

# An Bord Pleanála



## Inspector's Report

**PL 61 246099**

**DEVELOPMENT:** Demolition of a three storey building (Chatham Court) and construction of a five storey over double basement mixed use building.

**LOCATION** Chatham Street, King Street South, Clarendon Row Gaiety Centre, Gaiety Theatre, (Protected Structure) Dublin 2.

### PLANNING APPLICATION

**Planning Authority:** Dublin City Council.  
**P. A. Reg. Ref:** 3237/15  
**Applicant:** Adelaide Real Estate Investments (PLC)  
**Decision:** Grant Permission.

### APPEALS

**Third Party Appellants** (1) Butlers Irish Chocolates.  
(2) Lufa Ltd. (Steps of Rome.)

**Observer:** Westbury Hotel.  
**Inspector:** Jane Dennehy.

**Dates of Inspection:** 26<sup>th</sup> April and 5<sup>th</sup> May, 2016.

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site which has a stated area of 1.212 square metres with frontage onto Chatham Street along the northern boundary, and to the west side onto Clarendon Row. Chatham Street links Clarendon Street and William Street to the west of the site with Grafton Street to the east. The Gaiety Theatre and the Gaiety Centre are located to the east and south and south east of the site. The existing building on the site is a brick faced and at ground floor level across ten units there are three restaurants, a café, a betting office and a hair salon. On the upper floors there are nine apartments and there is a pedestrian entrance gate and steps at the western end providing access to an external passageway along the rear off which there is access to the apartments.
- 1.2 The buildings to the east along Chatham Street are in a mix of retail, restaurant and bar uses at ground floor level and offices at upper level. Chatham House on the corner of Chatham Lane and Chatham Street is vacant and subject of a grant of permission for redevelopment which had not commenced at the time of inspection. The Westbury Hotel is located on Balfe Street and Harry Street off which there is the main entrance and the services and carpark are located at basement level with access of Swan Yard. The Westbury Hotel also has frontage where there are bedrooms on the upper floors along Clarendon Street. front entrance Balfe Street (on which the Westbury Hotel is located)

## 2. PLANNING HISTORY:

- 2.1 **PL 29S 245372/ 2158/15:** The planning authority decision to grant permission at the Chatham House site on the northern side of Chatham Street for a five storey over basement mixed use building comprising fourteen apartments and retail development (205 square metres) and associated plant and services was upheld following appeal. This grant of permission for this development is of relevance to the current application.
- 2.2 There are no available details of parent permission for the existing building on the appeal site.
- 2.3 P. A. Reg. Ref. 3869/10 At Units 6 and 7 Permission was granted for retention of change of use to restaurant and interconnection between the two units.
- 2.4 P. A. Reg. Ref. 2496/11. for retention of retractable awnings signage on the front elevation.

### 3.1 **DEVELOPMENT PLAN.**

- 3.2 The operative development plan is the Dublin City Development Plan, 2011-2017 according to which the site is subject to the zoning objective: Z5: *“To consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity”*.
- 3.3 The site location is adjacent to the west side of the Grafton Street and Environs Architectural Conservation area and Special Area of Planning Control.
- 3.4 The site location is also within the City Centre Retail Core. Policies and objectives for the central city retail core area are set out in Chapter 10. The purpose of the designation is *“to protect the primary retail function of the streets in the principle shopping streets in the retail core and strengthen the retail character of the shopping core with emphasis on higher order comparison retail and a rich mix of uses”*.

Policy RD 11 provides for the maintenance and reinforcement of the dominant position of the central shopping area as the premier shopping area.

Policy RD 12 provides for implementation of the Retail Core Framework Plan which includes provision for additional retail floor areas, larger units and emphasis on enhancement of higher order comparison goods.

Policy RD 13 provides for recognition of the architectural fabric and fine grain of traditional retail frontage along with provision for modern retail format necessary for vibrancy in the retail core as provided for in the Retail Core Framework Plan.

- 3.5 Chatham Street is categorised as a Category 2 Shopping Street in respect of which further retail frontage is to be encouraged. For category 2 streets it is policy, *“where there is already a mixture of retail and non-retail uses or where there is potential to strengthen the retail and complementary uses on underperforming streets to improve the offer attractiveness of the City Centre Retail Core”*. The Retail Strategy is in Appendix 4.
- 3.6 Building Height standards and objectives are set out in Section 17.6.2. The site location is identified as being within the inner city low rise area. The maximum height for residential development is nineteen metres and six storeys and for commercial development it is twenty eight metres and seven storeys.

#### 4 THE PLANNING APPLICATION.

4.1 The application lodged with the planning authority indicates proposals for demolition of the existing buildings and for construction of a replacement five storey over double basement building with a stated floor area of 6,208 square metres providing for:

Lower basement: 12 car spaces and 44 cycle space and plant and shower facilities in the lower basemen (993 square metres.) Access is at the rear from Clarendon Row via a gated entrance incorporating a car lift arrangement.

Upper basement: Retail space – (993 square metres)

Ground floor: Retail space – (732 square metres)

First floor: Retail space – (1,155 square metres)

Second floor: Office space – (935 square metres) and external terraces facing Clarendon Row.

Third Floor Office space – (935 square metres) and external terraces facing Chatham Street and Clarendon Row.

Fourth Floor: A setback floor with space – (605 square metres) and external terraces facing Chatham Street and Clarendon Row.

Roof Level Plant and equipment including provision for a satellite dish.

4.2 Third Party Observations were received at application stage from five parties. The concerns raised include:

Undesirable loss of residential use in the city centre

Inadequate proposals for refuse disposal

Inadequate access arrangements for the carpark.

Insufficient legal interest to lodge the application.

Nature of the proposed use

Inappropriate design – horizontal emphasis which is at odds with the existing grain and inappropriate setbacks and inappropriate use of glazing.

4.3 The planning authority issued a request for additional information on 3<sup>rd</sup> December, 2015 in which clarification as to building heights, details of materials finishes and design elements to demonstrate integration into the historic fabric of the street and with the adjoining Gaiety Centre as well as details of the carparking layout, servicing and information required for appropriate assessment screening purposes. A response from the applicant's agent was received on 3<sup>rd</sup> December, 2015.

4.4 The submission includes:

An appropriate assessment screening report,

Confirmation that the proposed building height ranges from 25.7 to 27 metres above ground level,

Design modification providing for a reduced height 3.5 m high glazed projecting window incorporating a horizontal a glazing bar.

Photomontages to indicate images of the external elevations in redbrick, block brick and sandstone along with a statement the use of Portland stone (along with bronze coloured metal glazing) as indicated in the original application is considered the most appropriate design response to the surrounding environment.

Removal of a column, a 6.5 metre wide access road including a car waiting area and markings, a car lift that can be accessed in two movements as shown in a swept path analysis.

Confirmation that twice weekly waste collections will be similar to existing arrangements at Clarendon Row and deliveries from dedicated loading bays on Clarendon and Chatham Street.

4.5 The internal technical reports indicate no objection subject to conditions with requirements for a construction and mobility management plans to include proposals for noise vibration and dust control, noise limitations, archaeological monitoring, construction a Section 49 Development Contribution Scheme contribution.

4.6 The planning officer in remarks that the existing development on the site is underperforming and that the objective in the development plan to provide for larger retail floor plates in the city centre can be accommodated on the 'Category 2 Shopping Streets' in with City Centre Retail Core.

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

5.1 By Order dated, 8th January, 2016 the planning authority decided to grant permission for the proposed development subject to conditions most of which are of a standard nature.

- Condition 2 contains a requirement for preparation of a Waste Management Plan for the Construction and Demolition Waste and for hours of operation to be restricted to 0800 hrs to 1800 hrs Mondays to Fridays and 0800 hrs to 1300 hrs on Saturdays.
- Condition No 4 contains a requirement for external finishes (with samples to be agreed in writing with the planning authority.

- Condition No 5 contains a requirement for compliance with requirements of the Codes of Practice of the Drainage Division The Roads Streets and Traffic Department and the Noise and Air Pollution Section.
- Condition No 6 restricts hours of site and construction works to 7.00 am to 6 pm weekdays and 8.00 am to 2.00 pm Saturdays.
- Condition No 7 contains requirement for control of noise during demolition and construction in accordance with the standards in BS 5228.
- Condition No 8 contains a requirement for a noise, vibration and dust control plan to be submitted for the approval of the Air and Noise Control Unit.
- Condition No 9 is a condition with standard requirements for drainage arrangements including basement drainage and SUDS standards.
- Condition No 10 contains requirements for submission of a Construction Management Plan to the planning authority for written agreement and an undertaking for implementation of the measures in the Mobility Management Plan.
- Condition No 11 is an archaeological monitoring condition.
- Condition No 12 excludes external signage and lighting which are subject to separate planning applications.
- Condition No 15 contains a requirement for a widow display to be maintained at all times at the projecting feature window on the Clarendon Row frontage and excludes display of advertising and racks and rails in this area.

## **6 THIRD PARTY APPEAL – STEPS of ROME**

6.1 An Appeal was received from Fitzgerald and Company Solicitors on behalf of the Steps of Rome Restaurant which has been trading at ground floor level in the existing building for twenty five years the building According to the appeal:

- The applicant will be unable to meet the requirements for compliance with the standards in BS 5228 relating to, '*Noise and Vibration Control on Construction and Open Sites*' provided for in Condition No 5. Examples given for acceptable noise limits include noise at a level which would interfere with conversation at the nearest building with the windows shut. (para. E2. BS 5228)

- Noise experienced at local receptors will depend on several variables including noise generated by plant and equipment generally expressed as a sound power level, - The periods of operation of the plant (“on-time”) -Distance between noise source and receptor (“stand-off) and reflections of noise due to the presence of hard vertical faces such as walls.
- The development will affect huge tourist trade in the area where there are old buildings and public houses of cultural significance and which benefits the appellant’s business. The Grafton Street area is very busy during the times when demolition is permitted according to condition No 6. The applicant will be unable to comply with para 8.6 of the BS 5228 and unable to comply with Condition No 7 (b).

## 6. **THIRD PARTY APPEAL – BUTLERS IRISH CHOCOLATES.**

6.1 An Appeal was received from Manahan Planners on behalf of the Steps of Butlers Irish Chocolates which has been trading at ground floor level at the west end corner in existing building. According to the appeal:

- The ground floor businesses in the terrace are distinct in adding vitality and visual interest to the public realm and to the pedestrian environment in Chatham Street. Development plan policies for improvement of the pedestrian environment are strong but the emphasis is on paving and reducing car traffic.
- Replacement of the small business units with larger retail units is incongruous with the street character. It interrupts the pleasant connection between William Street South and Grafton Street.
- The proposed development is contrary to provision for vibrancy vitality and consistency with the “Z5” zoning objective.
- The combined effect of the construction stage and vacant site that might follow would be negative.
- The removal of the upper floor residential units and lack of any proposals for residential use which is retrograde and contrary to the development plan which seeks to increase numbers of people living in the centre. The use provides passive surveillance and will affect the vibrancy of the street.
- The appellant does not agree to inclusion of the premises in the application. It has legal interest in the existing building which extends beyond the lifetime of a grant of permission.

## **7. RESPONSE TO THE APPEALS BY THE PLANNING AUTHORITY**

7.1 It is confirmed in a letter received on 1<sup>st</sup> March 2016 that the planning authority considers the decision on the application is justified and reference is made to the planning officer report.

## **8. OBSERVER SUBMISSION – WESTBURY HOTEL.**

8.1 A submission was received from Doyle Kent on behalf of the Westbury Hotel on behalf of the applicant on 5th February, 2016. According to the submission the hotel is of major importance to the city centre economy. It is a five star hotel which occupies a large site with the main entrance onto Balfe Street and Harry Street and a carpark and services entrance on Swan Lane and hotel bedrooms on the Chatham Street frontage facing the site.

8.2 The concerns indicated are:

- Demolition and construction will have serious negative impact on the operation of the hotel, particularly the bedrooms and restaurant used by guests and on pedestrian and vehicular access to the hotel including deliveries. Restrictions on traffic would also affect business. The conditions attached to the decision are not sufficient in detail to address these concerns. Detailed construction and traffic management conditions are essential to address the concerns of the Westbury Hotel.
- Noise generating operations should be confined to 8.00 am and 18.00 pm Mondays to Fridays and 9 and 1400 hrs on Saturday so that guests can use the bedrooms facing onto Chatham Street. The hours permitted for the Chatham House were revised to a later starting time. (PL 29 245372 refers)
- Condition Nos. 7 and 8 lack certainty and there is serious concern given the proximity to the Westbury Hotel which is a noise sensitive property. Limitations on noise, vibration and dust emission levels should be clearly set out in a revised condition which should include monitoring requirements.
- No construction management plan was submitted with the application. Instead of condition 10 (a) a condition similar to Condition No 2 attached to the grant of permission for Chatham House in which the detailed requirements are specific is necessary. (PL 29 245372 refers) Several recommendations for requirements to be included in a construction management plan are included.



9. **OBSERVATIONS OF AN TAISCE (Prescribed Body).**

9.1 A submission was received from An Taisce on 11<sup>th</sup> April, 2016. According to An Taisce, the proposed development does not tie into the existing streetscape of modestly scaled buildings of historic interest. Instead of relating to the historic grain it is informed by the Gaiety Centre. The windows are out of proportion with those on Chatham Street and the building steps excessively above the street parapet. A three storey elevation with a potential for an additional setback would be appropriate and in line with Chatham Street existing development. A successful modern insertion on the street is on the diagonal opposite corner of the junction. It is a well-modulated and scaled building occupied by “Bar Rua”.

10. **APPLICANT’S RESPONSE TO THE THIRD PARTY APPEALS.**

10.1 A Submission was received from IMG Planning on 2<sup>nd</sup> March, 2016. It is submitted that the appellants have not presented grounds on the basis of which the decision to grant permission can be overturned. The introductory paragraphs contain summary of the application and the appeals. The responses to each of the appeals which follow are outlined below.

10.2 **Response to the Appeal by Lufa Ltd./Steps of Rome.**

- It is inevitable that disturbance and disruption occurs during the construction period especially in a central city area. The conditions attached by the planning authority are mechanisms to mitigate the impacts to strike a balance between the construction requirements and the protection of the amenities in the area as far as possible to be protected.
- A main contractor has yet to be appointed. A competent contractor will devise construction management programmes in liaison with local stakeholders. The periods of construction and adverse impact will be kept to a minimum.
- There is no statutory guidance for maximum permissible noise levels during construction and planning authorities rely on restricted house and noise limits.
- The construction management plan will require the contractor to give due regard to the guidance in BS 5228:1:2009+A1:2014 in relation to noise control. It will include arrangements for communication between contractor the local authority and adjoining occupiers, a site representative with responsibility for noise and monitoring during critical periods and at sensitive locations.

- With regard to vibration standards are set out in BS 7385:1993 and the construction management plan will identify peak component particle velocity (PPV) thresholds and will require the Contractor to have due regard to the standards in BS 5228-1:2009+A1:2014 in relation to vibration control.

### 10.3 Response to the Appeal by Butlers Chocolates.

- The proposed development has good ground floor frontages on Chatham Street and Clarendon Row. It is compliant with the principles of Category 2 Shopping Street designation and supports the desirability for mix of uses and contributes to vibrancy. The Grafton Street area is the premier retail environment and at the top of the retail hierarchy.
- The proposed development facilitates retailers seeking quality and larger spaces by providing key suitable retail space including larger units. This helps to prevent leakage to the peripheral centres. Many of the larger higher order retailers have been forced to located in 'off pitch' locations and there are very few sites in the centre city retail core area. The proposed development consolidates a retail loop between Grafton Street South King Street and Chatham Street.
- The proposed development complies with Policy RD 14 in providing for a modern, competitive attractive retail environment and with the (Z5)zoning objective as it is a proposal with scale and mix of land-use that consolidates the central area.
- The vacancy of the site during construction stage for a temporary period is inevitable but this should be set against the significant contribution of the completed development to the vibrancy and vitality of the retail. It is not in the interests, following completion for the development to remain unoccupied on completion.
- With regard to the discontinuation of residential use on the site, the balance of uses will therefore be maintained on Chatham Street. Fourteen apartments are included in the permitted redevelopment of Chatham House which formerly was in retail/restaurant and office use. (PL 245372 refers) Policy RD 5 seeks to ensure availability of large commercial development incorporating a range of uses where appropriate. The retail use is appropriate for a shopping street but the configuration and proportions are more suited to office accommodation on the upper floors. This supports the underlying policy for promotion of mix of land uses in the city core.
- With regard to legal interest, the applicant has sufficient legal interest to seek planning permission. Resolution of disputes regarding title is a matter for the Courts.

## 11 APPLICANT'S RESPONSE TO THE OBSERVER SUBMISSION.

11.1 A Submission was received from IMG Planning in response to the observation of the Westbury Hotel on 5<sup>th</sup> April, 2016. It is indicated that the applicants are willing to accept a revised condition for construction management with the same wording of Condition No 2 of the grant of permission for Chatham House development. (PL 29S 245372 refers). It is also indicated that a revised condition in which the demolition and construction hours are reduced. The observations are outlined below.

- It is confirmed, (as previously indicated) that the applicant seeks to protect operations and amenity of adjoining business at demolition and construction by minimising adverse impact as far as possible.
- The observer party's request to reduce working hours would result in loss of ten per cent or six hours per week which is equal to five weeks a year of ten weeks in a two year construction period and possibly extending the period by twelve weeks. This is counter intuitive to completion of the development in as timely a manner as possible and minimisation of disturbance to the hotel. However, revised condition limiting the hours to 0800 hrs Mondays to Fridays and 9.00 am to 14.00 pm on Saturdays would be accepted.
- A preliminary construction management plan was included in section 6.0 of the, '*Trip Generation and Mobility Management Report*' included with the application. It addresses key issues, access, and parking and loading, hoarding and pedestrian cycle, safety waste management and noise vibration and dust control. The detail construction management plan is to be approved by the planning authority and will be prepared by an experienced contractor. Integral the plan is clear communication between contractor local authority and occupiers of adjoining premises and appointment of as site representative for demolition and management matters.

## 12 OBSERVER PARTY'S COMMENTS ON THE APPLICANT'S RESPONSE TO APPEALS.

12.1 A submission was received from Doyle Kent on behalf of the Westbury Hotel on 4<sup>th</sup> April 2016 in which it is stated that the applicant's desire to minimise impact on adjoining businesses, to liaise with local stakeholders in preparing the Construction Management Plan and establish channels of communication with the community and planning authority is welcomed.

12.2 It is reiterated that the conditions are vague and that they should be replaced by similar conditions to those attached to the grant of permission (P. A. Reg. Ref. 29S 245472 refers) for the Chatham House.

**13. FURTHER SUBMISSION OF FIRST THIRD PARTY APPELLANT (LUFTA – Steps of Rome)**

13.1 A submission was received from Fitzgerald and Co Solicitors on behalf of the appellant on 6<sup>th</sup> April, 2016. According to the submission:

- The planning authority provides no evidence to support the view that the existing development is underperforming.
- Forty six percent, (2,880 square metres of the 6,208 square metres) development is allocated to retail in the street adjacent to the most famous shopping street. The proposal is not in keeping with the spirit of the development plan in losing established businesses and demolition and construction damage.
- Any grant of permission should be delayed until there is statutory published guidance on noise levels, due to the disturbance that would occur during construction at this important location just off Grafton Street and several other streets that would be affected by unrestricted noise levels.

**14. FURTHER SUBMISSION OF FIRST THIRD PARTY APPELLANT (LUFTA – Steps of Rome)**

A submission was received from Fitzgerald and Co Solicitors on behalf of the appellant on 6<sup>th</sup> April, 2016 in which full support of the observations of the Westbury Hotel is indicated. It is reiterated that imposition of a condition requiring compliance with the standards of BS 5228 is insufficient given the site location.

**15. EVALUATION**

15.1 The issues of concern in the third party appeals and submissions can be considered under the following subheadings:

Procedural matters.

Justification for the development.

Scale Height and Design.

Construction Stage Impacts. (Noise, Vibration, Dust and Traffic)

**15.2 Procedural Matters**

It is noted that there is no documentary evidence supporting the claim that the applicant has insufficient legal interest to seek planning permission and that as a result the application is invalid. The applicant

has indicated ownership on Drawing 0010 P1 along with details of the projection over the public footpaths and the Gaiety Centre. It is open to the appellant to refer the matter to the Courts and it should also be borne in mind that according to Section 34 (13) of the Planning and Development Act, 2000, as amended, a grant of permission does not entitle an applicant to carry out a development.

### **15.3 Justification for the development.**

There have been several relatively recently constructed, permitted, and concurrent proposals for replacement of commercial developments or for refurbishment and upgrades to existing developments in the south city central area. These developments are generally more intense with significantly higher floor areas, plot ratios with higher occupancy and high performance levels and floorplates appropriate to contemporary commercial and retail use. They incorporate materials and contemporary design and significantly improved energy efficiency. The current proposal is no exception.

15.4 It is accepted that the existing building is underperforming for the central city location notwithstanding the lack of documentary evidence provided by the applicant to support the claim. To this end, regard should be had to the range of current development plan policies and objectives for the central city area with regard the primacy of retail at the top of the retail hierarchy, shortage of available space with larger retail floor plates along with emphasis on higher order comparison goods and, with regard to provision of high quality office space facilitating the commercial sector and encouraging employment in the city centre.

15.5 Although the proposal is for complete demolition and replacement with a new building, it is considered to be consistent with sustainable development interests in facilitating relatively intensive commercial use and retail use that responds to the demand identified in the development plan for larger retail units within the central shopping area.

15.6 The undesirability of loss of residential use in the central city area is acknowledged but it is not fully accepted that the failure to include a residential element in the proposed development would warrant reconsideration of the proposed use mix. To this end the provision for apartments the recently permitted mixed use development at Chatham House on the opposite side of the street is welcome. (PL 245372 refers)

### **15.7 Scale Height and Design.**

The site location links into the existing cluster at the western end of King Street with the Gaiety Centre and St Stephen's Green Shopping Centre to this end but is confined to the southern side and western section of Chatham Street. This allows for segregation from the vertical emphasis

and narrow plots characteristic of the historic terraced buildings predominant in the streetscapes to the east towards Grafton Street. The proposed development introduces re is a clear distinction in character and design in contrast to the historic eastern section of the south side of the street and to the west side of Clarendon Row. The site has the capacity to accept this contrast which is considered to be a welcome contemporary enhancement relative to the existing building.

- 15.8 The front façade (Chatham Street) detail integrates successfully into the streetscape in following the parapet lines and recognition in the shopfront design of the distinction between ground and first floors along the street. There is also sufficient acknowledgement of vertical emphasis in the fenestration detail on the façade. The features are not excessive in scale. The setbacks for the upper floors and roof level, as indicated in the section drawings and visual montages are sufficient and appropriate. Scope for additional development at roof level can be managed by condition should permission be granted. The building accords with the height restrictions provided for in the current development plan.
- 15.9 The revisions in the further information submission for the projecting feature window over Clarendon Row satisfactorily address the concerns that had initially been raised by the planning officer which are shared. It is considered that this element is a positive feature that is a significant improvement to the existing street frontage on the east side of Clarendon Row which is inactive and dominated by the service area and blank façade of the Gaiety Centre. There is added interest in the building design and form at the street corner on approach from the west, north and south.
- 15.10 Having considered the alternative external elevation finishes shown in the further information submission, it is agreed with the applicant's agent that the Portland Stone shown in the original application is the most appropriate finish.
- 15.11 Having noted the observations of An Taisce in particular with regard to the scale and design, it is considered the proposed building design is acceptable for the site location and in the context of surrounding built environment and is a compatible with the Grafton Street and Environs Architectural Conservation Area a short distance to the east.

**15.12 Construction Stage Impacts. (Noise, Vibration, Dust and Traffic)**

The third parties have raised similar issues of concern with regard to the impact on the demolition and construction stages on the amenities and as regards disturbance and inconvenience in the operation of wide ranging businesses adjoining and in the vicinity of the site. Construction traffic management, noise, vibration and dust are of particular concern. It is agreed that the conditions attached to the planning authority decision relating to these issues and construction management are

vague and that they would give rise to concerns as to compliance and enforcement. The observer party has suggested that the more specific requirements in the construction management condition attached to the grant of permission for the Chatham House site would be acceptable.

- 15.13 With regard to noise impact it is agreed that the site location although within a city centre area with the “Z5” zoning objective as opposed to a residential area is sensitive on account of the proximate location of the Westbury Hotel. It is not clear to what extent mitigation of noise is provided for within the hotel development itself to protect the bedrooms on account of the central city location, especially those overlooking Clarendon Street.
- 15.14 It is noted that that reduced permissible hours of operation are undesirable from a project management perspective but a 8.00 am as opposed to a starting time of 7.00 am would be a reasonable compromise. The applicant has indicated that this revision would not be opposed. An amended condition with similar restrictions was attached to the grant of Permission for the development at Chatham House is considered reasonable. (PL 246372 refers). Requirements for adherence to standards provided for in BS 5228 in connection with vibration and noise and the attachment of standardised noise conditions along with noise monitoring are reasonable whereas claim in one of the appeals that development should not be permitted until such time as statutory guidance on management of noise impact is available is unreasonable.
- 15.15 The applicant has provided outline details on for the Construction Management Plan within the application and has pointed out that comprehensive detail would be drawn up after an experienced contractor has been appointed. The applicant is willing to accept a condition with the specificity provided for in the construction management condition attached to the grant of permission for the Chatham House development as proposed in the observation of the Westbury Hotel. This degree of specificity which provides scope for stringent requirements would provide for a sufficient degree of clarity to address the third party concerns while enabling the developer to prepare a comprehensively detailed construction management plan in conjunction with the contractor to be subject to compliance with a condition.
- 15.16 A demolition management and construction waste management details should also be subject to compliance by agreement with the planning authority and addressed by a condition. This allows for clarification as to details of management of dust control, vibration and noise. The methodology and schedule for demolition or dismantling of the existing structures and site clearance can and should be appropriate for the sensitive city centre site location and proximity to existing business operations and consistent with codes of practices for such works.

15.17 With regard to construction traffic management concerns, it was noted at the time of inspection works was being undertaken at SwanYard off which there is access to the Westbury Hotel carpark and services deliveries area. No obstruction or inconvenience to vehicular or pedestrian traffic was evident. Similarly, it is considered that there is no undue concern as to vehicular access and stops offs/pickups at the hotel entrance or at other business premises along Balfe Street/Harry Street or to business premises in the vicinity of the appeal site. The positive observations of the inspector in his report on the proposed development at Chatham House are also this regard. (PL 246372 refers.)

15.8 Feasible and practicable construction traffic management arrangements should be achievable and provided for in the construction management plan along with arrangements for a compound and for hoarding which is subject to separate licence. Should permission be granted it is recommended that condition with requirements for a compliance submission for a construction traffic plan, so that it can be submitted independent of the construction management plan be included.

## 16. **APPROPRIATE ASSESSMENT SCREENING.**

16.1 The applicant provided an appropriate assessment screening report within in the further information submission which has been consulted for appropriate assessment screening purposes.

16.2 The site is not within any European sites and is at a central city serviced location. The proposed development involves demolition of an existing building, removal of materials off site and construction of a larger, more intensive retail and commercial development.

16.3 The South Dublin Bay Special Area of Conservation (Site (0210) is circa three kilometres and the North Dublin Bay Special Area of Conservation (site 0206) is circa five kilometres from the site location and the conservation objectives relate to a number of number of Annex I Habitats including mudflats and sandflats not covered by seawater at Low tide [1140]. Several are failing to meet favourable conservation status with water pollution being a threat of high importance (NPWS 2013) Waters in Dublin Bay are classified as unpolluted and pollutants will be decreased in the longer term with the inclusion of SUDS systems for storm drainage in new development and for upgrades to the Ringsend WWTW. This should reduce pressure on habitats and species in the Bay.

16.4 The South Dublin Bay and River Tolka Estuary Special Protection Area (4024) is circa four km from the site and the conservation objectives relate to a number of wintering and breeding bird species. Several wintering, breeding and wetland and bird species of special conservation interest are identified:



- 16.5 Several other European sites come within six to fifteen kilometres distance from the appeal site and they are listed and along with the conservation objectives and possible source-pathway-receptor links in the screening report provided by the applicant.
- 16.6 Possible source pathway receptor links are that of contamination to surface water during construction stage or from foul effluent that could reach Dublin Bay. Surface water is to be attenuated and discharged by flow control device to the combined sewer. Foul effluent which is likely to be increased in volume due to the larger scale development will be discharged to the public system.
- 16.7 There is no risk to the two European sites or to any other European site due to the proposed development due to the limited scale of the proposed development at construction and operational stages.
- 16.8 The source pathways receptor linkage is surface and foul water drainage between the site and the European sites. Dublin Bay is of “unpolluted” water quality status. Sustainable Urban Drainage Systems (SUDS) which will minimise run off have been incorporated in the development. At construction stage runoff at any significant rate which could occur would contain imperceptible contaminants and would occur for short periods only.
- 16.9 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 and it is of note that former problems of overloading of the system have been overcome.
- 16.10 Having regard to the nature and scale of the proposed development and the characteristics of the Special Protection Areas and Special Areas of Conservation located within 15 kilometres distance of the site and to the .Appropriate Assessment Screening report submitted with the application it has been concluded on the basis of the information available that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the European sites. A Stage 2 appropriate assessment is therefore not required.

## 17. **CONCLUSION AND RECOMMENDATION.**

- 17.1 In view of the foregoing it is recommended that the planning authority decision be upheld, subject to minor revisions to the requirements of conditions and that the appeals are rejected. A draft order is set out overleaf.

## **DECISION**

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

### **REASONS AND CONSIDERATIONS**

Having regard to the Dublin City Development Plan, 2011-2017 in which zoning objective for the area is ZR 5: provides for the consolidation and facilitation of the development of the central area of the city and to the form, mass, height, materials, finishes, design detail and range and extent of the proposed combination of retail and commercial use it is considered that subject to compliance with the conditions set out below, the proposed development would integrate satisfactorily with the established character and pattern of development in the area, would not seriously injure the amenities of and properties in the vicinity, would be acceptable in terms of public amenity pedestrian and traffic safety and convenience, would be in accordance with the development objectives for the area and 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 3<sup>rd</sup> December, 2015 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 demolition of the existing buildings and construction of the development shall be managed in accordance with a Demolition and 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) Measures to obviate queuing of construction traffic on the adjoining road network;
  - (e) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
  - (f) 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;
  - (g) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels. Such measures shall reflect the advice contained in BS 5228-1: 2009 + A1: 2014 and they shall include a dust minimisation plan;
  - (h) Noise monitoring locations for the purposes of the construction phase of the proposed development shall be agreed in writing with the planning authority prior to the commencement of any development on site.
  - (i) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; and
  - (j) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
  - (k) Full details methodology for the demolition of the existing structures and site clearance.
  - (l) 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:** To protect the amenities of property in the vicinity.

3. A construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

**Reason:** In the interests of public safety and residential amenity

4. 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 the 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.

5. Prior to the commencement of the development, the developer shall submit to, and agree in writing with, the planning authority details of all the materials, textures and colours for the external facades including fenestration which shall include the following requirements:

A window display shall be maintained at all times in the projecting window facing onto Clarendon Row. No stickers, posters or advertising material may be displayed on the window and no display racks or rails may be displayed within the window area.

The external finish to the façade facing onto Clarendon Row shall be in Portland stone. Samples shall be displayed on site to facilitate the planning authority.

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

6. 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 and shall include.

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

7. 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.

8. Site development and building works shall be carried out only between the hours of 08.00 to 18.00 Mondays to Fridays inclusive, between 09.00 to 14.00 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.

9. No additional development shall erected above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment including the satellite dish shown on the roof plan 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.

10. Proposals for a development name, identification and numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all such names and numbering shall be provided in accordance with the agreed scheme.

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

11. 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.

12. No external security shutters shall be erected unless authorised by a further grant of planning permission. Details of all internal shutters shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

13. The management and maintenance of the proposed development 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 (residential and commercial), the communal terrace, landscaping, cycle parking areas, public lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, before any of the residential or commercial units are made available for occupation.

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

14. 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 interests of residential amenity and proper waste management.

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 is applied to the permission.

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

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**JANE DENNEHY**  
Senior Planning Inspector  
6<sup>th</sup> May, 2016.

**Note:** *The applicant is advised that according to the provisions of section 13.(34) of the Planning and Development Act, 2000 as amended, a grant of planning permission does not entitle a developer to carry out a development.*