



An
Bord
Pleanála

Inspector's Report PL29S.247070

Development

Construction of 16 no. residential dwelling units in a five storey over basement residential building.

Location

Site at the junction of The Appian Way, Dublin 6 and Leeson Street Upper, Dublin 4 (adjacent to No. 1 Leeson Village and the Mitchel House Apartments).

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2554/16

Applicant(s)

RGRE J & R Appian Ltd

Type of Application

Permission

Planning Authority Decision

Grant, subject to 12 conditions

Type of Appeal

First & Third Parties

Appellant(s)

RGRE J & R Appian Ltd
Richard & Marian Farrell
Mitchel House Management Ltd
Leeson Village Management
Committee

Upper Leeson Street Area Residents
Association

Observer(s)

Gretta Crosby

Aileen Haugh

Mary O'Mahony

Date of Site Inspection

3rd November 2016

Inspector

Hugh D. Morrison

1.0 Site Location and Description

- 1.1. The site is located in the southern corner formed by the “T” junction between Leeson Street Upper (R138) and The Appian Way. The former street, especially, is of generous dimensions and both streets are lined by mature deciduous trees, which are complemented by similar trees in front gardens.
- 1.2. The site lies within an area that is predominantly in residential use. Thus, to the north east and to the north west lie rows of two storey over basement detached, semi-detached, and terraced period dwelling houses set within their own grounds and to the south east and south west lie, variously, rows of three storey modern townhouses that comprise Leeson Village and 2 four storey apartment blocks known as Mitchel and Courtney Houses.
- 1.3. The site itself is of regular shape and it extends over an area of 0.092 hectares. This site is undeveloped and vacant. It, too, is characterised by the presence of mature deciduous trees, which have been planted beside its public boundaries to the north east and the north west. These boundaries are enclosed by a stone plinth with railings above. The south eastern boundary is partially enclosed by this same treatment and partially by the brick gabled side elevation of the nearest aforementioned townhouse and its brick walled rear garden. The south western boundary is enclosed by a palisade steel security fence, within which are a pair of gates that afford vehicular and pedestrian access to the site from the car park which serves Mitchel House. Thus, access to the site is via this car park and its entrance on The Appian Way.

2.0 Proposed Development

- 2.1. The construction of 16 no. residential dwelling units with a total gross floor area of 2,074.16 sq m in a five storey residential building (with a maximum building height of 16m) with a set back fourth floor penthouse level above a lower ground and basement level to include:
 - (i) 3 one-bed apartments, 1 one-bed with study apartment, 11 two-bed apartments, and 1 three-bed apartment.

(ii) The provision of private terraces/courtyards at lower ground floor and ground floor level and balconies at all upper floor levels of the building (north, south, and west elevations). A private terrace for the penthouse apartment will be provided at fourth floor level and a roof garden at roof level.

(iii) The provision of a single level basement car park with vehicular access via a car lift on the ground floor of the south eastern elevation of the building providing for 13 private car parking spaces, 1 smart car space, 12 cycle parking spaces, water storage, plant, and attenuation tank. Six cycle parking spaces are also provided at ground level along the north east boundary. Vehicular access to the car lift entrance is to be provided via the existing vehicular access to the Mitchel House Apartments from The Appian Way.

(iv) The removal of a 3.2m section of boundary wall and railings along Leeson Street Upper to facilitate the provision of a new pedestrian access to the proposed development with entrance portal feature. The remaining boundary wall and railings along The Appian Way and Leeson Street Upper to be retained.

(v) The provision of new boundary treatment along the boundary to Mitchel House Apartments consisting of 1200 mm high stainless steel balustrade.

(vi) Temporary construction access to site from The Appian Way.

(vii) Construction of bicycle and bin store along eastern boundary and associated works to existing boundary wall.

(viii) All site development works, hard and soft landscaping and all ancillary works.

3.0 Planning Authority Decision

3.1. Decision

Following the receipt of further information, permission was granted subject to 12 conditions, including the following one:

3. The set back fourth floor penthouse level shall be omitted from the development.

Reason: To comply with the height policy of the Dublin City Development Plan 2011 – 2017.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The application was the subject of a request for further information, which raised several issues with the applicant that gave rise to the following outcomes:

- A revised layout was submitted, which shows the omission of 1 car parking space as a result of the proposed widening of the vehicular access from The Appian Way and the reorganisation of 4 car parking spaces in conjunction with the access to the proposed car lift. (The relocation of this car lift is not proposed, as it would entail the loss of 2 residential units and 3 car parking spaces). Sixteen cycle parking spaces are now proposed in the basement. Two temporary accesses for the construction period are proposed.
- The applicant addressed the question of legal interest by stating that they have “A right of way to pass and repass for all purposes over the part of the common areas of Mitchel House and a right to widen the existing access or to create an entirely new access from The Appian Way.”
- The applicant has addressed the amenity concerns of the residents of Apartment No. 29 in Mitchel House arising from the proposed car lift, which was previously permitted in the location shown. Thus, they refer to the base-line conditions, which entail car parking and bin storage next to this Apartment. They also state that the introduction of a traffic light system would obviate queuing for this car lift outside the same.
- The applicant has clarified that the stated plot ratio of 1.76 is derived from a calculation that excludes the floorspace of the basement car park.
- The submitted Housing Quality Assessment Table indicates that the proposal would meet and exceed all relevant quantitative and qualitative standards.

3.2.2. Other Technical Reports

- Waste Regulation: Conditions requested.
- Drainage: No objection, subject to conditions.
- Roads & Traffic Planning: Following receipt of further information, no objection, subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

See third parties' grounds of appeal and observers' comments.

4.0 Planning History

4105/04: The erection of railings and automated gates at the entrance to Mitchel House Apartments, off The Appian Way: Permitted.

3882/06: The construction of 17 no. residential dwelling units in a six storey over basement building (total gross floorspace 2,007 sq m) with an overall height of 19.3m: Refused at appeal (PL29S.222919) on the grounds that it would be over development, which would compromise the viability of important trees, and the environmental effect of traffic generated by the proposal, which would use the restricted access to Mitchel House Apartments, would impact unduly upon residential amenity.

2282/08: The construction of 9 no. residential units in a five storey over basement building (total gross floorspace 1,601 sq m) with an overall height of 16.5m: Permitted at appeal (PL29S.229720), subject to 12 conditions including the following ones:

- Upper floors to be set back by 1m from the south western boundary with Mitchel House to protect the amenity of this House,
- Vehicular access from Appian Way to be widened to 5m, in the interest of traffic safety and convenience, and
- The car parking space denoted as no. 9 to be omitted from the basement, in the interest of traffic safety.

Extension of duration of this permission was refused on the basis that it would breach Section 17.6.1 of the Dublin City Development Plan 2011 – 2017, which

stipulates a maximum of four storeys for residential buildings in the outer city and a height of below 13m.

5.0 Policy Context

5.1. Development Plan

Under the Dublin City Development Plan 2016 – 2022, the site is zoned Z1, wherein the objective is “To protect, provide, and improve residential amenities.” Section 16.7 of this Plan addresses building height. It states that, in the outer city, residential buildings can be up to 16m in height. Section 16.10 sets out standards for residential accommodation.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

First Party: RGRE J & R Appian Ltd

The proposal would exceed the CDP’s cap of 4 storeys/below 13m for residential buildings in the outer city. The case planner and her senior colleague differed as to whether this was a material breach. Consequently, condition 3 was attached to the draft permission and it is this condition that the applicant has appealed.

The applicant cites the Board’s decision on the National Children’s Hospital as an example of a case where, notwithstanding a breach in the relevant height stipulations of the CDP, this was not considered to be a material breach. Precedent, therefore, exists for not regarding the breach of the height policy as material and so they contest condition 3 on the following grounds:

- Attention is drawn to the proximity of the QBC on Leeson Street Upper and the Dublin Bikes Station at Lesson Street Bridge and to the relative proximity of Luas and DART Stations. National, regional, and local planning policies

promote development to higher densities on sites accessible to public transport, such as the subject site.

- Attention is drawn to the height and scale of existing buildings in the vicinity of the site, in particular Mitchel House, which is of four storey form. Given this context and the corner location of the site, the proposed fifth storey is considered to be entirely appropriate in terms of the streetscape.
- Precedent exists under the former permission granted for the subject site, under 2282/08 and PL29S.229720, to allow a higher residential building, i.e. 16.5m. While the CDP's height policy has changed in the interim, visual and residential amenity considerations remain as before and so the current proposal for a 16m high residential building is in order.
- The draft CDP proposed an outer city maximum height for new buildings of up to 16m. A subsequent amendment reduced this to 13m. However, what the figure will be in the finally adopted Plan remains to be seen. It may revert to 16m, in which case the proposal would be compliant.

Third party (A): Mr & Mrs R Farrell of 69 Upper Leeson Street

- Far from being a development site, the subject site is a planned retained green oasis that balances adjacent buildings and is accompanied by a mature specimen tree in the public footpath. Notwithstanding reassurances concerning this tree, its future cannot be guaranteed under the proposal.
- The prominence of the proposal would conflict with the more modest scale in relation to the streetscape of adjacent buildings.
- The height of the subject building would be excessive and the proposed balconies/terraces on public elevations would risk being put to unsightly uses.
- The excavations needed for the proposed basement would risk interference with the water table and structural damage to existing adjacent buildings. The proposed car lift would be at risk of breakdown: no alternative off-street car parking spaces would be available. Furthermore, no provision is made for visitor parking.
- The proposal would forfeit the soakage properties of the existing green site.

The appellants have also critiqued the draft permission as follows:

- Condition 3 fails to address the issue of scale and design,
- Condition 4 requires a construction phase traffic management plan, which lacks realism, as the adjacent junction already suffers from congestion.
- Condition 5 is unsatisfactory, as it only requires a reduction in flood risk rather than its eradication.
- Condition 6 is unsatisfactory as the dampening down of excavated materials would risk the blockage of the surface water drainage network.

Third party (B): Mitchel House Management Ltd

- The proposal would, principally due to the siting of the proposed car lift and the permanent loss of car parking spaces, result in a major loss of amenity and the diminution in value of the apartments comprised in Mitchel House.
- As tenants of Mitchel House have parked for over 45 years in the area to the east of this House, they have prescriptive rights to continue to do so.
- The number of car parking spaces in the grounds to Mitchel House is 28, i.e. 20 to the front of the House and 8 on its eastern side. (Refer to plans attached to the appellant's grounds of appeal). Several are not lined out at present, due to recent resurfacing works, but are shown in a photograph (fig. 2(b)) of the applicant's Construction Management Plan (CMP) dated 20th June 2016.
- The swept path shown on the submitted plans omits entrance steps, which project 1.7m forward of the building, and the 1.45m wide pedestrian walkway, i.e. the aisle width is only 3.75m. It also shows the existing front spaces but fails to allow for their shortness at 4.556m, i.e. the CDP dimension is 4.75m.
- The applicant proposes unilaterally to convert the said walkway to vehicular use, thus discommoding pedestrians and jeopardising their safety and negating any future provision of a ramp at the entrance to Mitchel House. In any event, under the CDP, two way aisles should have a width of 7m.
- Notwithstanding reference to the same in documentation, the submitted plans do not show a delineated waiting area and scope for the provision of one does not exist.

- The swept path shown on the appellant's submitted plans illustrates how tight access/egress routes to and from the proposed car lift would be. They also show that 5 car parking spaces would be permanently lost.
- The aforementioned loss of spaces would mean that there would be 23, rather than the existing 28 spaces, available to serve the 36 apartments in Mitchel House. During the construction period, a further 3 spaces would be unavailable.
- Attention is drawn to the ventilation openings in the north eastern elevation of Mitchel House and the ease with which vehicles manoeuvre in the area beside this elevation at present. Under the proposal, congestion would arise with associated noise and fumes that would adversely affect the adjacent apartments, particularly the ground floor one denoted as No. 29.
- The proposal makes no provision for either visitor or service/delivery/emergency vehicles. Parking of such vehicles in the grounds of Mitchel House is anticipated and attendant conflict.
- The appellant's submitted plans include one that shows the proposed car lift re-sited to the western corner of the proposed building. Such re-siting would facilitate a clear line of sight for manoeuvring vehicles and, if it were to be accompanied by a delineated waiting area, then these measures would overcome much of the critique of the current proposal.
- The implications of the aforementioned re-siting for the design of the proposed building have not been explored properly by the applicant or the planning authority.
- The proposed widening of the entrance from Appian Way would entail the loss of one of the appellant's car parking spaces. If the widening was to occur at the other side of the entrance, then this space could be spared. The resulting encroachment into the grounds of Courtney House would not be so significant as there is scope within these grounds for a compensatory space to be laid out.

- The CMP proposes two temporary accesses to the site, a direct one and an indirect one through the appellant's grounds. The need for this latter access is questioned, especially as it would sterilise 3 car parking spaces.
- The site compound would encroach onto the appellant's grounds without their consent and no details of hoardings have been submitted. Under further information, this encroachment was omitted. The realism of confining construction activities solely to the site itself is questioned.
- Concern is expressed over the likely number of construction vehicle movements and the implications for traffic flows on surrounding streets.
- The proposal for 16 apartments would constitute over-development (a previous one for 17 was refused at appeal).
- The proposal would be overbearing and it would lead to overlooking of the appellant's penthouse terraces denoted as Nos. 1 and 2, even if condition 3 is confirmed. This condition fails to address the question of a proposed roof garden.
- Just as the glazing overlooking Leeson Village would be obscure, so the glazing overlooking Mitchel House should be obscure.

Third Party (C): Leeson Village Management Committee

- Dust and noise nuisance during the construction phase.
- Commencement on site at 07.00 would be too early for the surrounding locality that includes housing, hotels, and hospitals.
- Loss of residents' views of trees.
- Traffic generation on The Appian Way and at the access off this Way.
- Noise and fumes from cars waiting to use the proposed car lift.

Third Party (D): Upper Leeson Street Area Residents Association

The appellant's original concerns over the proposal are reiterated as follows:

- The planning history of the site does not support a proposal of this scale.
- The proposal would constitute over-development in terms of bulk, height, and basements.

- Traffic generation would have an adverse impact upon amenity and the health and safety of residents.
- No provision is made for service/delivery/emergency vehicles.
- The proposed basement apartments would provide an inadequate standard of residential amenity.
- The Waste Management Plan (WMP) would compromise public health and safety by assembling large refuse bins for collection on the footpath near to a dangerous junction.
- The proposed roof terraces would lead to overlooking and noise generation.
- The proposal shows a lack of regard for the surrounding conservation area.
- The proposed two basement levels would pose a flood risk, due to the high water table, antiquated public drainage, and climate change.

The appellant is concerned about the following aspects of the planning authority's decision:

- While condition 3 is welcomed, this condition does not clarify the status of the roof terraces and, with the omission of the only three-bed apartment, the mix of apartments would fail to provide for families.
- The plot ratio should include the floorspace comprised in the proposed basement/lower ground floor level of apartments and the gross internal area should be measured, i.e. all space within the outer walls of the building. On this basis the plot ratio would be 1.93 or, under condition 3, 1.7.
- The proposed building would be 16m high. Whereas a previous proposal was a similar height, under the Dublin City Development Plan 2011 – 2017, the maximum relevant height is 13m.
- Notwithstanding the advice of the Roads and Traffic Planning Division, the need to widened the entrance from The Appian Way to 5m is not conditioned.
- While issues pertaining to rights of way are for the courts to clarify, insofar as residential amenity and public health and safety are at stake, the Board is involved. In this respect the following points are made:

- Traffic generation and the need for parking are related to the number of apartments proposed, i.e. previously 9 now 16.
- The siting of the proposed car lift would negate several car parking spaces and lead to the relocation of an existing bin store. The re-siting of this lift in the western corner of the building would avoid these outcomes.
- In the absence of a hardstanding for service/delivery/emergency vehicles, the parking of such vehicles in the grounds of Mitchel or Courtney Houses or on the surrounding streets would occur, all of which would be unacceptable and/or dangerous.

6.2. Applicant Response

The applicant has responded to the appellants on a thematic basis as follows:

Overdevelopment, density, height, and scale

- The proposal would be 16m high and as such 0.5m lower than that which was previously permitted by the Board for the site. Given this precedent and the intervention of the Minister for Housing and Planning to the effect that the draft CDP should be revised to cite 16m as the maximum height for residential buildings in the outer city, this proposal would be appropriate.
- The scale and massing of the proposal would be similar to that which was previously permitted by the Board for the site. The size of the proposal would be appropriate to the site's location on a QBC. The top storey would be recessed.
- The site is at some remove from the nearest protected structures to the extent that the contemporary design of the proposal would not impact on their character, integrity, and setting. The presence of this proposal would be further mediated by the retention of existing trees and the planting of new ones.

Density and plot ratio

- Attention is drawn to appeal ref. no. PL29S.246119, wherein the Board held that below ground floor level floorspace should not form part of the calculation of plot ratio, which is a measure of building bulk within the relevant

streetscape context. On this basis the plot ratio of the proposal would be 1.51. Nevertheless, even if the floorspace of the basement apartments is included, the plot ratio would be 1.83 and so below the CDP's indicative maximum of 2.0.

Overshadowing and overlooking

- The proposed building would be sited to the north of Leeson Village and so it would not overshadow the townhouses comprised in the same. Its southern corner would be stepped back above ground floor level and the exposed sides to the upper floor terraces would be enclosed by means of 1.8m high opal glass screens to prevent direct overlooking.
- The proposed building would be sited to the north east of Mitchel House and so, again, it would not overshadow the apartments comprised in the same. The clearance distance between it and the north eastern elevation of this House would be 10.7m and, as this elevation only contains windows to corridors, no significant overlooking would occur. At third floor level there is a terrace above the said elevation. However, given the urban location of the site and the aforementioned separation distance, ensuing overlooking would be acceptable.

Loss of open space

- The site originally formed part of the lands that were developed to provide Mitchel and Courtney Houses. It was intended that this site be likewise developed and so it has not formed part of the communal area used by the residents of the said Houses. Furthermore, it was rezoned from open space to residential (Z1), under the 2005 – 2011 CDP, and it has retained this zoning in subsequent CDPs.

Impact on trees

- Since the application was made and the appeals lodged, the feature horse chestnut tree in the public footpath adjacent to the site has been removed by Dublin City Council and so concern over this tree has been superseded.
- The applicant's arborist has prepared a full method statement for the protection of the trees proposed for retention. Likewise, the applicant's

engineer has advised that a secant pile wall be installed around the perimeter of the proposed building to protect the ground within which lie the roots of the said trees.

Architectural design and amenity of basement units

- Scope for providing a building of contemporary design on the site was recognised by the previous inspector, who noted this site is one of the few ones in the area which is zoned Z1 rather than Z2 and which is adjacent to existing modern buildings.
- The finishing materials selected for the proposed building and the proposed retention and planting of trees would allow this building to integrate with its wider conservation area context. Its balconies would be designed to maintain a discrete presence on the face of the building.
- The proposed basement units would be served by large courtyards and they themselves would have high floor to ceiling heights with lighting levels in excess of relevant minimum standards. Thus, the amenity value of these units would be acceptable. Precedent for such units, albeit as the lower floor of duplexes, was established by the previous Board permission for the site.
- Overall, the proposal would comprise units, all of which would be in excess of the relevant minimum quantitative standards and the size mix of these units would be appropriate.
- The aforementioned removal of an adjacent horse chestnut tree has provided the opportunity for a larger courtyard to be specified to serve the basement unit denoted as apartment No. 1.

Construction management, air quality, and waste management

- The impact of any construction phase would be mitigated by measures set out in the Construction Management Plan and in compliance with all relevant conditions. Prior to the commencement of this phase, an in-depth traffic management plan will be prepared to ensure that the impact on traffic movements on surrounding streets is minimised.
- Air pollution resulting from the use by vehicles of the proposed car lift would be minimal, due to its low level of usage.

- Domestic waste would be stored on site for collection at off peak times from the kerbside in accordance with best practise.

Basement construction

- The aforementioned secant pile wall would pose the least risk of damage not only to tree roots but to adjacent buildings. Furthermore, this wall would be fitted with monitors that would record its deflection levels and so early warning of problems would be available.
- Vibration monitors would be installed at the base of adjacent buildings and these would alarm if excessive vibration is recorded. These buildings would also be the subject of pre and post-construction surveys.
- The secant pile wall would also afford protection against ground water infiltration during storm events and any post-construction increase in local groundwater levels would be minimal.
- The greatest risk of flooding would arise from surcharging of the public sewer under The Appian Way. Insofar as the proposal would entail the use of an attenuation system, it would lessen the pressure upon this sewer.

Traffic congestion/access arrangements

- The proposal would entail the provision of 13 car parking spaces, i.e. 3 more than the 10 permitted under PL29S.229720. Thirteen spaces were also proposed under PL29S.222919 and although this application was refused it was not for reasons to do with car parking. The inspectors judged that the traffic movements generated by the said spaces would not be critical in exacerbating peak time traffic on The Appian Way.
- Notwithstanding the omission of a condition in relation to the widening of the entrance from The Appian Way from the draft permission, if the Board is minded to attach one, then the applicant would raise no objection.
- Notwithstanding the claims of appellants and observers to the contrary, the applicant is legally entitled to access the site via the adjoining area of car park next to the north eastern elevation of Mitchel House, even if this entails the effective negation of car parking spaces. Likewise, they are legally entitled to undertake the aforementioned widening of the existing entrance. As under the

previous appeals, insofar as these matters are disputed, their resolution would be a civil matter.

- The circulation space within the grounds of Mitchel House would be capable of accommodating the aforementioned traffic movements.
- The applicant conducted a survey of the usage of the existing car park for Mitchel House, which indicated that it is never fully occupied and so the proposed provision of 23 spaces instead of 25 would be adequate. In both cases, while these numbers would be below CDP standards, given the high accessibility of the site to public transport, this is not an issue.
- Appellant B's depiction of car parking spaces beside the north eastern elevation is critiqued as being unrealistic, practically and legally. By contrast, the applicant's depiction of 4 diagonal spaces in this area would be consistent with their swept path analysis for vehicular movements to and from the proposed car lift.
- Attention is drawn to the duplication of access arrangements over the previous two appeals and the current proposal and the importance of consistency in decision making.
- The existing car park forward of Mitchel House is composed of diagonal spaces that are served by an aisle that is of sufficient width to allow cars to pass travelling in opposite directions over the greater portion of its length, i.e. the exception is forward of the entrance to the House. (The pedestrian walkway is part of a shared surface rather than a "pedestrian safe zone").
- The re-siting of the car lift to the western corner of the proposed building would lead to the loss of two residential units and 3 car parking spaces and it would threaten the viability of the project.
- The siting of the proposed car lift and, by extension, its associated usage has previously been permit. Specific concerns about malfunction scenarios are addressed.
- Delivery vehicles would be able to service the proposal from The Appian Way.

- The proposed temporary access via the existing car park would only be used when it would not be feasible to use the proposed temporary access to the site.

6.3. Planning Authority Response

No further comments to make beyond those in the case planner's application report.

6.4. Observations

A: Gretta Crosby of 17 Mitchel House

- The observer has walking difficulties and the loss of car parking spaces during the construction phase and then permanently would make parking adjacent to her apartment even more difficult.
- The existing refuse area would be lost.
- The proposal may be detrimental to the water supply to and foul drainage from Mitchel House.
- Traffic generation and noise pollution during the construction phase would adversely affect residential amenity.

B: Aileen Haugh of 36 Courtney House

- The applicant's right of way across the entrance does not necessarily mean that they are entitled to widen it, especially where increased usage is envisaged. The description of the proposal does not refer to this widening.
- The site notice was not posted at the entrance.
- The applicant's right of way should not mean that they can disregard the established amenities of long term existing residents.
- Notwithstanding the submitted plans, there is insufficient distance for vehicles travelling in either direction to pass one another in front of Mitchel House.
- Take up of the proposed underground car park would be limited to perhaps overnight parking and so short term parking is likely to occur in the grounds of Mitchel and Courtney Houses.

- The proposed underground car park would be prone to flooding, due to the risk of pump malfunction and climate change.
- Existing car parking is inadequate and so the proposal would worsen the situation appreciably.
- Over-development would arise: car parking on the basis of 2 spaces per apartment should be provided at ground level.
- The proposal would lead to the loss of existing trees and its appearance would be out of character with the streetscape.
- The proposal would adversely affect the amenities of long established residents.
- The proposal would bring to 88 the number of apartments on a small site with, post-development, no communal green space.
- With respect to the draft permission, the following critique is made:
 - Condition 6(a): The derivation clause would be open to abuse.
 - Conditions 11 & 6(d): The access roads to Mitchel and Courtney Houses should likewise be kept free of debris.
 - Conditions 6(d) & (c): Noise controls would be unenforceable in practise.
- Attention is drawn to the Board's refusal (PL29S.222991). The reasons given then are pertinent now.

C: Mary O'Mahony of 25 Courtney House

- The site formerly was accessed directly from Leeson Street Upper: this access should be reopened.
- The applicant has not obtained the consent of Courtney House for the proposal.
- The applicant only has a right of way over the existing entrance.
- Any widening of the entrance should be to the north east as there is a bus stop to the south west.

- The intermingling of existing traffic and proposed traffic would be hazardous and disruptive to harmony.
- The busyness of The Appian way can be gauged by the fact that it's a clearway between 07.00 – 10.00 and 16.00 – 19.00.
- The entrance crosses a footpath and cycleway.
- Under the CDP, the proposed number of car parking spaces would be deficient and no provision is made for service/delivery/emergency vehicles.
- Should the proposed car lift malfunction, disruption would ensue.
- The proposed basement levels would be at risk of pluvial flooding and the impact of the Swan River has not been assessed.

6.5. **Further Responses**

None

7.0 **Assessment**

I have reviewed the proposal in the light of national planning guidelines, the CDP, relevant planning history, and the submissions of the parties and the observers. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Land use, density, and height,
- (ii) Conservation and design,
- (iii) Traffic, access, and parking,
- (iv) Development standards,
- (v) Residential amenity,
- (vi) Water, and
- (vii) AA.

(i) Land use, density, and height

7.1.1 Under the CDP, the site is zoned Z1 (sustainable residential neighbourhoods).

“Residential” is a permissible use within this zone and so there is no, in principle, land use objection to the residential use of the site, which is comprised in the current proposal.

7.1.2 The planning history of the site indicates that it has previously been the subject of proposals for a six storey over basement block of 17 apartments, which was refused at appeal, and a five storey over basement block of 9 apartments, which was permitted at appeal, although an extension to this permission was refused under the previous CDP’s height policy. As the current proposal is for a five storey over basement block of 16 apartments, there is precedent for this scale of development but not for the said number of apartments.

7.1.3 Chapter 5 of the Sustainable Residential Development in Urban Areas

Guidelines addresses appropriate locations for increased densities, which include public transport corridors. The site is located on Leeson Street Upper (R138) which is a QBC and so it comes within the said category of location. The Guidelines advise that minimum net densities of 50 dwellings per hectare are appropriate to such sites. The proposal would provide 16 dwellings on a site of 0.092 hectares, which would represent 174 dwellings per hectare, *prima facie*, an ambitious density figure under this measure. However, if this proposal is compared with its predecessor, then the proposed 16 dwellings contrast with the 9 dwellings previously proposed and yet their gross internal residential floorspaces of 1684.77 sq m and 1601 sq m would be similar. Thus, more but smaller apartments (4 one-bed, 11 two-bed, and 1 three-bed) are now proposed compared to fewer but larger ones (4 two-bed, 4 three-bed, and 1 four-bed) previously and so the aforementioned density figure needs to be seen in this light.

7.1.4 As indicated above, the site is zoned Z1 under which the relevant ranges for plot ratio and site coverage are stated as being 0.5 – 2.0 and 45 – 65%, respectively. The completed application forms state that the proposal would exhibit a plot ratio of 1.76 and a site coverage of 50% and so it would lie within the said ranges.

7.1.5 Appellant D has questioned the applicant's methodology in arriving at a plot ratio of 1.76. They state that if the floorspace of the basement/lower ground floor level of apartments is included in the calculation, then a plot ratio of 1.93 results. The applicant has responded by insisting that the said floorspace is not relevant to plot ratio. They cite the approach taken in PL29S.246119 by way of support. They also revisit the calculation of plot ratio and in a detailed presentation (Appendix 2 to their response) they state that, if the appellant's approach is adopted, then a plot ratio of 1.83 emerges and, if their approach is adopted, then a plot ratio of 1.51 emerges. Either way the plot ratio would be within the aforementioned range.

7.1.6 Section 16.5 of the Dublin City Development Plan 2016 – 2022 discusses plot ratio at greater length than its predecessor. Thus, it states that plot ratio is a tool to help control the bulk and mass of buildings and it explicitly states that basements are excluded from consideration. In the light of this Section, I accept the validity of the applicant's approach to the calculation of plot ratio.

7.1.7 The planning authority's draft permission was made subject to condition 3, which requires the omission of the fourth floor, i.e. the proposed penthouse in the top storey. The reason cited for this condition was the need to comply with the height policy of the then current Dublin City Development Plan 2011 – 2017, which capped residential buildings at four storeys and below 13m in height.

7.1.8 The applicant has appealed this condition. In doing so, they draw attention to the precedent for permitting a five storey (16.5m high) residential building on the site that was established by PL29S.229720 (decision date 18th February 2009). They insist that the streetscape and visual amenity considerations that were pertinent to this permission have not changed in the interim and so the current proposal should likewise have been permitted without being subject to condition 3.

7.1.9 Since the planning authority's decision was made on 19th July 2016, the Dublin City Development Plan 2016 – 2022 has been adopted and it came into force on 21st October 2016. Under this CDP, the previous height policy has been relaxed to allow residential buildings of up to 16m in height in the outer city. (No

reference is made to the number of storeys). As the proposed residential building would be 16m in height it would now comply with the current CDP's height policy for the site.

7.1.10 I note the aforementioned change in height policy and the similarity in the size of the current proposal with its permitted predecessor (cf. elevation drawings AWA 3EL 001 – 004). I note, too, that the streetscape and visual amenity context of the site has altered since 2009. Thus, the feature horse chestnut tree adjacent to the northern corner of the site has been removed and Mitchel House has been refurbished. The former alteration would increase the visibility of the proposal on the site. The latter alteration has entailed the application of a white render finish over the original grey brickwork and so this House is of lighter colour than heretofore. I do not consider that either of these two alterations to the context are such as would prompt the need to take a different approach to the height of the proposed residential building to that which was adopted previously.

7.1.11 I conclude that the proposed residential use of the site, the density of the proposal, and the height of the proposed building would all be appropriate under the current CDP.

(ii) Conservation and design

7.2.1 While the site and the adjoining sites to the south east (Leeson Village) and the south west (Mitchel and Courtney Houses) are zoned Z1, the residential areas to the north east, the north west, and further to the south east are all zoned Z2 (residential neighbourhoods (conservation areas)) and the dwelling houses within these areas are protected structures. Thus, the wider context of Leeson Street Upper is one of considerable conservation interest. The site itself is undeveloped and vacant. However, it contains a considerable number of trees, which have been planted towards its boundaries with Leeson Street Upper and The Appian Way, and these boundaries are enclosed by means of stone plinths with railings over.

7.2.2 Appellants object to the proposal, insofar as it would entail the loss of the existing green space with its trees and the development of the site to provide a

building that would be, due to its siting, size, and design, be unduly prominent within its streetscape context.

7.2.3 The applicant has responded to these concerns by drawing attention to the longstanding intention to develop the site and so it does not function as communal open space for the residents of the adjacent Mitchel and Courtney Houses. They also draw attention to its zoning which changed from that of open space to residential under the Dublin City Development Plan 2005 – 2011 and to the arborist's report into the existing trees. Several of these trees would be retained and they would be augmented by additional replacement planting. Measures for the protection of the retained trees during any construction phase are outlined.

7.2.4 The proposed building would be sited in a position whereby it would project slightly forward of the nearest townhouses to the south east and more appreciably forward of Mitchel House. This building would also be significantly higher than these adjacent existing buildings, i.e. 5.51m in the former case and 4.24m in the latter case. Its contemporary design would add to the variety of modern design exhibited by the townhouses and the recently refurbished apartment block. Together these buildings would form a cluster of new buildings within the wider context of older period dwelling houses along Leeson Street Upper.

7.2.5 The proposed building would be more prominent than the adjacent existing buildings. However, this would be appropriate to its site, which lies on the southern corner of the major junction between Leeson Street Upper and The Appian Way. The resulting streetscape and visual amenity impacts would be mitigated by the aforementioned tree retention and tree planting proposals and by the retention of the existing public boundary treatments. Within the wider context of Leeson Street Upper, the generous dimensions of this Street and the generous set back distances that typically characterise the front gardens to its dwelling houses would ensure that these impacts would be capable of being further mitigated. The resulting relationships between old and new would provide contrasts that would be respectful of each other's immediate settings.

7.2.6 I conclude that the proposal would be of an appropriate design for its wider context, which is of considerable conservation interest.

(iii) Traffic, access, and parking

7.3.1 The proposed building would entail the provision of a basement car park with 13 spaces (plus 1 smart car space), which would be accessed by means of a car lift that would be sited in the southern corner of this building. Under the previous permitted proposal for the site, a basement car park with 10 spaces was proposed, which would have been accessed by means of a car lift that would have been sited in the southern corner of the building, too. One of these 10 spaces was omitted by condition.

7.3.2 Under the CDP, the site lies within Area 2 for car parking purposes. Within this Area, dwellings should be served by a maximum of 1 off-street car parking space. Under the proposal, 16 dwellings would be provided and they would be served by 13 car parking spaces, a shortfall of 3 spaces. The applicant has sought to address this shortfall by the introduction of an additional space for a smart car, which would be made available on a communal basis and overseen by the management company for the apartments. The applicant has also drawn attention to the QBC on Leeson Street Upper and the relative proximity of Luas and DART stations.

7.3.3 The proposed car park would be accessed via the existing grounds to Mitchel House and by means of the entrance to these grounds off The Appian Way. The said access arrangements were those that were envisaged under PL29S.229720. A further condition attached to this permission, granted at appeal, required that the said entrance be widened to 5m “In the interest of traffic safety and convenience.” The applicant has reproduced this requirement in their current proposal.

7.3.4 Observer B draws attention to the omission of any reference to the said widening from the description of the proposal and the absence of a site notice from the vicinity of the entrance. These matters relate to the validation of the application, which is the sole prerogative of the planning authority. I note that this application was so validated. I note, too, that item (iii) of the description refers to “the existing vehicular access to the Mitchel House Apartments from

The Appian Way” and item (viii) refers to “all ancillary works”. The planning authority may have judged that between these two items sufficient reference was made to the widening in question.

7.3.5 Appellants and observers express concern over the proposed access route through the grounds of Mitchel House, specifically, the usage of this route, including the existing entrance from The Appian Way, would displace existing car parking spaces, it would lead to congestion, and it would be hazardous. They also cite prescriptive rights that they state exist by virtue of the many years that cars have been parked within the said grounds.

7.3.6 The applicant has responded by setting out details of the way leave which they have over the car park in front of Mitchel House and the adjoining continuous paved area between the north eastern elevation to this House and the site. Thus, they have the right to pass and repass for all purposes over these two combined areas and they have the right to widen the existing entrance and to create an additional one.

7.3.7 I have reviewed the legal claims and counter claims of the parties. I consider that these matters lie within the realm of civil law for adjudication. Under Section 34(13) of the Planning and Development Act, 2000 – 2015, “A person shall not be entitled solely by reason of a permission under this section to carry out any development.” Thus, if the current proposal is permitted, then the applicant would still need to attend to the said matters, i.e. the existence or otherwise of a permission would not override the same.

7.3.8 The vehicular traffic that would be likely to be generated by the current proposal would be slightly in excess of the vehicular traffic that would have been likely to have been generated by its permitted predecessor. Thus, as before, it would be important that the entrance is widened to 5m to facilitate greater ease of manoeuvre to and from The Appian Way. Such widening would need to occur in a north easterly direction, as a bus stop lies to the south west and encroachment upon it should clearly be avoided.

7.3.9 Undoubtedly, Leeson Street Upper and The Appian Way experience heavy traffic during peak periods. The additional traffic movements generated by the proposal during such periods would make no appreciable difference to the

functioning of these streets and so objection, on the grounds of traffic management, would not be warranted. Furthermore, traffic movements to and from the site would be facilitated by the fact that within each cycle of the traffic lights at the junction between The Appian Way and Leeson Street Upper there is a pedestrian phase.

7.3.10 The appellants and the observers report that the existing car park in the grounds of Mitchel House is the subject of heavy usage. The applicant has challenged this account by means of a survey that they undertook between 26th August and 6th September 2016, at various times during each of these days. This survey recorded take up of between 4 and 14 of the available spaces, leading the applicant to conclude that there is spare capacity within the existing car park.

7.3.11 The submitted plans show that one car parking space on the north eastern side of the existing entrance would be lost as a result of the proposed widening of the entrance to the grounds to Mitchel House. Thus, the number of formally laid out spaces in front of this House would contract from 20 to 19.

7.3.12 The aforementioned spaces are laid out diagonally, at an angle of c. 70 degrees, and so, under CDP standards, any accompanying one-way aisle should preferably be 4.7m wide. As appellants point out, the depth of these spaces is 0.194m short of the CDP standard dimension and so, if allowance is made for this shortfall, the available width in the adjoining aisle is c. 5m, apart from in front of the entrance steps to Mitchel House. As claimed by the applicant, this width is still sufficient to allow cars travelling in opposite directions to pass one another over the greater portion of its length.

7.3.13 With respect to the aforementioned aisle, appellants draw attention to a pedestrian walkway beside the front elevation to Mitchel House that is the same width as the said entrance steps. They state that this walkway should not be overrun. The applicant has responded by drawing attention to the shared surface nature of this walkway, i.e. it is only distinguished by a change in finishing material rather than a change in level, and so they dispute the appellants' claim that it should be reserved for pedestrian use only. I concur with their position on this matter and I note that any risk to pedestrians would

be slight, due to the good forward visibility available along the said aisle and the low vehicle speeds that would arise.

7.3.14 During my site visit, I observed that there are 8 car parking spaces formally laid out between the north eastern elevation of Mitchel House and the site, along with a bin storage area. Under CDP standards, car parking spaces should be at least 2.4m wide and 4.75m deep, in the case of perpendicular spaces, or 6m long in the case of parallel spaces. None of the spaces thus laid out would accord consistently with these dimensions. If they were to be adapted to exhibit these dimensions, then I estimate that 4 spaces could be provided, on the basis that they would be capable of being independently accessed/egressed, i.e. 2 perpendicular ones next to the south eastern boundary and 2 parallel ones next to the north eastern boundary of the continuously paved area in question (cf. to the depiction of such spaces on submitted drawing no. R018-010 revision A).

7.3.15 The applicant's submitted plans show a swept path movement of a small/medium sized car to and from the proposed car lift through the grounds of Mitchel House. These plans also show the notional siting of 4 diagonal spaces beside the north eastern boundary of the aforementioned area. I am not persuaded that, in practise, the provision of these spaces would be consistent with ease of manoeuvre to and from the proposed car lift. I consider that, realistically, 2 parallel spaces would be the more likely level of provision, along with the re-siting of the bin store. Thus, I anticipate that the impact of the proposal would be that 1 existing and 2 potential spaces would be lost from the grounds of Mitchel House. Ultimately, this impact may be one that forms part of the range of issues that the applicant and appellant B may need to address, as adjoining property owners.

7.3.16 The appellants request that the proposed car lift be re-sited from the southern to the western corner of the proposed building. This request was explored by the applicant under further information. They submitted plans depicting such a re-siting, which, as superimposed upon the existing proposal, would negate 2 apartments and 3 car parking spaces. They also outline the importance of the western corner, in design terms, as its orientation is of considerable value in achieving amenity for future residents of the proposed building, and they

emphasise that, as the car lift was previously permitted in the southern corner, consistency of decision making requires that it be accepted in this position again.

7.3.17 I recognise that, whereas the suggested re-siting would facilitate easier traffic movements and traffic management within the grounds of Mitchel House, to insist upon re-siting against the backdrop of the precedent cited by the applicant and in the knowledge that any redesign would be likely to lead to a smaller quantum of development, due to the constraints affecting the southern corner of the site, may be difficult to justify. I recognise, too, that the applicant has sought to address the obvious difficulty posed by the need for arriving drivers to round the northern corner of Mitchel House before they can see if the car lift is available for use, by proposing the installation of a red/green traffic light on the western corner of the building to denote the availability or otherwise of this lift.

7.3.18 The appellants have expressed concern that, in the event of malfunction of the proposed car lift, traffic congestion would occur within the grounds of Mitchel House. Likewise, they envisaged such congestion arising from the periodic presence of delivery/service/emergency vehicles in attendance upon the proposed apartments.

7.3.19 The applicant has responded to the aforementioned concerns by setting out malfunction scenarios and how they would be dealt with (cf. Appendix 4 of their response). They also state that the said vehicles would be able to stop briefly on the adjoining road network. Thus, for example, refuse vehicles would collect bins from the kerbside. In this respect, I note that the footpath adjoining the relevant north eastern boundary is 3m wide and I note, too, that the bin store would be conveniently sited in relation to this footpath. These factors would facilitate the handling of bins with minimal disruption to the public.

7.3.20 The appellants have also expressed concern that during any construction phase the applicant may open a temporary access from The Appian Way to the grounds of Mitchel House to be used when it is not feasible to use the temporary access directly to the site itself. Three car parking spaces would be

lost for the duration of such an access. I consider that, as with the other potential parking impacts of the proposal upon these grounds, this may be a matter that the applicant would need to work out with appellant B.

7.3.21 The submitted plans indicate that 12 cycle stands for residents would be provided in the basement car park and a further 6 stands (4 for residents and 2 for visitors) would be provided in a cycle shed adjoining the bin shed, which would be sited forward of the proposed building and beside the south eastern boundary of the site. Under CDP standards, each apartment should be served by 1 cycle stand and so this standard would be met.

7.3.22 I conclude that the traffic generated by the proposal would not add appreciably to traffic levels on the surrounding road network, provided the entrance to the grounds of Mitchel House is widened, access to the site would be capable of being gained satisfactorily, and the number of proposed car parking spaces would be adequate.

(iv) Development standards

7.4.1 Under Section 16.10.1 of the CDP, the mix for apartment dwellings of 15 units or more should reflect the following parameters:

- A maximum of 25 – 30% of one-bed units, and
- A minimum of 15% three or more bed units.

The proposal would entail the construction of 16 apartments (3 one-bed, 1 one-bed with study, 11 two-bed, and 1 three-bed). The percentages represented by this mix would be 25%, 69%, and 6%, respectively.

7.4.2 The CDP's development standards replicate those that are set out in the Sustainable Urban Housing: Design Standards for Apartments Guidelines.

- Under further information, the applicant submitted a table, which shows that each of the proposed apartments would comply with these standards. Thus, in terms of overall floorspace, they would comfortably exceed the relevant standard and, in the case of specific rooms and dimensions, they would comfortably exceed the majority of the relevant standards.

- Under further information, the applicant also submitted a table, which shows the area of private open space that would serve each apartment. In each case compliance would be achieved, in the majority of cases comfortably so. The apartments would also be served by communal open space, which again would comfortably exceed the relevant development standard.

7.4.3 At the appeal stage, the applicant has responded to the opportunity presented by the removal of the roadside horse chestnut tree adjacent to the site. They thus propose to increase the footprint of the building on its northern corner, thereby extending the basement car park and the courtyards that would serve the basement/lower ground floor apartment denoted as No. 1, i.e. the two originally proposed separate courtyards would be linked to form a continuous one. Consequently, the utility and amenity value of the combined courtyards would be enhanced.

7.4.4 Appellants express concern over the amenity that would be afforded by particularly the basement/lower ground floor apartments. Under further information, the applicant addressed this concern by means of a Sunlight and Daylight Access Analysis, which, amongst other things, assesses the daylighting of the said apartments. This Analysis indicated that, in all living rooms and kitchens, the minimum average daylight factors of 1.5% and 2%, respectively, would be achievable and in most instances comfortably so. In the case of the apartment denoted as No. 2, which would be orientated to the north east and which would be served by a light well to the south east, the provision of daylight would be the most restricted and yet these factors would be achievable over 98.1% of the floorspace of the living room and 95% of the floorspace of the kitchen of this apartment.

7.4.5 I recognise that, under the CDP, the appropriate mix of apartment types would not be achieved, due to a deficiency in the number of three-bed or more apartments. I recognise, too, that the proposed apartments would be provided, largely, well in excess of relevant floorspace and dimensional standards and so a high specification would be achieved. Thus, they would afford a good standard of amenity to future residents. In these circumstances and in view of the relatively small number of apartments in question, I do not consider that any

meaningful purpose would be served in requiring that the mix of apartment types be reworked.

7.4.6 I, therefore, conclude that the proposed apartments would meet all relevant quantitative and qualitative standards designed to ensure that they would afford an acceptable standard of amenity to future residents.

(v) Residential amenity

7.5.1 The proposed building would be sited to the west and north west of the nearest townhouses in Leeson Village and to the north east of Mitchel House. The applicant's Sunlight and Daylight Access Analysis indicates that this building would lead to some increase in the overshadowing of the said townhouses in the evenings and no increase in the overshadowing of the said House. In the case of the nearest townhouse (No. 1), this Analysis indicates that, notwithstanding the absence of floors above the proposed car lift in the southern corner, a slight reduction in sunlight and the average daylight factor would ensue. This reduction would, however, be within acceptable limits for an urban area.

7.5.2 The appellants have expressed concern that the proposed building would lead to overlooking of the aforementioned adjacent buildings.

- In this respect, I note that the exposed south eastern sides of the balconies on the recessed portion of the south western elevation next to No.1 would be enclosed by means of 1.8m high opal glass screens. Thus, views into the initial portion of the rear garden to No. 1 would be curtailed. I consider that the extension of these screens above the balustrade level for an additional 1m would curtail these views still further and so, in the event of a grant, such extension should be conditioned.
- I note, too, that openings to habitable rooms and balconies on the third and fourth floors in the main south western elevation of the proposed building and the roof garden above the fourth floor would afford views of the roof terrace at the north eastern end of Mitchel House. The clearance distance would, however, be 10.67m and so I consider that overlooking would not lead to any undue loss of privacy for what again is an urban area. I,

therefore, do not agree with appellants who request that the openings in the said elevation be the subject of obscure glazing.

7.5.3 The appellants have also expressed concern that the construction phase would have a range of environmental/amenity impacts upon local residents, as would traffic movements generated by the operational development. The applicant has sought to mitigate the former by means of measures set out in their Construction Management Plan and, as to the latter, they contend that these would tend to duplicate existing traffic movements between the north eastern elevation of Mitchel House and the site and so no discernible increase in pollution would arise.

7.5.4 I therefore conclude that the proposal would, subject to an increase in screening within the southern corner of the new building, be compatible with the residential amenities of the area.

(vi) Water

7.6.1 The proposal would be served by the public mains water supply and the public sewerage system. While appellants express concern over implications for water pressure and the capacity of the said system, the Drainage Division of Dublin City Council has raised no objection.

7.6.2 The proposal would be served by a surface water drainage that would utilise SuDS techniques. An oil separator and a storm water attenuation tank, with a control flow device, would be installed. Thus, during storm events, pressure on the combined public sewerage system would be restricted. This is important, as surcharging from this system poses a local flood risk.

7.6.3 The applicant's engineer has undertaken a flood risk assessment of the proposal (cf. Engineering services Report submitted as part of the original application). This assessment identifies the site as being in Zone C, under the Planning System and Flood Risk Management Guidelines. It states that fluvial and tidal flooding would pose no appreciable risk to the site. However, as the proposed basement/lower ground floor apartments would be served by courtyards underneath light wells, these spaces would be at risk of pluvial flooding. To mitigate the same, bunds would be constructed around the

exposed sides of the light wells. Likewise, to mitigate the risk of ground water flooding, the basement car park would be constructed as a water tight box.

7.6.4 Appellants express concern that the proposal would lead to the displacement of ground water, which could cause flooding elsewhere within the locality. They also express concern that the presence of the Swan River has not been factored into the applicant's aforementioned assessment.

7.6.5 The applicant has responded by stating that the footprint of the proposal would be too small to either divert the ground water flow or to cause flooding elsewhere. Historically, the Swan River did not pass underneath the site and, as it is culverted, its connection with ground water is insignificant.

7.6.6 I, therefore, conclude that the proposal would be capable of being satisfactorily serviced by the public water mains and sewerage system and that it would, subject to the cited mitigation measures, be flood resistant while not posing any appreciable heightening of food risk to the locality.

(vii) AA

7.7.1 The site is neither in nor near to a Natura 2000 site. The nearest such sites are in Dublin Bay (SAC and SPA). The proposal would be linked to these sites via the combined foul and surface water public sewerage network that discharges to the Ringsend WWTP. Periodic storm water surges through this Plant can lead to a decrease in the water quality of the Bay. However, the Conservation Objectives of the said Natura 2000 sites do not refer to water quality. Furthermore, the scale of water treatment occurring at the Plant is such that the contribution of the proposal would be negligible.

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

8.0 Recommendation

In the light of my assessment, I recommend that this proposal be permitted.

9.0 Reasons and Considerations

Having regard to the Dublin City Development Plan 2016 – 2022 and the planning history of the site, it is considered that, subject to conditions, the proposal would comply with the zoning objective for the site and associated density standards. This proposal would be compatible with the immediate streetscape, which is composed of newer buildings, and the wider streetscape, which is composed of older buildings. It would thus be consistent with the visual amenities of the area. The proposal would afford an acceptable standard of amenity to future residents, while being compatible with the existing residential amenities of the area. Traffic generated by the proposal would be capable of being accommodated on the local road network and access and parking arrangements would be satisfactory. Drainage arrangements would, likewise, be satisfactory and no Appropriate Assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0 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 22nd day of June 2016 and by the further plans and particulars received by An Bord Pleanála on the 8th day of September, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

- (a) The opal glass screen specified for the exposed side of the balconies to apartments numbered 9, 12 and 15 shall be extended above the height of the balustrade for a further 1m in a south westerly direction.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed apartment block shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. 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.

5. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 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 residential amenities of property in the vicinity.

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

Reason: In the interests of sustainable waste management.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of on-site car parking facilities for site workers during the course of construction;
- (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) Measures to obviate queuing of construction traffic on the adjoining road network;

- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

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

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

8. The trees identified for retention on drawing no. 0LG + 00G shall be retained insitu and to this end the methodology outlined in the Method Statement: Construction of basement adjacent to existing buildings and trees, dated 11th March 2016, shall be followed and the tree protection measures outlined in the Arboricultural Assessment, dated 26th February 2016, shall be implemented at all times during the construction phase of the development.

Reason: To ensure that the trees are safeguarded.

9. The landscaping scheme shown on drawing. nos. C0045 L100, 102, 103, 400, 500, 501, 502 shall be carried out within the first planting season

following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of 5 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

10. Proposals for a name for the apartment block and apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the apartment block name and apartment numbers, shall be provided in accordance with the agreed scheme. No advertisements/ marketing signage relating to the name of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name.

Reason: In the interests of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

11. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of communal open spaces and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

12. Prior to the commencement of the first occupation of any of the apartments the following works shall be undertaken:

(a) The vehicular entrance to the grounds of Mitchel House from The Appian Way shall be widened in a north easterly direction to provide a width of 5m.

(b) The portion(s) of stone plinth and railings removed to facilitate temporary site access(es) shall be reinstated.

(c) The bin store and bicycle shed shown on the submitted plans shall be constructed and, thereafter, retained insitu for the duration of the apartment block on site.

(d) The “Sheffield” type cycle stands shown on the submitted plans shall be installed in the basement car park and, thereafter, retained insitu for the duration of the apartment block on site.

Reason: In the interest of good traffic management, residential and visual amenity, and in order to promote a sustainable mode of transport.

13. The car parking spaces in the basement car park shall not be sold, rented, or otherwise sub-let or leased to parties who are not resident in the apartment block on the site.

Reason: In the interest of good traffic management.

14. The developer shall pay to the planning authority a financial contribution of €161,063 (one hundred and sixty-one thousand and sixty-three euro) 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 – 2015. 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. The application of any indexation required by this condition 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.

Reason: It is a requirement of the Planning and Development Act 2000 – 2015 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.

Hugh D. Morrison
Planning Inspector

10th November 2016