edward Fitzgerald, the Irish revolutionary, hid in while on the run during the rebellion of 1798. The top of the well lies approximately 0.4m below present ground level. The proposal involves retention of the well in situ as feature of courtyard entrance. Reconstruction of the well at upper level will be required. A methodology is set out within the desk study impact assessment by Linzi Simpson to address potential impacts of basement excavation and development works. The assessment concludes that the proposed works should have little impact on the actual well structure and could be reversed at sometime in the future if required. The piling wall proposed around the well will provide permanent shoring thereby stabilising the well in a permanent fashion. It is asserted that the construction of an above ground well structure will protect the well into the future re-establishing its presence in the modern landscape. As regards impact on the setting of protected structures on Harcourt Terrace, I would concur with the view of the previous reporting inspector that the overall impact will be neutral having regard to the existing built form which is of significant scale in the vicinity of the protected structures.

7.3.4 I consider that the proposed development provides for a contemporary structure which is in tune with development plan goals for the area namely the encouragement of a strong identity through innovative contemporary architecture and high-quality public realm. In my view the development provides a high-quality design approach to the specific constraints of the site. I consider in relation to the visual impact and

impact on cultural heritage that the proposal is of a high standard and is in my view successful from an urban design perspective.

7.4 Access and Parking

7.4.1 As regards access the proposal involves vehicular access via the existing Hilton Hotel Car park and car parking provision is in line with development plan standards. In relation to traffic safety I note that a number of concerns were raised with regard to the access to the Hilton Hotel car park. I note that given the limited extent of the development the proposal will not have a significant impact on traffic volumes and the proposal can be accommodated without adverse impact on traffic safety. On the matter of potential conflict between vehicular / pedestrian traffic on the laneway I note that given the low speed of traffic and the likely nature and volume of pedestrian movement the use of this laneway as a shared space is not likely to give rise to a hazard and the provision of relevant signage / road markings will mitigate potential safety issues.

7.4.2 As regards the questions raised by third parties with regard to legal interest in terms of access to the basement car park I note that the first party refers to the letter from O' Sullivan and Associates Solicitors which contends that the first party has sufficient legal entitlement to access the basement for car parking, cycle parking and servicing. In response to such issues regarding legal interest I note that such issues are essentially civil matters and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: "*A person shall*

not be entitled solely by reason of a permission under this section to carry out any development.”

7.5 Impact on Established Residential Amenity and extent to which concerns raised in the Board’s previous refusal have been addressed.

7.5.1 This is the key issue arising in the current appeal and the question arises as to whether the revised proposed design addresses the previous grounds for refusal. The Board in its determination of the previous proposal concluded that the design had not adequately addressed the issue of overshadowing and obtrusiveness in relation to the properties to the north. In considering the issue of residential amenity impact due consideration must be given to the houses and rear gardens of Peter Place to the north and houses and rear gardens of Hilton Mews and 8 Harcourt Terrace to the northeast and east. The revised proposal reduces the scale and height of the building by one storey from maximum height 21.95m to 18.95m and provides for increased setback from the northern boundary. The third-party appellants contend that notwithstanding the amendments the detrimental impact on the dwellings arising in terms of overshadowing daylight / sunlight impact and overbearing impact remains. Overlooking is also raised as a concern as well as noise and disturbance.

7.5.2 I note the daylight assessment submitted by BPG3 which sets out the impact of the proposal on the adjacent residential properties. In relation to the assessment of skylight access available to rooms in the vicinity a total of 16 windows were tested. The results demonstrate that of these 12 would be capable of meeting or exceeding BRE’s advisory targets. In assessing the details of the four negatively impacted windows the level of daylight amenity retained is higher than minimum recommendation for new build accommodation. It is asserted that the rooms retain adequate levels of internal sunlight and therefore impact can be considered acceptable.

7.5.3 As regards the assessment of sunlight levels available to neighbouring living rooms 11 living rooms assessed seven were found to exceed the BRE advisory targets for

sunlight access during both annual and winter periods. The report asserts that while departures from the target are identified for 4 windows to living rooms at Peter Place during winter sunlight levels the departures are within tolerable bounds and acceptable levels of sunlight amenity will remain available to these dwellings.

7.5.4 In the assessment of sunlight levels available to neighbouring gardens, of the 11 gardens assessed predictions indicate that five will meet or exceed standard advisory targets within the BRE guidelines. It is noted that many of the gardens currently receive sunlight access below the absolute advisory targets recommended in BRE (50% of area to receive at least 2 hours of sunshine on 21st March). It is noted that the principal explanation for low levels of sunlight access in the baseline scenario relates to the comparative height of the existing boundary walls and (their overshadowing effect) relative to the size of the garden contained within. (i.e. self-shading) (Notably the average area of gardens to rear of properties on Peter Place is 32m².)

7.5.5 An iterative assessment was carried out to identify the largest massing form that could be accommodated without offending the standard performance criteria recommended by the BRE for sunlight access to neighbouring gardens and this is presented in Figure 5 (Massing comparisons provided in Appendix F). It is asserted that this would render the development unviable and would be unrealistic given that the site is located in the city centre with immediate access to high quality services and transport offerings.

7.5.6 It is also noted that the typical levels of overshadowing over the course of the year demonstrate that while some impact is predicted in spring significantly lower levels of impacts will register during the remaining months of the year. The typical overshadowing condition calculated by averaging results obtained for each of the 365 component days demonstrates that the levels of sunlight available would satisfy the target of receiving (50% of area to receive at least 2 hours of direct sunlight on a typical day).

7.5.7 In terms of a comparative assessment of the revised proposal against the refused scheme it is noted that the average reduction in levels is 23%, 27% and 63% lower

than the refused scheme for skylight access, annual sunlight access to windows and typical annual sunlight access to gardens.

7.5.8 The BPG3 assessment makes the case for a flexible interpretation of daylight results flexibly as recommended in BRE Guidelines Site Layout Planning for Daylight and Sunlight. It is argued that while the minimisation of impact on neighbouring buildings should always be aspired to, the associated imperative to create sustainable levels of urban density, to encourage the development of compact urban form and to make use of scarce urban land will always place restrictions on the degree to which it is appropriate to pursue full compliance with BRE Guidelines. I consider that these arguments are well made. I note that the BRE Guidance document notes that in areas with modern high-rise buildings a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings. On balance I consider that a reasonable balance has been achieved in the revised design

7.5.9 In relation to overlooking I note that the proposal provides for a number of measures to mitigate impact and protect residential amenity including use of obscure glazing behind fins and directional windows. The strategy ensures that no material overlooking of established residential property occurs. On the issue of the roof terrace at third floor level I would concur with the recommendation of the City Council planning officer that on the basis of potential for noise disturbance this element of the proposal should be omitted. In relation to the concerns expressed with regard controls on the nature of use I consider that this can be addressed by condition.

7.5.10 In relation to overbearing impact and impact on visual amenity, I consider that whilst the proposal will clearly have a significant impact on the dwellings on Peter Place, the step down and use of glazing and green wall appropriately mitigates the visual impact arising and in my view the proposal will not be overbearing. Whilst the proposal will represent a significant change to the current outlook from these

dwellings, I consider that the proposal is appropriate in the context and is consistent with the objectives of the development plan for this highly accessible urban infill site.

7.6 Appropriate Assessment

7.6.1 The application is accompanied by a screening for Appropriate Assessment compiled by Openfield Ecological Services. The site is not located within or directly adjacent to any Natura 2000 sites. In relation to the identification of the sites which would be potentially affected using the source pathway receptor model the site at its closest point is approximately 3km from the boundary of the Natura 2000 site within Dublin Bay. The site is not of importance to the qualifying interests of these Natura 2000 sites.

7.5.2 Having regard to the brownfield nature of the site and scale of the development and nature of the receiving environment and proximity to the nearest European Site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a European Site.

7.5.3 It is reasonable to conclude that on the basis of the information on the file, which I considered adequate in order to issue a screening determination, that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on any European site, in view of the sites' conservation objectives, and a Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

8 Recommendation

Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the

planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

9 Reasons and Considerations

Having regard to the location of the development, the pattern of development in the area, to the provisions of the Dublin City Development Plan 2016-2022 and to the nature, scale, layout and design of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or other amenities of the area or of adjoining property, would be acceptable in terms of impact on architectural and cultural heritage of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

- 2 The proposed development shall be amended as follows
The roof terrace at third floor level shall be omitted from the proposal. Prior to the commencement of development, revised plans detailing the omission of the roof terrace shall be submitted to and approved in writing by the planning authority.

Reason: In the interest of residential amenity.

3. An information board detailing the historical significance of the Well Protected Structure 3563 (Spring Well) shall be erected in an appropriate location adjacent to the reconstructed well structure. Prior to commencement of development details of this information board shall be submitted to, and approved in writing by, the planning authority.

Reason: In the interest of enhancing the amenity of the area and in the interest of ensuring that the historical significance of the protected well is conveyed in an appropriate manner.

4. All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

Reason: To ensure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

5. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) Notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations relating to the proposed development, and
- (b) Employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues :

- (i) The nature and location of archaeological material on the site, and
- (ii) The impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with

the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement of any of these requirements, the matter shall be referred to An Bord Pleanála for determination,

Reason: In order to conserve the archaeological heritage of the site and to ensure the preservation and protection of any remains that may exist within the site.

6. Details, including samples, of the materials, colours and textures of all the external finishes to the building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. The aparthotel units shall only be occupied for short term letting periods of no more than two months and shall operated within the definition of aparthotel as set out in Appendix 16 of the Dublin City Development Plan 2016-2022. The aparthotel shall be managed by a reception facility on the ground floor with 24hr reception and security facilities. The aparthotel units shall not be used as independent self-contained permanent residential units or student accommodation.

Reason: To ensure that the development would accord with the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

8. The proposed development shall be implemented in such a manner as to ensure no adverse impact on Luas operation and safety and shall comply with Transport Infrastructure Ireland's Code of Engineering Practice for works on, near or adjacent to the Luas light Rail System. Prior to the commencement of development, the developer shall consult with TII and submit to the planning authority details showing compliance with these requirements for written agreement including the following:

- (i) Prior to the commencement of development, the developer shall obtain a permit from the Luas operator under the Light Railway (Regulation of Works) Bye Laws 2004 (SI No 101 of 2004) which regulates works occurring close to LRT infrastructure.
- (ii) Programme for settlement and vibration monitoring programme during construction works,
- (ii) Demolition and construction method statement, identifying all interfaces to the Luas alignment and risk assessment for work associated with the interfaces including mitigation measures.
- (iii) Construction management plan and construction traffic management plan.
- (iv) Lighting and public realm scheme in the context of the Luas light rail system.

Reason: In the interest of traffic safety and to ensure no adverse impact on Luas operation and safety.

9. No additional development shall take place above roof parapet level including lift motor enclosures, air handling equipment storage tanks ducts or other external plant telecommunication aerials antennas or equipment unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

10. No signage, advertising structures / advertisements, security shutters or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

11. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

12. Public lighting shall be provided in accordance with a scheme, details of which shall be submitted to the planning authority for agreement prior to the commencement of development.

Reason: In the interest of amenity and public safety.

13. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

14. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

15. The construction of the development shall be managed in accordance with a construction and demolition management plan which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
- (a) Location of the site and materials compound including area identified for the storage of construction refuse
 - (b) location of areas for construction site offices and staff facilities
 - (c) Details of site security fencing and hoardings;
 - (d) Details of parking / transport facilities for site workers during the course of construction
 - (e) Details of timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.
 - (f) measures to obviate queuing of construction traffic on the adjoining road network
 - (g) Measures to prevent the spillage or deposit of clay rubble or other debris on the public road network;
 - (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of closure of any public road or footpath during the course of site development works;
 - (i) details of appropriate mitigation measures for noise, dust and vibration and monitoring of such levels.
 - (j) Containment of all construction related fuel and oil within specifically constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
 - (k) Off-site disposal of construction / demolition waste and details of how it is proposed to manage excavated soil;

(l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

Reason: In the interest of amenities, public health and safety.

16. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

17. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme.

18 The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the Planning Authority under Section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Bríd Maxwell
Planning Inspector
16th January 2020