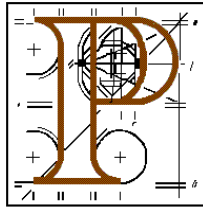


## An Bord Pleanála



### Inspector's Report.

**PL 29S 245433**

**DEVELOPMENT:** Demolition of existing buildings and construction of a student housing development

**LOCATION:** Rear of Nos. 14/15 Wexford Street and Protestant Row, Dublin 2.

#### PLANNING APPLICATION

**Planning Authority:** Dublin City Council

**P. A. Reg. Ref:** 2356/15

**Applicant:** Safestore (Ireland) Ltd.,

**Decision:** Refuse Permission

#### APPEAL

**Appellant:** Residents of Nos. 1-4 Montague Court,

**Type of Appeal** Appeal against Grant of Permission.

**Observers** Residents of 24-48 O'Carroll Villas.

**Date of Inspection:** 18<sup>th</sup> November, 2015.

**Inspector** Jane Dennehy

## **1.0 INTRODUCTION**

- 1.1 This file contains a third party appeal by the residents of Montague Court against the decision of Dublin City Council to grant permission for demolition of existing buildings and construction of a student housing development at 14/15 Wexford Street and Protestant Row, Dublin 2. It also contains an observer submission by the residents of Nos. 25-48 O'Carroll Villas.

## **2.0 SITE LOCATION AND DESCRIPTION**

- 2.1 The site is located at the rear of Nos. 14 and 14a on the east side of Wexford Street. It has northern frontage onto Protestant Row which is a narrow lane linking Wexford Street to the west with Montague Court to the east. The site includes No 15 Wexford Street a three storey building with a doorway between two shop fronts accessing the upper floors in residential use. Facing on Protestant Row on which there is a wall and an entrance to a derelict two storey building with corrugated sheet roofing partially intact which it is understood formerly was a sewing workshop and formerly there were a number of structures which were used for residential accommodation on the remainder of the site.
- 2.2 Along the eastern boundary there is a high wall and the gable end and chimney of the derelict building. It adjoins the back yards of a terrace of four two storey dwellings which face eastwards and is occupied by the appellant party. O'Carroll's Villas is within the residential complex located east and north east of Montague Court and Protestant Row.
- 2.3 The site is walled along the boundaries re is a walled in area to the rear of No 14 and No 15 on part of which buildings dating from the mid twentieth century are located. There is an access gate onto Protestant Row facing directly onto Protestant Row are located and there are a number of sheds were relocated.
- 2.4 The area is characterised by primarily by nineteenth and twentieth century buildings mainly three storey in height. Wexford Street on the west side is a major historic thoroughfare between Camden Street and the City Centre and there are a variety of commercial and retail uses and some residential use in the area.

## **3. PLANNING HISTORY:**

- 3.1 **P. A. Reg. Ref. 2246/09:** Permission was granted, for demolition of ht existing buildings and outbuildings to the rear f No 12 Wexford Street facing onto Protestant Row and construction of five residential units with

a roof garden. An extension of the duration of the grant of permission was subsequently refused.

- 3.2 **P. A. Reg. Ref. 3382/08:** Permission was refused for the demolition of the existing buildings and outbuildings, demolition of No 12 Wexford Street and construction of a five and six storey mixed use development of thirteen apartments with a roof garden and replacement of the retail unit at No 12 Wexford Street. The reason for refusal of permission related to serious injury to residential amenity and property devaluation due to overdevelopment on account of height, bulk and scale and an overbearing and overshadowing effect on adjoining residential properties.
- 3.3 **P. A. Reg. Ref. 1331/08:** Permission was refused on the basis of two reasons for the demolition of the existing buildings and outbuildings, demolition of the upper floors at No 12 Wexford Street and construction of a five and six storey mixed use development of fourteen apartments with a roof garden and replacement of the retail unit at No 12 Wexford Street. The first reason for refusal of permission related to serious injury to residential amenity and property devaluation due to close proximity and overdevelopment on account of height, bulk and scale and an overbearing and overshadowing effect on adjoining residential properties at Montague Court. The second reason for refusal of permission was on grounds of visual incongruity as an insertion into the key historic streetscape resulting in serious injury to the visual amenity of the designated conservation area and precedent for substandard development in the area.
- 3.4 **P. A. Reg. Ref. 5387/07:** Permission was refused on the basis of two reasons for the demolition of the existing buildings and outbuildings, demolition of the upper floors at No 12 Wexford Street and construction of a five and six storey mixed use development of fourteen apartments with a roof garden and replacement of the retail unit at No 12 Wexford Street. The first reason for refusal of permission related to serious injury to residential amenity injury and property devaluation at No 1 Montague Court due to overlooking, overbearing and overshadowing impact, overlooking. The second reason was on grounds of serious injury to the residential amenities for the future residents and devaluation of property on account of overdevelopment related to substandard private open space for single aspect north facing apartments with insufficient daylight, and precedent for substandard development.

#### 4. **DEVELOPMENT PLAN.**

- 4.1 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site location is within the area subject to the zoning objective: Z5: *“to consolidate and facilitate the*

*development of the central area, to identify, reinforce and strengthen and protect its civic design character and dignity”.*

4.2 Policy QH30 is reproduced below:

*“To support the provision of high quality, professionally managed and purpose built third level accommodation on campuses or in appropriate locations close to the main campus adjacent to high quality public transport corridors and cycle routes in a manner which represents the amenity of the surrounding area.*

Appendix 23 comprises, *“Guidelines for Student Accommodation”.*

4.3 Building height policies and standards are set out in section 1.6.2.

Recorded monuments in the vicinity include a gateway at Wexford Street (DU018:020 – 36), a bridge (DU018:020 – 337) to the west and a holy well to the south of Montague Street (DU018:020 – 336) St Kevin’s Church and Graveyard (DU018 – 078) is circa one hundred and fifty metres to the north west.

## **5. THE PLANNING APPLICATION.**

- 5.1 The application lodged with the planning authority indicates proposals for demolition of the existing structures which face onto Protestant Row and site boundaries and erection of a student housing development. The development includes provision for foul drainage arrangements surface water drainage and attenuation, a rainwater harvesting system, mains water supply connection. Alterations and upgrading works are proposed for the shopfront at No 15 Wexford Street to form entrance and reception area in the former shop area with associated signage.
- 5.2 The student accommodation to be constructed is in two blocks with a link staircase and lift. A four storey building (southern block) is to be located at the rear of Nos. 14 and 15 Wexford Street and a five storey block at the northern end with a four storey elevation on Protestant Row. A total of forty eight student, en-suite rooms are to be provided, within apartments with communal living space on each floor, the fifth floor being a setback floor with four units whereas six units are to be provided on each of the other floors. The height of the building is to be 16.4 metres with the height of the frontage onto Protestant Row being twelve metres. At fifth floor there is to be a link building with lift access and stairwell. A zinc finish is proposed for the roof and top floor penthouse level. A basement with a plant room and laundry is included along with a waste management store/covered stairwell, Basement with plant room, laundry, waste management, covered cycle storage for eight cycles and landscaped open space which includes limestone paving and planter boxes. No on site carparking is included in the proposal but provision is made for a covered service vehicle parking bay on Protestant Row, The

total stated floor area is 1,445 square metres and the space within the existing building at No 15 Wexford Street which is to form the entrance and reception area is 30 square metres. This entrance is to open to the rear to the accommodation building.

5.3 The application is accompanied by a Planning and Environment Report, Conservation Area Impact Assessment report Archaeological Assessment report in which it is stated that some subsurface material may be present and a monitoring condition is recommended by a shadow analysis, (which was revised in further information submissions), drainage calculations and a refurbishment and demolition survey as some of the structures on the site are known to contain some asbestos material.

5.4 The applicant submitted a response to a four item additional information request to the planning authority on 8<sup>th</sup> June, 2015 comprising:

Detailed shadow diagrams with details of predevelopment shadow;

Detail of finishes which include polished granite, sand and cement and seam zinc. Brochures and photomontages and details of signage were not included.

A more detailed floor plan for the fourth floor which provides for a recreation room and a site plan indicating sixteen cycle spaces, an increase from the eight initially proposed having been recommended by the Roads Traffic Planning Division.

5.5 A response to a clarification of additional information request was received from the applicant on 10<sup>th</sup> July, 2015. It comprises details on shadow analysis of pre and post development shadow on adjoining properties at different times and dates and for brochures and photomontages and details of signage were not included.

5.6 The internal technical reports of the Roads Planning and Traffic Division and Drainage Division indicate no objection to the proposed development subject to standard conditions of a technical nature including a requirement for flood risk assessment to be conducted.

## **6.0 DECISION OF THE PLANNING AUTHORITY.**

6.1 By Order dated, 5<sup>th</sup> August, 2015 the planning authority decided to grant permission for the proposed development subject to conditions of a standard nature which include requirements for:

Standard drainage requirements including SUDS systems, measures to minimise risk of basement flooding and submission of a flood risk impact assessment report which includes details of

solutions for mitigation of potential risk from coastal fluvial, pluvial and groundwater. Thirty and One hundred year storms and no increase from greenfield rates are to be provided for in the proposals are to be assessed. (Condition No 4.)

An archaeological assessment in accordance with the requirements of the City Archaeologist to who a final report is to be submitted and also lodged with the archaeological paper archive at Dublin City Library. (Condition No 6.)

Compliance requirement for details of proposed materials, colours and textures for signage. (Condition No 10.)

A requirement for submission of a plan for control of noise, vibration and dust from demolition and construction. (Condition No 12 (a))

Details of requirements for limitations for hours of work for demolition and construction. (Condition No 12 (b))

Details of requirements for management of noise (at operational stage) and compliance with the standards in BS 4142. (Condition No.12 (c))

## **7.0 THE APPEAL.**

7.1 An appeal was received from Karen Plunkett on behalf of the residents of Nos. 1-4 Montague Court which adjoins the eastern site boundary on 1<sup>st</sup> September, 2015. Included with the appeal is a copy of the planning and environment report submitted by the applicant with the application on which comments and observations have been provided to support the range of appeal grounds. The residents believe that the proposed development would have a dramatic negative impact on the quality of life and health at their properties.

7.2 The objections can be outlined as follows:

- The proximity, height and scale will affect light and privacy at Montague Court. The mass of the facade at Block A is depressing in effect and a enclosing and overbearing in impact and the rainwater goods will add to the unattractiveness of the facade.
- There is loss of access to light and the sky for the residents due to the scale and overbearing impact of a five storey building. Overshadowing impacts on quality of life and health. The shadow analysis is for specific dates but on 27<sup>th</sup> August, at 19.30 hrs. Evening sunlight is visible on the back walls and windows of the houses on Montague Court and this would be removed by the

proposed development. The marginal setback of the fifth floor in Block A does not effectively improve light access to Montague Court.

- The noise levels from the student accommodation would be inappropriate and is not manageable by CCTV in a non campus location. There have been problems with noise from students in the area and this problem would be exacerbated. The designated recreational area which is beside No 1 and the waste storage facility would encroach on the Montague Court properties.
- Odours would occur at the waste storage facility due to the amount of accommodation proposed. Details about waste collection are not available but the size of the development would necessitate a high frequency for collections so significant increases in servicing activity and noise pollution would occur. The waste storage building adjoins the wall of the three metre yard of No 1 Montague Court and addition to the concerns about noise and odours there is potential for pest infestation.
- The demand and need for student accommodation in the area is questioned. A project is under construction at York Street and there is available accommodation for students at other locations in Dublin 2 and at the Aungier Street student accommodation complex which is operated by the applicant. Permanent residents rather than students are residing at the Aungier Street development.
- It is not accepted that on site carparking is not required because students do own cars and parking available at present at Montague Court for residents to park their cars is very limited. Students would want to park on Montague Court.
- Access along Protestant Row which is a narrow lane to Montague Court by foot and by art is disrupted and is hazardous and the increase would exacerbate existing problems with congestion. Emergency and services vehicles have difficulty and experience hazard when using Protestant Row as would the refuse vehicles that service Montague Court. A restaurant at No 12 Wexford Street also opens onto and uses Protestant Row.
- Student accommodation by its nature creates a transient community which would be underlined by the use during one third of the year as a short let holiday accommodation and for short term leases with there being no vested interest in the community or the environment. This is unacceptable within an established residential community.

- It is acknowledged that the location is designated as a development site. However a more sympathetic and considered development is necessary for the increasingly thriving Wexford Street area and which would be an asset for the local community. A quality piece of architecture would be welcomed and it can be rewarding for the developer, the City Council and have minimal negative impact on the environment for the residents.

**8. OBSERVER SUBMISSION - RESIDENTS of Nos. 25 – 48 O’CARROLL VILLAS.**

8.1 A submission was received from Yvonne Farrell on behalf of the residents of Nos. 25- 48 O’Carroll Villas on 21<sup>st</sup> September 2015. The signatures of the residents have been included in the submission.

8.2 The observations can be outlined as follows.

- No details of proposals for deliveries and storage have been provided. Safety of access to and from O’Carroll Villas is a major concern.
- Asbestos is in the pitched roof of No 15 Wexford Street. A competent company for removal and disposal prior to demolition is recommended in the report. If the building is to be demolished the roof should be left in situ. The wall and or roof on Protestant Row should be tested and treated for asbestos. . It appears that it is to be demolished.
- Noise from the proposed development (which is not a college campus with twenty four hour supervision is a major concern. There are no details about noise issues during the construction phase. The 7.00 am start time is too early on account of the night life environment in the area which disturbs residents.
- Details of storage and collection of waste which is to serve forth eight residents are not clear. Truck backing up Protestant Row will result in additional noise. The storage facility will result in additional noise and odours.
- Details for rodent control through construction and operational stages should be available.
- The need for student accommodation is questioned. RCSI is development its own accommodation. The applicant has an existing student accommodation development which is used by RCSI students in Aungier Street. No reply has been received by the observer party to a request for details of the numbers of students who have stayed there since 2006. DIT Kevin Street and Aungier Street are relocating to Grangegorman which



reduces the need for student accommodation. There is no assurance that the applicant will operate the development as student accommodation or lease it to other accommodation uses. Transient and short term lettings will be available for three months of the year and groups and individuals may avail of them.

- There is a shortage of carparking space for residents. There are no details of parking proposals for the construction phase.
- Protestant Row is a walkway between O'Carroll Villas and Wexford Street Emergency services have difficulty in access along Protestant Row and there is risk of obstruction of access to the fire hydrant on Montague Court.
- The proposed development will overshadow, obstruct access to light and will be overbearing on O'Carroll Villas.
- The development will increase demand on the water and drainage system and affect water pressure and flooding risk.
- There is no objection in principle to future development of the site if it will add to the community and quality of life. There is little or no potential community gain and the occupants will have limited interest in the local community. Residents were not consulted on the impact of the proposed development on the quality of life for the existing community.

## **9. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.**

- 9.1 A submission from the planning authority on 24<sup>th</sup> September, 2015 in which the planning officer requests that the planning authority decision with the conditions attached to the planning authority decision be upheld and reference is made to the planning officer's report.

## **10. RESPONSE TO THE THIRD PARTY APPEAL BY THE APPLICANT**

- 10.1 A submission was received on 30<sup>th</sup> September, 2015 attached to which are three dimensional images submitted with the application, A Site plan with details of the viewpoint directions, and an elevation drawing of previously permitted development for the Protestant Row frontage with the current proposal superimposed. The submission contains a detailed outline of design of the proposed development, the rationale for it, the planning history and the planning authority's assessment.

- 10.2 It is stated that:

- The site was assembled over several years by the operator of the Aungier Street Student Residence with a view to development of an additional student housing into which the business would be extended and the interests of the residents of Montague Court have always been of paramount importance.
- There is an acute shortage of student accommodation and the Aungier Street complex has been one hundred percent occupied with requests exceeding capacity. over the last number of years.

10.3 With regard to the appeal grounds it is submitted that:

- The proposed development is within the envelope for which development was permitted under P. A. Reg. Ref. 2246/09 having regard to concerns about regard to height, scale and proximity to boundaries. The opaque nature of the eastern façade of Block A eliminates overlooking of Montague Court. The appellant may not have taken into account the 0.3 metre setback of the top floor.
- There is no additional shadow effect on Montague Court relative to that caused by existing yard boundary walls. Enhanced 3D shadow and daylight drawings are shown in Figure A.
- The proposed service bay on Protestant Row must be kept clear of bins etc. in order to obtain a Fire Certificate. The enclosed bin store will be where the ground floor apartment is located and the number of bedrooms in it will be reduced and this should address the concerns as to effect on No 1 Montague Court. A balance between frequency of waste collection and build up will be necessary and it may vary according to occupancy levels and a five metre four wheel fixed chassis van is to be used. Waste is collected three to four times a week from the Aungier Street residence.
- Noise levels will be in acceptable limits by professional management of the development in accordance with students' licence agreement criteria and lease terms. The license agreement restricts hours and music playing after 1 pm and controls the disposal of waste. BS 4142 standards are the benchmark against which complaints can be measured as provided for in Condition No 12. CCTV will be installed. Aungier street residents are aware of the CCTV monitoring and Licence agreements which ensures good behaviour. Approval of the Air Quality and Nos. and Control Unit at the City Council is also required.

- Strong demand for student accommodation is well reported in media and the Aungier Street residence could be filled several times over. Students only are resident at Aungier Street.
- None of the students at Aungier Street have cars and parking on adjoining streets is not foreseen at the proposed development.
- The Road and traffic department has no objection to the proposed development. The appellants acknowledge the advantage of the range of facilities available in the central area.
- But it must be accepted that a degree of congestion is a natural consequence of urban life.
- Diversity in housing tenure and in age, race and occupations of residents are factors that adds to rather than diminishes the quality of life of an established community.

10.4 It is concluded that the proposal is appropriate to the location and in conformity with the policies, objectives and standards in the Dublin City Development Plan, designed to avoid overlooking traffic generation and the applicant will comply with the conditions attached to the plan.

10.5 It is requested that the planning authority decision to grant permission be upheld.

## 11. FURTHER SUBMISSION OF THE APPLICANT.

11.1 A submission was received on 29<sup>th</sup> October, 2015 in which observations are made on the contents of the Observer submission.

11.2 According to the submission:

- A construction method statement will be prepared and submitted to the planning authority to address logistical aspects of the construction stage and access for O'Carrolls Villas. Additional footfall on Protestant Row will be modest.
- A survey of asbestos containing materials will be carried out for the structure on Protestant Row to be demolished. Statutory requirements will be observed.
- Compliance with standards in BS 4141 is required under Condition 12 (c). There will be continuous monitoring of the accommodation and the lease agreement with occupants has conditions which include disposal of waste in a proper manner, restrictions on music and parties. During construction the application will copy with Condition No 12 (a) and the applicant is

willing to prepare a construction method statement for approval by the Air Quality and Noise Control Unit.

- The applicant will comply with the hours of construction permitted, further to the appeal. A community Liaison Officer is to be appointed for the construction period.
- Waste collection will be by a five metre long four wheel chassis enclosed van from the service area off street and a balance will be struck between collection and building up of waste in the bin store. The service bay on Protestant row will be kept clear of bins for Fire Safety Certificate requirements. Good hygiene and waste management should prevent rodent problems but if necessary a pest control company can be employed.
- The strong demand for student accommodation cannot be disputed, the Aungier street facility could be filled several times over and the site is well located for city centre college and local facilities and services. It is not the applicant's intention to cater for other sectors of the housing or hospitality market. Outside of the academic year the accommodation may be let to graduate students or language students.
- No parking is to be provided on Protestant Row. It is not foreseen that students would have cars. Additional footfall on Protestant row would be modest.
- The construction methods statement to be formulated will address logistics of construction and access to the fire hydrant, a disability Access certificate has been obtained and a fire certificate application is being assessed.
- Overshadowing will not be increased relative to that of the permitted development under P. A. Reg. Ref. 2246.09. The O'Carroll Villas are twenty five metres from the site. Overlooking will not occur.
- The building height is within the parameters of section 17.6.2 of the development plan.
- Drainage arrangements have been competently designed and there is no objection to it other than by the Observer Party.
- The proposed development will have positive impacts on city life in the area in terms of the diversity and vibrancy and variety which are characteristic of the area.

## 12 FURTHER SUBMISSION OF THE PLANNING AUTHORITY.

- 12.1 A submission was received from the planning authority on 30<sup>th</sup> October, 2015 in which the planning officer states the appeal documentation has been reviewed and it is requested that the planning authority decision be upheld and reference is made to the planning officer's report.

## 9. EVALUATION

- 9.1 The planning authority decided to grant permission for a student housing development on a brownfield site to the east side of Wexford Street comprising two blocks with a shared entrance and reception area at ground floor level in No 15 Wexford Street. Permission was previously granted for development on the site in 2009 which was not implemented. The third party appeal is from the residents of 1-4 Montague Court which adjoins the eastern site boundary and observer submission by the residents of 25-48 O'Carroll's Villas to the east and north east of Montague Court and Protestant Row. These issues considered central to the determination of a decision are:

- Nature and Intensity of Development.
- Scale Mass and Height.
- Impact on amenities of adjoining residential properties.
- Overbearing Impact.
- Overshadowing
- Overlooking
- Noise and Nuisance – Public Health
- Traffic Generation and Parking Demand.
- Drainage, Water Supply and Flooding Risk.

- 9.2 **Nature and Intensity of Development.** The site location is within a central city area subject to the Z5 zoning objective which is: *“to consolidate and facilitate the development of the central area, to identify, reinforce and strengthen and protect its civic design character and dignity”*. It is a brownfield central city site in a mixed use area to which services and facilities are readily available. It is considered that student accommodation development would contribute to consolidation of the vitality and viability of the mix of land uses in the immediate vicinity.

- 9.3 It has been established that both the site coverage and plot ratio come within the applicable development plan parameters. Student housing has the capacity for high density or intensity, in this case, a capacity for forty eight rooms comprising five or six study bedrooms with shared sitting room and cooking facilities in apartments. The requirements are not as extensive as those required for generic residential development

for permanent occupancy. For example student housing is solely occupied by adults who reside there for periods of limited duration and have fewer requirements for on-site amenities, and services (which may be communal), reliance on services and facilities in the local street network and there is limited traffic generation and parking demand<sup>1</sup>. The proposed development is low key in impact.

9.4 The applicant has confirmed in the response to the appeal that the letting of the accommodation will be confined, to letting to students only. Short lets will be made available for short stay students such as those taking English language courses during summer months but the accommodation will not be available for letting as alternative short stay or holiday accommodation.

9.5 It is considered that potential for consistent adverse impact on residential amenity due to anti social behaviour and noise and nuisance impact would not be any greater than that the potential for such occurrences at alternative residential accommodation. Expectations to the contrary are noted but it is agreed that the commitment to good management, a clear lease agreement with residents and surveillance through a CCTV system of the scheme should provide assurance in this regard. A commitment to this end is made in the submissions accompanying the application and reference is made to the applicant's established prior record as a successful student accommodation provider in Aungier Street. To this end, it is considered that a student accommodation scheme of the size and nature proposed would be low key in impact on the residential amenities of the surrounding area.

9.6 **Scale Mass and Height.**

The applicant relies on the previous grant of permission which expired without implementation<sup>2</sup> as a reference point for parameters for the current proposal. The proposed development is within the envelope of the previously permitted development. While this is a reasonable approach the *de novo* review and determination of a decision is not restricted to this end and reference will be made to the current planning context it being noted that development plan was reviewed in the intervening period.

9.7 The site is set in behind the buildings which have frontage onto Wexford Street and while not sensitive with regard to compatibility and integration to an existing streetscape the visual impact of a new, taller structure at the rear of the street frontage buildings is a consideration.

9.8 The heights at approximately 16.5 metres maximum for Block B to the rear of Wexford Street. Block A has a twelve metre high facade along the Protestant Row frontage which is similar in height. There building

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<sup>2</sup> In 2014, Permission was refused for an extension of the duration of the grant of permission. (P.A. Reg. Ref. 2246/09 refers.)

heights are in accordance with the limitations indicated in the current development plan but it is within a site that formerly accommodated structures with a maximum of two storeys. From the perspective of visual impact, especially in views from Wexford Street and the junction, it is considered that the insertion of the proposed development into the site is acceptable. The materials and colours selected for the facades, screening of plant at roof level and zinc sheeting at roof level is considered appropriate. In the event that permission is to be granted, a compliance condition can be included so that there is an opportunity for samples if required to be viewed by the planning authority.

9.9 The height to the eaves of the enclosed storage area adjacent to Montague Court is to be similar to the height of the existing wall at this end of Protestant Row and the pitched roof is not obtrusive. The removal of the existing chimney at the boundary with No 1 Montague Court is appropriate.

9.10 **Impact on amenities of adjoining residential properties.**

In addition to residential property adjoining and in the vicinity of the appeal site at Montague Court and O'Carroll's Villas to the east and north, there is some upper floor residential accommodation at adjoining property on Wexford Street to the west. This was noted in the course of the inspection and is indicated on the survey drawings provide with the application. It is considered that the amenities of the residential properties at O'Carroll Villas the occupants of which submitted the observation to the Board in connection with the appeal would be unaffected by reason overbearing impact, overshadowing or overlooking.

9.11 Policies and objectives of the Dublin City Development Plan and associated measures strongly encourage upper floor residential use in existing buildings within city centre areas subject to multiple use zoning objectives which provide for balance between the mix of uses and the sustainable urban development. Some flexibility on a case by case basis with regard to the application of minimum standards may be justified. The impacts on residential amenity are considered below.

9.12 **Overbearing Impact.**

As the proposed structure is considerably higher than existing and removed structures on the site and it will result in a major change to the immediate environs by the insertion of new development of a student accommodation development into the vacant brownfield site adjoining the existing development. The existing boundary wall along the eastern boundary is circa four metres in height. The footprint, which is in the envelope of the previously permitted development, has limited separation distances to the adjoining residential properties.

9.13 The east and west facing elevations of the proposed development are not continuous or blank owing to the design, materials and finishes and the setback link element between the two blocks and top level setback.

The covered over storage building adjacent to No 1 Montague Court shares a similar eaves height to the existing and the pitched roof similar to that of the existing building with removal of the chimney on the boundary is considered to be an acceptable solution. Overall, it is concluded that acceptable standards have been achieved in the design whereby the development would not be overbearing and would be acceptable particularly at the central city location.

**9.14 Overshadowing.**

The primary concern is as to impact on the properties on Montague Court which are east facing with rear private open space of three to four metres depth to the west which are enclosed by the four metres high wall along the western and southern boundaries. At present, (without the development in place) sunlight and daylight at the rear facade and rear yard areas of the four properties is limited owing to the proximity to the boundary wall. The setback of the proposed development from the boundary and at the top floor and the form and height of the enclosed storage area adjacent to No 1 Montague Court are sufficient to allow for the existing standard of access to sunlight and daylight at the rear of these properties to remain relatively unchanged. It is considered that it has been satisfactorily demonstrated in the final shadow analysis submitted to the planning authority that the potential additional overshadowing effect directly attributable to the proposed development is limited. Significant diminution in access to sunlight and daylight at the rear, east facing facades of the properties on Wexford Street would not occur.

**9.15 Overlooking.**

The separation distances from adjoining buildings are a minimum of ten metres from the rear facades of Wexford Street buildings at upper levels. The proposed development would give rise to some reciprocal overlooking from a living room window and balcony and a bedroom window at upper levels in Block B and the upper floor rear elevation of the Wexford Street properties. It is noted that the planning officer accepted this arrangement on the basis that a similar arrangement had been shown for the previously permitted proposal under P. A. Reg. Ref. 2246/09. If required some screening measures or minor modifications to the fenestration could be required so that the impact could be partially mitigated but avoidance of diminution of the quality of the living room and bedrooms involved is also a consideration.

**9.16** Potential for overlooking of the four properties on Montague Court (the appellant party) from which there is a minimum separation distance of six metres is mitigated in the design by the positioning of most of the living space fenestration, perpendicular to the eastern boundary and rear, west facing facades of the houses. This is satisfactory. The upper floors of the Montague Court properties have landing/bathroom and bedroom windows in the rear elevation at upper floor level. The lower levels and rear yards are screened by the boundary wall.



**9.17 Noise and Nuisance, public health.**

Owing to the existing mix of uses of Wexford Street particularly in entertainment and nightlife, noise, nuisance and disturbance is a regular occurrence in the area. It is considered the proposed development is such that it would not be a direct cause of significant undue negative impact on residential amenities of adjoining properties subject to full and satisfactory implementation at operational stage of the various leasing requirements and management and security measures as previously discussed under paras 9.4 and 9.5.

9.18 The appellant and observer parties have indicated particular concern about waste management and collection both on grounds of disturbance and on grounds of hygiene and public health. It is considered that satisfactory measures have been incorporated in the proposals for the enclosed waste storage space and waste collection area to address disturbance by noise prevention against rodent infestation and odours. The proposed location for refuse collections and vehicle size is suitable to the narrow width of the lane. It is also a suitable location for other servicing requirements. It is noted that storage and disposal of waste arrangements are also subject to separate legislative standards. The prevalence of existing restaurants, bars, shops and take out facilities in the area which generate considerable waste should also be borne in mind when considering direct potential impact of the proposed development.

9.19 It is considered that the planning authority has provided for further assurance and clarity in attaching Condition 12 to the decision to grant permission. It has a requirement for a noise, dust and vibration management plan to be prepared. Such a plan is required for both a construction and operational stages and requirements, (subject to compliance) which are of a standard nature can be included by condition should permission be granted.

9.20 With regard to the construction stage operations which can be provided for in a construction management plan, it is considered similar hours of construction to those indicated in condition No 12 attached to the planning authority decision are appropriate. It is not accepted that there is a sufficient case for restrictions to an 8 am as opposed to a 7.00 am start on weekday mornings. It is a mixed use city centre location and the restriction would be relatively onerous. It would be a matter for the planning authority to ensure compliance with any restrictions imposed by condition.

9.21 It is considered that it has been satisfactorily established, having regard to the demolition survey report on asbestos materials provided with the application that the applicant has proposed a suitable arrangement for removal of roofs and for their disposal off site. As a result there should be no health risk to residents and others in the area.

**9.21 Traffic Generation and Parking Demand.**

As indicated in the report of the Traffic Planning Division at application stage, there is no requirement for onsite parking for dedicated student accommodation developments. The contention of the appellant and observer party that students may own cars is not unreasonable but ownership and trip generation would be relatively insignificant and demand for on street parking in the vicinity of adjoining developments at Montague Court and O'Carroll Villas.

9.22 Protestant Row is suitable for pedestrian use, cycle/motor cycles, private car services vehicular access from Wexford Street. Vehicles using the lane require almost the entire width and unauthorised stopping on it would result in the lane being fully blocked. The proposed student accommodation development is advantageous and is a suitable use owing to lack of traffic generation, limited need for vehicular access and off street parking.

**9.23 Drainage, Water Supply and Flooding Risk.**

The appellant and observer parties indicate concern as to impact on water pressure that would be attributable to additional demand at the development site and as to flooding risk. The application includes a layout and calculations for drainage and storm cellular storage with hydro-brake outflow control attenuation. It is noted that the report from the Drainage Division of Dublin City Council on file indicates no objection subject to conditions which include a requirement for submission of a flood risk assessment for the thirty and one hundred year storm events in accordance with the methodology and recommendations within "*Guidelines for Planning Authorities: The Planning System and Flood Risk Management*" issued by DOEHLG/OPW in 2009. It also recommends that by condition, confirmation that the flooding risk is minimised in the design without increased risk relative to that of a greenfield site be provided. Calculations are provided in the application for the 100 year return period plus twenty percent (standard climate change allowance)

9.24 The proposed development does not give rise to any special concern as to flooding risk. The site is a brownfield site and the location is within the central business district and although is a vulnerable land use is proposed the ground level is sufficiently elevated and major excavation and below ground development is not included in the proposal. It is recommended in the event that permission is granted that a Flood Risk Assessment report be required, by condition as recommended in the report of the Drainage Division.

9.25 It is not apparent that the use of the water supply by the proposed development would be a direct cause of loss of pressure to other residential and commercial development in the area. Deficiency in supply is a city wide rather than immediate site specific problem.

## **10. APPROPRIATE ASSESSMENT SCREENING.**

10.1 The Dublin Bay Special Area of Conservation and the South Dublin Bay and River Tolka Estuary Special Protection Areas in which a range of waterbird species are the features of interest are the nearest European sites to the area at circa five kilometres from the site location. The conservation objective is to maintain or restore the favourable conservation status of the Annex habitats species for the European sites. The appeal site is a brownfield site most of which is under hardstanding with some derelict structures in place. Surface water collection and disposal which includes attenuation is to the public system and any material change in terms of adverse impact would be negligible. Wastewater is to be discharged through the public system to Ringsend Treatment Plant for treatment and disposal the impact on the loading on which or consequent nutrients in receiving waters would be negligible.

10.2 It is concluded that Stage 2 appropriate assessment is not required as the project has been screened as a result of which it has been concluded that having regard to the nature, scale and location of the proposed development the proposed development would not be likely to have significant effect, individually or in combination with other plans and projects on European sites.

## **11. CONCLUSION AND RECOMMENDATION.**

11.1 In view of the foregoing it is considered that the proposed development both in terms of the proposed structures and the nature of use is a suitable development for the brownfield site at the location to the rear of Wexford Street and adjacent to Protestant Row. It is recommended that the planning authority decision to grant permission subject to a number of conditions with some minor changes to the requirements should be upheld and that the appeal should be rejected. A draft order is set out overleaf.

11. A draft order is set out overleaf.

## DECISION

Grant Permission on the Basis of the Reasons and Considerations and subject to the Conditions set out below.

## REASONS AND CONSIDERATIONS

Having regard to the location of the brownfield site within a city centre in close proximity to services and amenities; to the extent and range of higher education facilities within the central city area and to the provisions within the zoning objective Z 5 “*to consolidate and facilitate the development of the central area*”, in the Dublin City Development Plan, 2011-2017, it is considered that subject to the conditions set out below, the proposed development would not be seriously injurious to the visual and residential amenities of the area, would not be prejudicial to public health and would be acceptable in terms of vehicular traffic and pedestrian 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 in accordance with the plans and particulars lodged with the application as amended by the plans and particulars submitted to the planning authority on 8<sup>th</sup> June, 2015 and 10<sup>th</sup> July, 2015 and as amended by the further plans and particulars received by An Bord Pleanála on 30<sup>th</sup> September, 2015 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to the commencement of the development the applicant shall submit for the written agreement, full details of the shopfront signage and shopfront at No. 15 Wexford Street which shall be glazed and at which a window display shall be maintained. The lettering shall be individually mounted and back lit only. No advertisement or advertisement structure shall be erected or displayed on the building or within the curtilage of the site in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.

**Reason:** In the interest of visual amenities of the area.

- 3 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 authorized 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.

4. Prior to the commencement of the development the applicant shall submit agree full details with the planning authority of all materials, textures and colours for the external facades including fenestration. Samples to be displayed on site to facilitate the planning authority.

**Reason:** In the interest of visual amenity, clarity and orderly development.

5. Prior to the commencement of the development the applicant shall submit for the written agreement of the planning authority, a demolition and construction and a construction traffic management plan which shall include details of the proposed arrangements for air quality and noise level control.

Site development and building works shall be carried out only between the hours of 07.00hrs to 19.00 hrs. Mondays to Fridays excluding bank holidays and 0800 hrs. – 14.00 hrs. on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to prior written agreement from the planning authority.

**Reason:** In the interest of residential amenities of property in the vicinity, public safety and convenience and clarity.

- 6 Prior to the commencement of the development extract details of the proposed services/loading bay on Protestant Row in consultation with the Traffic Management and Control Section shall be submitted for written agreement with the planning authority. The bay shall be installed at the applicant's expense inclusive of any repairs to the road and services required. The doors to the covered storage area on Protestant Row shall have sliding or inward opening only.

**Reason:** In the interest of orderly development public safety and convenience and clarity.

- 7 Sixteen cycle parking spaces shall be provided within the site. The layout of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure that adequate off-street cycle parking provision is available to serve the proposed development.

- 8 A comprehensive landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. This scheme shall include the following:-

(a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;

(b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

(c) details of proposed street furniture, including bollards, lighting fixtures and seating;

(d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

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

9. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. The agreed lighting system shall be fully implemented and operational, prior to occupation of the development.

**Reason:** In the interest of public safety and amenity.

10. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, internal common areas, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority prior to occupation of the development.

**Reason:** To provide for future maintenance and orderly development in the interest of clarity.

- 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 any archaeological excavation works prior to commencement of construction works.

A copy of the report shall also be lodged with the Dublin City Library and Archive, 138-144 Pearse Street, Dublin 2.

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 A plan containing details for the management of waste within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, 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:** In the interest of residential amenity and orderly development.

- 13 The proposed development shall only be solely be occupied as student accommodation unless a prior grant of planning permission for change of use has been obtained

**Reason:** To limit the scope of the proposed development and to allow for planning review in the event of any future proposal for a material change to the proposed occupancy.

- 14 Prior to the commencement of the development the applicant shall submit for the written agreement of the planning authority a flood risk assessment report to include the following: Identification of potential risks from all flooding sources and along with details of measures to mitigate and such risks for the thirty year and one hundred year storm event in accordance with the standards and recommendations set out in "*Guidelines for Planning Authorities: The Planning System and Flood Risk Management*" issued by DOEHLG/OPW in 2009. The developer shall confirm in writing that the risk of flooding to the proposed development and to adjacent properties has been reduced as far as is practicable in the design of the development. The report shall include and confirmation that the flooding risk is minimised in the design without increased flooding risk relative to that of a greenfield site. Water supply and drainage arrangements, including the attenuation and 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 and to ensure a satisfactory standard of development.

- 15 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. 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



Development Contribution Scheme made under section 48 of the Act be applied to the permission.

16. The developer shall pay to the planning authority a financial contribution in respect of Metro North 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.

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**Jane Dennehy,**  
**Senior Planning Inspector.**  
20<sup>th</sup> November, 2015.