

An  
Bord  
Pleanála

**Board Direction**  
**BD-009133-21**  
**ABP-309511-21**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 22/09/2021.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

Having regard to the city-centre location of the site in close proximity to a wide range of public transport options and facilities, the provisions of the Dublin City Council Development Plan 2016-2022, the Urban Development and Building Heights - Guidelines for Planning Authorities (2018), the National Planning Framework which seeks to direct new development in cities into built-up serviced areas, the pattern of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development in this accessible urban location, would not detract from the mixed-use character of the area, would not seriously injure the amenities of surrounding properties or the visual amenities of the area, would not detract from the character or setting of the Protected Structure on site (No. 3 Parnell Street) or other Protected Structures in the vicinity of the site and would not detract from the character of the Capel Street and Environs Architectural Conservation Area, and would be acceptable in terms of pedestrian and traffic safety. 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 particulars lodged with the application as amended by the further plans and particulars submitted on the 22<sup>nd</sup> day of December 2020, and more particularly the proposals therein for 'Option A' (Option B is hereby not permitted), 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 fourth-floor level of Stair Core 2 and adjoining link corridor shall be omitted. Revised drawings showing compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of protecting the built heritage of the area.

3. Water supply and drainage arrangements, including the disposal of surface water from the site, shall be in accordance with the detailed requirements of the Planning Authority.

**Reason:** In the interests of public health.

4. The applicant or developer shall enter into water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

**Reason:** In the interests of public health.

5. The proposed shopfronts shall be in accordance with the following requirements:

- (a) Prior to the commencement of development, proposed lighting arrangements shall be submitted to, and agreed in writing with, the planning authority.
- (b) External roller shutters shall not be erected. Any internal shutter shall be only of the perforated type, coloured to match the shopfront colour.



- (c) No adhesive material shall be affixed to the windows or the shopfront.
- (d) No other 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.

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

**Reason:** In the interest of visual amenity and streetscape

7. The external courtyard sitting area shall not be open between the hours of 2200 and 0700 on any day.

**Reason:** in the interest of residential amenity.

8. The developer shall control odour emissions from the premises in accordance with measures including extract duct details which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of public health and to protect the amenities of the area.

9.

- (a) All proposed works to the protected structure (No. 3 Parnell Street) and No.'s 58 & 59 Capel Street shall be carried out under the supervision of a qualified professional with specialised conservation expertise.
- (b) The works shall be carried out in accordance with best conservation practice as detailed in the application (including the supplemented Architectural Heritage Impact Assessment) and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011.
- (c) A detailed survey of the basement of Numbers 4, 5 and 6 Parnell Street shall be carried out.



**Reason:** To secure the preservation of a protected structure and significant historic fabric within the site, and to ensure that the proposed works are carried out in accordance with best conservation practice.

10. The premises shall be soundproofed and managed such that:

- (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 08.00 to 2300 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as  $L_{90}$  and the specific noise shall be measured at  $L_{Aeq,T}$ .
- (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be the subject to the same locational and decibel exceedance criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at  $L_{Aeq,T}$ .
- (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
  - (i) during a temporary shutdown of the specific noise source, or
  - (ii) during a period immediately before or after the specific noise source operates.
- (d) When measuring the specific noise, the time (T) shall be any 5-minute period during which the sound emission from the premises is at its maximum level.
- (e) Any measuring instrument shall be precision grade.
- (f) Soundproofing shall be provided along the boundaries with adjoining properties where necessary.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority and shall include a comprehensive survey of baseline noise levels and predicted noise levels associated with the proposed development.



**Reason:** In order to protect the amenities of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

11. 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 on 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

12. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0700 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 amenities of property in the vicinity.

13. No additional development shall take place above roof parapet levels, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, machinery or telecommunications aerial, antennas or equipment unless authorised by a further grant of planning permission.

**Reason:** In the interest of residential and visual amenity.

14. Prior to the opening of the development, a Mobility Management Strategy shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff employed in the development and to reduce and regulate the extent of staff car parking. The mobility strategy shall be prepared and implemented by the management company for all units within the development. Details to be agreed with the planning authority shall include the provision of adequate facilities within the development for bicycle parking, shower and changing facilities associated with the policies set out in the strategy.

**Reason:** In the interest of encouraging the use of sustainable modes of transport

15. Any alterations to the public road or footpath shall be in accordance with the requirements of the planning authority and where required, all repairs to the public road and services shall be carried out to the satisfaction of the planning authority at the applicant's expense.

**Reason:** In the interests of clarity, public safety and amenity.

16. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.



17. 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.

18. The construction of the development shall be managed in accordance with a Construction 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(s) including area(s) 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 car parking facilities for site workers during the course of construction.
- (e) Details of the 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 the closure of any public road or footpath during the course of site development works;



- (i) Provision of parking/vehicular access for existing properties during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

19. 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.

20. Public access to and from the street shall be maintained to the ground floor bars and restaurants at all times during opening hours.

**Reason:** To promote active uses at street level.

21. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains,



drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

22. The developer shall pay to the planning authority a financial contribution in respect of LUAS Cross City 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, 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

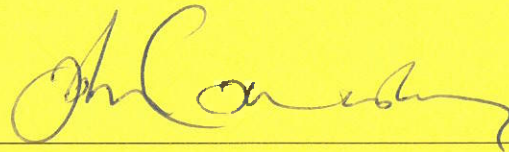
23. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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 made under section 48 of the Act be applied to the permission

**Board Member**



**Date:** 22/09/2021

**Note:** The Board noted, and agreed with, the Inspector's view that the omission of the fourth-floor level of Stair Core 2 and adjoining link corridor, along with the adoption of Option A, would significantly improve the Vertical Sky Component (VSC) values for the existing windows on the northern elevation of No. 57 Capel Street. However, the Board did not consider it necessary to setback the western elevation walls of bedroom no.'s 111, 112, 211, 212, 311, 312, 408 & 409, or the eastern elevation of the proposed en-suite extension to the rear of No. 58 Capel Street, noting that the VSC values of 6 of the 10 existing windows are already below the BRE recommended level and that the windows are quite limited in size. In this regard, the Board also noted that these windows have been installed on the boundary line, and the BRE guidelines are discretionary and should be interpreted flexibly having regard to the site context and the desirability of the regeneration of this city centre site.