



An
Bord
Pleanála

Inspector's Report PL29S.247351

Development

Internal alterations and amendments and provision of office use and demolition of the existing two storey rear shed structure and the construction of a three storey office development connected via an atrium to the existing buildings fronting Westland Row.

Location

Nos. 42 and 43 Westland Row and 42 / 43 Westland Court.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2148/16

Applicant(s)

James and Patrick Dooley

Type of Application

Permission

Planning Authority Decision

Grant permission

Type of Appeal

Third Party

Appellant(s)

Oliver McGrath
Ciaran McGrath

Observers

none

Date of Site Inspection

20th January 2017

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on the eastern side of Westland Row in Dublin 2 and has frontage onto both Westland Row to the west and to the east onto Westland Court, a narrow lane that accesses onto Cumberland Street South.
- 1.2. The site is currently occupied by two mid Victorian period buildings that front onto Westland Row and by a large double storey garage or shed structure to the rear. The buildings that front onto Westland Row, Nos. 42 and 43 comprise a three storey over basement level two bay building at No. 43 and a four storey over basement level three bay structure at No.42. These buildings, together with the garage structure to the rear were most recently used in connection with a car hire business operated from the site, Dan Dooley car hire.
- 1.3. The buildings fronting onto Westland Row constitute part of a significant terrace of buildings on this side of the street including the Royal Irish Academy of Music and the St Andrews Catholic Church and school that have a high architectural and streetscape quality. The buildings on site are included on the record of protected structures and the site is located within a conservation area (Objective Z8). The existing condition of the buildings is poor and in the case of No.43 there has been damage to the roof that has led to significant ingress of water and damage to ceilings and other interior features of the building. There is a limited amount of original building fabric left in the two buildings at Nos. 42 and 43 Westland Row. In addition, the adaptation of the use of the buildings over the years has resulted in a number of significant changes in the original layout including the opening of a large opening in the rear elevation of No. 42 to facilitate vehicular access and also the integration of the two buildings at all levels. The ground floor frontage has also been the subject of significant alteration and the original shop fronts have been removed and replaced with more modern frontages which is now in poor condition.
- 1.4. The shed or garage structure to the rear dates from the early twentieth century although it has been significantly altered over the years. The structure is double height and has a ramped access into the existing building at No.42. The most recent use of the building comprised storage at basement level with office use in the form of car hire at ground floor and the upper levels. The structure to the rear contains roof

frames and trusses and parts of the structure including the roof have been the subject of redevelopment over the life of the structure.

- 1.5. Development on adjoining sites comprises the intensive development on both sides with very high site coverages. To the north, the site is adjoined by a building that has a central store located at ground floor level. This store has a café at the rear. The café area looks out over a courtyard that extends down to basement level and which is surrounded by office and retail floorspace. The area above the café, which is in an extension at the rear of No.44 Westland Row, is laid out as a terrace and this terrace is at approximately the same level as the eaves height of the existing garage structure on the appeal site. The uses of the upper floors of No.44 Westland Row comprise office and part residential. Further to the east of the courtyard to the rear of No.44 development comprising part two and part three storey office accommodation. This area of the site is called No.44 The Loft and houses a wide range of companies. The building extends to length of the north side of Westland Court as far as the junction with Cumberland Street South.
- 1.6. To the south, the appeal site adjoins No.41 Westland Row. To the rear of the main building fronting Westland Row development comprises a mixture of single, two and three storeys. To the south, between the eastern end of the appeal site and No.41 and extending east as far as Cumberland Street South is a recently completed ESB sub station and compound.
- 1.7. The stated area of the appeal site is 536.9 sq. metres and the floor area of the existing buildings on the site is 1,279 sq. metres. The existing layout of the site is such that there is 100 percent of the site developed and the plot ratio of the existing layout on site is stated to be 2.4.

2.0 Proposed Development

- 2.1. The proposed development comprises a number of elements that can be summarised as firstly, the refurbishment of the existing buildings at Nos. 42 and 43 Westland Row for office and ground floor retail use, and secondly the demolition of the existing shed / garage structure to the rear and its replacement with a new three

storey office building that would be connected to the rear of the existing structures at Nos. 42 and 43 Westland Row by a glazed atrium structure.

- 2.2. The works to the buildings at Nos. 42 and 43 Westland Row comprise the complete refurbishment of the buildings to include the repair of existing features and replacement of some features which have been lost. The works provide for the reinstatement of original layout. At basement level the proposal is for a change of use from the existing storage to part storage and staff canteen facilities connected with a ground floor retail use and part office. To facilitate the proposed change of use of the basement the floor level is proposed to be reduced and the current split level basement that has a c. 300mm difference in levels evened out to a single level. A number of existing walls at basement level are proposed to be removed and existing staircase at No. 42 connecting the basement with ground floor is indicated in the plans as being recorded and replaced with a new stair. It is noted that the conservation report submitted with the application indicates that it is intended that this staircase would be retained.
- 2.3. At ground floor level in the buildings fronting Westland Row it is proposed that No.43 would be redeveloped for use as a café with No.42 comprising an entrance area and lobby that would access the office accommodation at upper levels. The removal of the existing shopfront and the addition of a new shopfront to both buildings is proposed. At street level it is also proposed that the glass lights set into the pavement would be replaced.
- 2.4. At the upper floors of Nos. 42 and 43 it is proposed that the use would be office and a number of modern partitions and walls are proposed to be removed. Skirting boards and cornicing are to be repaired where feasible and replaced where required. Existing original doors are to be repaired and non original doors to be replaced with appropriate style of door. Repairs to the chimney are proposed and cleaning and repointing of brick is also proposed. All existing windows are proposed to be repaired where required and window cills to be repaired where possible and replaced where repair is not feasible.
- 2.5. To the rear of the existing buildings it is proposed to demolish the existing garage structure. The replacement building on the rear part of the site is proposed to be a three storey flat roofed office building that would be connected to the existing

Westland Row buildings by a glazed atrium that would extend c. 5.75 metres beyond the rear elevation of No.43. The glazed atrium is proposed to extend to three storeys in height and would facilitate stair access between the office accommodation in the existing buildings and the new development to the rear. It is also proposed that the atrium would accommodate a glazed lift.

- 2.6. The office building to the rear is proposed to have an overall height to parapet level of c. 10.62 metres and a low pitch metal cladding roof is proposed to be sited within the parapet height. The building is proposed to extend up to the northern boundary of the site and to the south, the building is proposed to be to the boundary at ground and first floor level but set back by c. 2 metres at second floor level where a terrace accessed from the second floor office accommodation is proposed along the full 18 metre length of the new building. Pedestrian access from the building to Westland Court is proposed and a bin storage area accessible from Westland Court is also indicated.
- 2.7. The stated floor area of the proposed development is 1,531.9 sq. metres with a total of 750.9 sq. metres of floorspace retained in the existing buildings at Nos. 42 and 43 Westland Row, and new floorspace provided in the new office building to the rear and new atrium amounting to an additional 781 sq. metres. Of the total floorspace the proposed café and ancillary accommodation amount to a total of 318 sq. metres.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 11 conditions, the most significant of which are considered to be the following:

Condition No. 6 sets out detailed requirements of the conservation section of the council and requires the submission of a detailed conservation methodology and specification to be submitted following a site inspection in the presence of the conservation officer. Details and schedule of demolitions and stripping out works are required and clarification on a number of issues including items to be retained, salvaged, brickwork and stone repair, internal joinery works, and removal of existing

plant and equipment amongst other issues. Details of the proposed shopfront are also required to be submitted. All works are required to be undertaken under the supervision of a conservation architect. It is also specified that all works shall be undertaken in accordance with the submitted report on structural and related issues.

Condition No. 7 relates to archaeology and requires that an archaeologist be retained to undertake licenced monitoring of all demolition and sub surface works. A method statement shall be prepared and agreed with the City Archaeologist prior to the commencement of development. In the event of features being discovered then the archaeologist shall be facilitated in the recording of such features.

Condition No.8 requires that no advertising signs or signage shall be or other advertising elements shall be erected on site without a prior grant of permission.

Condition No.6 relates to archaeology and requires inter alia the undertaking of an archaeological assessment prior to any site clearance works. Where archaeological material is found to be present then a detailed impact statement is to be submitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer notes the nature of proposed development, objections and the planning history of the site including refusals. A number of issues are identified in an initial report including clarity regarding the revisions since previously refused permissions, submission of additional elevations and also details regarding works to the protected structures including details of the proposed upgrading of the structures and methodology for demolitions, and revised drawings regarding the scope of proposed fabric removal, repair and conservation. The principle of the proposed site coverage and plot ratio figures are considered acceptable given the existing development of the site and its location. Following receipt of responses to the further information and clarification of further information requests a decision consistent with the Notification of Decision to Grant Permission issued is recommended.

3.2.2. Other Technical Reports

Drainage Division – No objection subject to conditions.

Conservation Officer – Initial report recommends further information on the basis of the limited scope of information that is provided with regard to the method for the proposed demolition and also the clarification of the scope of the removal of original fabric and the reduction / minimisation of the impact of the proposed services on the existing structure. Detailed design of the proposed café and the shopfront are also required. Following the receipt of further information, a grant of permission subject to conditions is recommended.

City Archaeologist – Notes that the site is located within the Zone of Archaeological interest as identified in the development plan. Conditions are recommended.

Environmental Health Officer – No objections subject to conditions.

3.3. Third Party Observations

An objection was made to the Planning Authority and the issues raised can be summarised as follows:

- Compliance with Z8 zoning and specified uses.
- Exceedance of the site coverage and plot ratio standards for Z8 lands and overdevelopment of the site.
- Inaccuracies in the description of the proposed development.
- Lack of side elevation drawings.
- Lack of details of boundary treatment to No.41.
- Overshadowing and blocking of light to the adjoining properties.

3.4. Further Information and Clarification of Further Information

Prior to the issuing of a Notification of decision, the planning authority requested further information and clarification of further information on the following issues:

- Submission of north and south facing elevations.
- Drawings indicating how the proposed development differs from that refused previously under Refs. 3729/13 and 4227/06.
- Submission of conservation details comprising details of the proposed fire upgrading measures, revised drawings indicating the extent of the removal of existing fabric, revised services layout to minimise the impact on the existing structure, detailed design of the proposed café and shopfront including lighting and signage.

In response, the applicant submitted additional details regarding the extent of interventions into the existing structure. Some additional details of the proposed shopfront were also submitted.

4.0 **Planning History**

The following planning history is of relevance to the assessment of this appeal:

Dublin City Council Ref. 3729/13 – Permission refused by the planning authority for development of the appeal site comprising the redevelopment of the buildings fronting onto Westland Row with retail use at ground floor and retail storage at basement level. Internal alterations and extension to upper levels including the raising of the ridge height of No.43 to match that of No.42 and the use of the upper floor levels to office. The proposal also provided for the demolition of the existing building located to the rear and for the construction of a four storey steel frame building to be used as offices. An atrium connecting the new development to the rear with the existing buildings at Nos.42 and 43 was proposed. Permission was refused by the Planning Authority on the basis that the height scale and massing of the proposed four storey building and its proximity to the boundary of the proposed site was such that it would seriously injure the amenities of property in the vicinity by reason of loss of light, overshadowing and visual intrusion.

Dublin City Council Ref. 4227/06 – Permission refused by the planning authority for alterations to the single storey warehouse to the rear of No.41 Westland Row to include the addition of a second floor and the change of use of the structure from

industrial warehouse to office use. The proposed development also included the replacement of the roof and the alterations to the north east elevation overlooking Westland Court and the provision of a new access from Westland Court. Permission was refused on the basis that the proposed mix of uses would be contrary to the Z8 zoning objective which seeks to ensure that there is a maximum of 50 percent office use and that the proposed development would therefore materially contravene the provisions of the development plan.

5.0 Policy Context

5.1. Development Plan

It is noted that the application the subject of this appeal was assessed by the Planning Authority under the provisions of the Dublin City Development Plan, 2011-2017. Since the decision of the Planning Authority the new Dublin City Development Plan, 2016-2021 has come into effect.

The appeal site is located on lands that are zoned Objective Z8 under the provisions of the Dublin City Development Plan, 2016-2021. The stated objective for Z8 lands is *'to protect the existing architectural and civic design character and to allow for only limited expansion consistent with the conservation objectives'*.

Office use is a permissible use on lands that are zoned Objective Z8 and 'Restaurant' and 'Retail' uses are both identified as being Open for Consideration. It is noted that under previous development plans, Objective Z8 areas were covered by a general requirement that not more than 50 percent of the floor area of developments / buildings would be for office use. This specific requirement has been omitted in the recently adopted development plan. There is reference in 14.8.8 to the fact that the main objective of the zoning is to protect the architectural character / design and overall setting of such areas. It is also stated that a range of uses are permitted but that the main aim is to enhance these areas as active residential streets and squares. Offices may be permitted where they do not impact negatively on the architectural character and setting of the area and do not result in an over concentration of offices.

The indicative plot ratio standard for Objective Z8 lands is 1.5 and the indicative site coverage standard is 50 percent. There is provision in the plan for the relaxation of these standards in areas where, inter alia, the site adjoins a major public transport termini or corridor, to maintain existing streetscape profile or where there is already a higher site coverage / plot ratio on the site.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party appeal submitted:

- That the site is located between Nos. 40, 41 and 44 Westland Row and these adjoining buildings owned by the appellant have been redeveloped and conserved with a mixture of residential and commercial occupants. These buildings are occupied by restaurant, retail, creative, residential and office uses.
- That the redevelopments of the adjoining sites have involved the retention of existing structures including the trussed building to the rear of No.40 which dates from the late Victorian period. A similar principle / approach should be taken with the Edwardian structure to the rear of the appeal site.
- That the two storey industrial building to the rear of the appeal site which is proposed for demolition is of significance given it was designed by Frederick Higginbotham.
- That the restoration of the structure would be in accordance with ICOMOS principles and it is requested that the decision to permit demolition would be re-evaluated in the context of the merits of retaining industrial heritage.
- The development would result in the loss of the brick gable that faces onto Westland Court.

- That the proposed development will result in a significant loss of light to the office units at the rear of No.44 and the eastern elevation of No. 40. The residential occupants of No.44 will be adversely impacted contrary to 17.9.1 of the development plan.
- There are second floor windows to No.44 that face west that would be severely impacted by the proposed development. The second floor courtyard to No.44 would also be significantly impacted. This courtyard is used as a coffee and meeting area and also connected with the photography business on the site.
- That the condition of Nos. 42 and 43 and the state of disrepair referred to in the application documents is as a result of the actions of the property owner.
- That the proposed development would be contrary to zoning objective Z8 as at least 60 percent residential use will not be provided.
- That the proposed development would contravene the rights to light of the occupants of the adjoining buildings.
- It is requested that the adjoining properties would be visited.
- That the proposed development would be contrary to the main objective for the Objective Z8 lands which is that the main use of the area would be residential. It is noted that Ref. 4227/06 refused permission on the basis that it would materially contravene the land use zoning.
- That the application made in 2006 makes reference to change of use from residential and it would appear that the established or permitted use of the third floor of the building is as a residential unit. There is no reference to residential in the current application and the planners report does not justify the proposed mix.
- That the development will impact negatively on the terrace located to the rear of No.44 Westland Row which provides an outdoor space for the occupants of ground and lower ground floor units.
- That no assessment of the impact on adjoining properties in terms of shadow project or daylight and sunlight analysis has been submitted.

- Submission accompanied by an analysis prepared by Chris Shackleton consulting that clearly demonstrates that the proposed development would result in a significant loss of light to No.44. It is shown that the proposed layout fails to comply with BRE standards.
- That the proposed development will result in a significant increase in plot ratio from 2.4 to 2.85 and significantly in excess of the indicative figure of 1.5 for Z8 lands.
- That the proposed scale and height of development will overbear and dominate the protected structure as well as impacting on amenity of adjoining properties.
- The proposal would set an undesirable precedent for other similar forms of development.

6.2. First Party Response to Grounds of Appeal

The following is a summary of the main issues raised in the first party response to the grounds of appeal:

- That the proposed development to the rear will be in scale with and will not be higher than any of the taller buildings in the adjacent curtilages. Specifically, the replacement rear structure will not be higher than the eaves height of No. 43 (the lower of the two front buildings) and will not be any higher than the building constructed at the rear of the site of No.44.
- That the layout at second floor level has been set back from the boundary to avoid the blocking of the windows in the boundary wall of No.44. It is submitted as an option to the Board that this set back could be extended across the atrium as well.
- That the adjoining site at No.44 is intensively used for a range of commercial activities.
- That an inspection of the site at No.44 indicates an existing dark / shadowed courtyard and the use of artificial lighting during daylight hours.

- There is a duplex apartment at second floor level on the side facing No.43. It is noted that the entrance door to this unit accessed via stairs from the terrace area within the rear of No.44. The entire atrium proposed would be below the level of the bedroom in this duplex apartment.
- That the entire rear curtilage of the appeal site is bounded by high level buildings that extend up to the property boundary.
- That the inspection of the appeal site and environs indicates that the premises at No.44 has a very limited residential component contrary to the impression given in the third party appeal.
- That No.44 is a very intensively developed site and the development undertaken at the rear of that site has acted to block other development within No.44 by virtue of its scale.
- What is proposed to the rear of the site is a development that is no higher than the ridge height of existing warehouse to the rear of Nos. 42 and 43.
- That the proposed development is of the same three storey scale as the development undertaken on the site by the third party appellants.
- That the BRE guidelines and the two hours of sunlight over 50% of the area relates to a residential context. The BRE guidelines also clearly provide for relaxations in the case of city centre developments and historic urban contexts.
- That the 2016-2022 development plan has revised the policy regarding development on Objective Z8 lands. This is not recognised in the appeal submissions. The overall aim of Objective Z8 is to protect the existing architectural and civic design character and to allow for limited expansion.
- That the location of the site relative to Pearse Station is such that it is ideal for the provision of office accommodation that is accessible by public transport.
- Regarding the Shackleton daylight and sunlight assessment, the window 1 referred to is the window of the centra café and is below the level of the deck.

- Window 2 was indicated as receiving light throughout the inspection of the site. Window 3 is a high level window that is on the boundary and will be continue to receive light as the proposed development is set back from the boundary at that level. The accommodation at No.44 also has alternative windows and light sources.
- That overall the Shackleton report is of little or no value and should be disregarded.
- That the existing warehouse on the appeal site has steel girder trusses to the roof with asbestos sheeting. There are no original roof materials remaining from the original warehouse.
- Finally, a modification to the proposal in the form of a set back to the atrium from the boundary with No.44 has been submitted with the appeal. A revised set of drawings incorporating this change as well as the revisions proposed in response to the further information requests of the Planning Authority is submitted.

6.3. Response of Planning Authority to Grounds of Appeal

The first Planning Authority have responded to state that they consider that the report of the planning officer on file addresses the issues raised and that they have no further comment to make on the grounds of appeal.

6.4. Comments of Mr Oliver McGrath (Appellant) on Appeal Submitted by Mr Ciaran McGrath

The following is a summary of the main points raised additional to those in the appeal submission:

- That inadequate consideration has been given to the architectural importance of the rear structure.
- There will be a significant loss of amenity to adjoining properties and loss of light.

- That the setting and historical character of Westland Row will be adversely impacted.
- That the submitted drawings contain discrepancies, notably the inaccurate description of the elevations. Contiguous buildings are not indicated and the level of detail is inadequate to enable the council to assess the proposal.

6.5 Third Party Submissions on First Party Response to Appeals

The following is a summary of the main additional points made in the response submissions received from the third party appellants commenting on the first party submission:

Ciaran McGrath (c/o Stephen McGrath)

- That the first party submission contains photographs of No.44 and gained access to No.44 without consent.
- That the site is not a 'warren' as described in the Clear submission and comprises an employment rich hub.
- That the structures on the appeal site have been allowed fall into a state of disrepair contrary to s.58 of the Act.
- That there is a residential element in the building as evidenced by the photographs in the Clear submission.
- That Clear Associates are incorrect to state that there is no original roofing material on the shed structure. The heritage assessment for application ref. 06/6628 recorded that the steel roof structure should be recorded as per Duchas guidelines. The current conservation assessment with the application notes the significant timber trusses.
- That the designer of the shed was Frederick Higginbotham a noted engineer of the period and therefore the structure is of technical interest as per 2.5.15 of the Architectural Heritage Protection Guidelines.
- That the Clear submission does not address the issues raised in the appeals regarding the brick gable and the retention of industrial heritage.

- That there is an obligation under the European Convention on Human Rights for planning authorities and an Bord Pleanála to ensure compliance with the convention in the application of their functions.

Oliver McGrath (c/o Downey Planning).

- It remains clear that there will be an unacceptable impact on amenity as a result of the proposed development and no proper assessment of the impact has been undertaken by the first party.
- That unauthorised access to the third party properties was undertaken and it is requested that the photographs obtained from this be redacted.
- Contrary to what is stated by the first party, there does not appear to be vehicular access to the rear from Westland Row via the protected structure.
- That the rear elevation as submitted by the first party gives a misleading impression of the scale of the proposed development. The rear returns immediately adjoining the buildings fronting Westland Row are two storey and not three storey.
- That No.44 has a residential component and daylight and sunlight analysis should also be required for commercial developments.
- Contrary to the first party response, the proposed development would result in a clear increase in overall (maximum) height of development to the rear (from 57.39 metres ridge height of the existing shed to 59.92 metres).
- The statement that the third party appeal is misleading and dishonest.
- That the standards set out in the BRE guidelines are best practice and the first party contention that they should not be taken as standards is not correct.
- That the new development plan removes the cap on office use in Z8 zones but states that office use may be permitted where it does not impact negatively on the architectural character and setting of the area or result in an over concentration of offices.

- The proposed development would lead to the overlooking of No.44 from the glazed second floor. It is also noted that the revised layout proposed indicates a set back of the atrium from the boundary with No.44 recognising that there is an issue of amenity arising. Again the impact of this amendment is not quantified.
- That the site coverage and plot ratio levels proposed are excessive and indicate overdevelopment of the site and a loss of amenity for surrounding properties.

6.6 Other Referrals

The application was referred by the Board to An Chomhairle Ealaion and Failte Ireland for comment. No response was received within the period specified in these s.131 notices.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development
- Conservation Issues
- Impact on Amenity
- Other Issues

7.2. Principle of Development

7.2.1. The appeal site is located on lands that are zoned Objective Z8 *'to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective'*. Under the provisions of the 2016-2022 Dublin City Development Plan, 'Office' is a Permissible Use and 'Restaurant' and 'Retail' are both identified as uses that are Open for Consideration. The uses proposed in the development are therefore compatible with the land use

zoning objective of the site. It is also noted that the most recent use of the site was for an office and commercial use connected with a car hire business.

- 7.2.2. The third party appellants make reference to the fact that the policy for Objective Z8 zoned lands set out in the development plan sets a limit on the amount of office accommodation that should be provided and requires that the predominant land use would be residential. The third party appeal submissions refer to the 2011-2017 Dublin City Development Plan and I note that the 2016-2022 Plan has removed any specific requirement for a residential component.
- 7.2.3. The main objective of the Objective Z8 zoning is to protect the architectural character / design and overall setting of the area. It is also stated that the aim is to maintain and enhance these areas as active residential streets and squares and that where offices are proposed these should not impact negatively on the architectural character and setting of the area and not result in an over concentration of this use. It is noted that the proposed development does not propose any residential component however the most recent use of the site did not contain any residential use and it would appear from the information available that there has not been any residential use of the site for a significant length of time. The proposed office use is permissible under the land use zoning objective and in the general vicinity of the site there are a range of land uses such that I do not consider that the proposal would result in an over concentration of office development in this location. I am also conscious of the strategic location of the site for employment use given its very close proximity to Pearse Street station and the mainline and DART network as well as other public transportation modes.
- 7.2.4. The issue as to whether the proposed use would impact negatively on the architectural character and setting of the area will be considered in more detail in paragraph 7.3 below, however I note that the main basis for the inclusion of the site on the record of protected structures and the part of the site that contributes to the architectural and civic design character and the basis of the Z8 zoning objective is the development that fronts onto Westland Row. The proposed development provides for the comprehensive redevelopment of the existing buildings at Nos. 42 and 43 Westland Row. These buildings are currently in a very poor state of repair and their renovation and reuse would be beneficial to the overall architectural character of Westland Row. The proposed works to the rear and the potential

impact on the character of the protected structures at Nos. 42 and 43 will also be considered in more detail in section 7.3 below however it is noted that the existing layout is such that there is 100 percent site coverage and the rear elevation of the protected structures at Nos. 42 and 43 are not visible as the link to the existing garage structure directly adjoins the rear elevation of the protected structures at ground floor level.

- 7.2.5. The fact that the existing site layout has a 100 percent site coverage is cited by the first party as the basis for permitted the retention of the site coverage proposed. While significantly in excess of the 50 percent indicative site coverage for lands zoned Objective Z8, I consider that given the existing site coverage and the fact that the site is located in close proximity to a major public transportation hub that the proposed site coverage is acceptable in principle. The third party appellants contend that the proposed development would represent over development of the site on the basis of the proposed 100 percent site coverage and the fact that the plot ratio is proposed to increase from the current 2.4 to c. 2.85. The proposed scale of development and the implications for the amenity of adjacent properties will be considered in more detail in 7.4 below however paragraph 16.5 of the 2016-2022 development plan makes provision for the indicative plot ration for Objective Z8 lands (which is given as 1.5), to be exceeded in circumstances where, inter alia, it adjoins a public transport hub or the development site already has the benefit of a higher plot ration than the indicative figure. It is my opinion that both of these circumstances are met in this case and that subject to being acceptable in terms of the impact on amenity there is no reason in principle why the proposed development would not be acceptable.

7.3. Conservation Issues

- 7.3.1. The third party appellants have raised a number of issues relating to conservation. Firstly, it is contended by the third party appellants that there is not sufficient justification for the demolition of the existing shed / garage structure located at the rear of the site and that the existing structure has merit on the basis of original fabric and also as an example of early 20th Century industrial heritage.

- 7.3.2. From an inspection of the appeal site including the shed / garage structure and a review of the Conservation Reports submitted with the application and the report of the Conservation Officer of Dublin City Council it is my opinion that the extent of original building fabric contained in the garage structure is very limited. The existing east facing brick gable is an attractive feature in Westland Court however the metal roof frame and roof panels do not appear to me to be of any significant conservation merit. The third party appellants state that the structure was designed by a well recognised engineer, Frederick Higginbotham, who was also the designer of the Winding Stair building close to the Ha'penny Bridge and the former Astor cinema site at 7-8 Eden Quay. From the information presented it would appear that he was the designer of the garage structure on the appeal site, however I do not agree that the building is of such architectural or historic interest that it should be retained. In stating this, I am conscious of the limited amount of original fabric in the building and the poor condition of elements that remain including the timber floors to the first floor which are rotten in parts. It is recognised that the structure is located within the curtilage of protected structures at Nos. 42 and 43 Westland Row, however for the reasons set out above, that in itself is not in my opinion grounds such that its retention should be required.
- 7.3.3. The impact of the proposed construction of the three storey office building to the rear of the site on the setting of the protected structures facing Westland Row is also identified as an issue in the third party appeals submitted. It is contended that the proposed development by virtue of its scale would have a negative impact on the setting of the protected structure. In response, the first party has noted that the existing situation on the site is one of 100 percent site coverage and a design such that it is not possible to get a view of the rear elevation of the protected structures at Nos. 42 and 43 Westland Row from any location within the appeal site. I would also note that the development of the surrounding sites and the separation to Westland Court is such that at present there are no clear views of the rear of the protected structures from any surrounding public areas and limited locations within the adjoining sites.
- 7.3.4. The proposed development will result in the addition of a glazed atrium to the rear of the existing buildings and this atrium will provide a link between the protected structures and the proposed three storey new block to the rear. The layout of the

atrium is such that it would accommodate the circulation space, stairs and walkways connecting the two buildings and a lift. The depth of the atrium varies between 5.75 and 7.25 metres. While it is clearly significantly higher than the existing single storey link structure, the proposed atrium would open up clear views of the rear of the buildings Nos. 42 and 43 for occupants. The atrium is proposed to be a lightweight structure that would have minimal physical connection with the existing protected structures and would be reversible in its design. Given the existing context of the site with a 100 percent site coverage and the merits of the retention of a high site coverage as set out at 7.2.5 above, it is my opinion that the design approach proposed is acceptable and that it offers a solution that minimises the impact on the existing protected structures. It could be argued that a clear set back or break between the existing and proposed buildings should be required however the design solution proposed facilitates the more flexible use of the existing and proposed accommodation. In my opinion regard also has to be had to the existing very poor condition of the protected structures and the fact that the primary purpose of the zoning objective is to protect the architectural character and setting of the area. At the time of inspection, the upper levels beyond first floor were in such poor condition that it was not considered safe to access and there has been very significant structural damage to the buildings.

- 7.3.5. The works to the protected structures are detailed in the application documentation, notably the Conservation Planning Report that details the structural works required. Due to the condition of the building there are a number of areas where a comprehensive survey of the existing structure has not been possible and it is also stated that in a number of area it is not apparent whether some features, such as stair cases, would be feasible to repair and retain or whether replacement will be necessary. The reports of the City Conservation Officer expressed some concern with regard to a lack of certainty and detail regarding the methodology of demolitions and the extent of existing fabric to be retained, repaired and replaced. Some additional detail was provided by way of further information and a subsequent report of the conservation officer dated 26th July, 2016 recommends a grant of permission subject to conditions. I would share some of the concerns expressed by the conservation officer regarding the clarity provided in relation to the scope of the works to be undertaken to the protected structures. Given this, in the event that

permission is to be granted I would agree that a detailed condition regarding the submission of further information detailing the exact scope and methodology of works for the agreement of the conservation officer would be included.

7.4. Impact on Amenity

- 7.4.1. The main issue of concern raised by the third party appellants relates to the potential impact of the proposed development at the rear of the site on the amenity of the adjoining properties and particularly on No.44 which is located immediately to the north of the appeal site. The appellants contend that the proposed development would result in a loss of light and general amenity to the occupants of No.44 and that in addition to reducing the availability of light to the office accommodation located at ground and first floor level in the area close to the rear of the main building, that the development would have an adverse impact on the existing second floor level amenity space and would result in the overlooking of No.44. It is contended that the onus should be on the applicant to demonstrate that the proposed development would not have a significant adverse impact in terms of loss of daylight and sunlight and that this has not been done.
- 7.4.2. I note the revised proposals submitted with the appeal and the set back of the proposed atrium from the northern boundary of the site and from No.44. In my opinion this is a likely improvement in terms of the minimisation of potential impacts on the property at No.44 and it is proposed to proceed with the assessment on the basis that this revision to the design would be required. These revisions are indicated on drags P-110-C and P-311-B received by the Board on 1st November, 2016.
- 7.4.3. The first party has not undertaken an assessment of the likely impact of the proposed development on daylight and sunlight. On the daylight and sunlight issue, the first party notes that the layout of the development at No.44 is such that there is very limited residential accommodation and that the office accommodation which is served by the light well or courtyard already has a limited access to daylight such that artificial lighting is already necessary during daylight hours. Finally, it is stated by the first party that the second floor level terrace to the rear of No. 44 is already compromised in terms of amenity by the presence of air conditioning units and that

the proposed development would not significantly impact upon this space. The first party also notes that the existing layout of the development at No.44 is such that there are windows on the site boundary that directly face the appeal site and that the proposed design and specifically the setting back of the second floor from the boundary with No.44, would mitigate the potential impact on these windows.

7.4.4. Firstly, with regard to use, the extent of residential use at No.44 would appear from the information available to be limited to a duplex unit that is in the rear elevation of No.44 Westland Row. There is an access to this unit via an external metal staircase to second floor level from the courtyard to the immediate rear of the main building at No.44 Westland Row and there is a small balcony serving this unit at third floor level. The first party appeal response has demonstrated how the atrium to the proposed development would not extend any higher than second floor level and would slope down away from the rear elevation of the main buildings at Nos. 42 and 43. The proposed atrium would not therefore extend any higher than the entrance level to the apartment. As indicated in the first party appeal response, the set back of the rear of No.44 relative to No.43 is such that the second floor entrance to the residential unit is partially in shade. In view of the relative level of the apartment and the proposed atrium and the opaque design of the atrium structure I do not consider that the proposed development would have any significant adverse impact on the availability of light to this residential unit. The layout of the proposed office accommodation in the block to the rear would also be such that there would not be any significant overlooking issues arising.

7.4.5. The appeal submission on behalf of the owner of No.44 includes a preliminary daylight and sunlight assessment prepared by Chris Shackleton Consulting. This analysis is not a full assessment based on full survey data, however it gives some analysis of the potential impact of the proposed development on the existing second level terrace at No.44 and also windows at ground and first floor level in No.44 that serve office and retail / cafe floorspace. The analysis presented indicates that there would be a significant loss of light to both the terrace and the windows to the office and retail / café areas. The terrace area is stated to be changed such that the extent of the area that would receive a minimum of 2 hours' sunlight would be reduced from 100 percent to c. 28 percent. This is clearly a significant reduction, however I cannot be clear regarding its accuracy as noted in the Shackleton Report. I note for

example that the depth of the atrium relative to the depth of the proposed office accommodation shown on page 5 of the report appears to be lower than that presented in the drawings. This may be due to perspective of the image presented on page 5. I also note that the analysis does not account for the revisions proposed to the Board by the first party for the set back of the atrium from the boundary. It is also unclear from the information presented the degree to which the transparent nature of the atrium design is represented in the modelling undertaken. It is likely that the atrium would block sunlight, however there would be still light available. The proposed development would effectively result in one additional floor of office development above the level of the existing terrace at No.44. The terrace would adjoin the glazed atrium for most of its length and both the office accommodation at the third floor level and the atrium structure would be set back from the boundary by approximately 2 metres. Given these considerations, and the fact that the proposed development is due south of the terrace at No.44, I consider that there would likely be some loss of sunlight resulting. Overall however I consider that on the basis of the information available there would remain a reasonable level of amenity for users of this terrace and that there is insufficient basis to refuse permission on the grounds of loss of amenity to this area.

- 7.4.6. I note the fact that the bulk of the terrace would adjoin the set back atrium in this area. The circulation area and staircase is proposed for the southern side of the atrium so no significant overlooking issues are considered likely to arise. It is unclear from the submitted drawings the degree, if any, to which the terrace to No.44 would overlap the new third floor office accommodation proposed on the appeal site. Some screening to this area may therefore be required and, in the event of a grant of permission, should be required by way of condition.
- 7.4.7. Regarding the south facing windows at lower levels facing the internal courtyard at No.44 identified in the Shackleton Report, I note the predicted reduction in vertical sky component (VSC). I also note the fact that from my inspection of the site that the office and retail / café areas that had windows facing this courtyard already used artificial lighting. Window 2 shown in the analysis faces south from accommodation at the rear of the Centra retail unit at No.44. It is clear that this window would see a reduction in VSC in the event of a grant of permission. In the context of the overall development proposed, the existing light level and need for artificial lighting in this

area and the quantum of floorspace impacted relative to the significant extent of development at No.44 it is considered that a reduction in VSC is acceptable.

- 7.4.8. Window 3 indicated in the Shackleton Report relates to three south facing windows that are located immediately on the boundary with the appeal site. These windows serve office accommodation that is located to the east of the terrace and courtyard area and are at second floor level. It should also be noted that this office accommodation is also served by rooflights and other windows and these can be seen in the photographs in the Shackleton report and also in aerial photographs of the site. The Shackleton analysis predicts a very significant reduction in VSC to these windows however, in my opinion, regard has to be had to the urban context of the site and the position of these windows immediately on a third party boundary. The proposed development has incorporated a set back at second floor level so that the existing windows on the appellant's property (identified as Win 003 in the Shackleton report) are not directly blocked. In the circumstances it is my opinion that this is a reasonable design approach.
- 7.4.9. The appellants have raised concerns with regard to other potential impacts on amenity notably noise and overlooking from the proposed office accommodation. Given the separation between the proposed development and the site boundary at second floor level and the layout of development at No.44 I do not consider that any significant issues of overlooking are likely to arise. The use of the terrace in the set back area at second floor level may potential give rise to amenity issues in terms of overlooking and noise and I therefore consider it appropriate that in the event of a grant of permission a condition be attached restricting the general access to this north facing terrace other than for maintenance purposes.
- 7.4.10. To the south of the appeal site, the relationship between the appeal site and the existing development at Nos. 40 and 41 is such that there would not be any significant negative impact in terms of lighting or overshadowing. To the rear of No.41 there is a first floor extension immediately to the rear of the main building that has east facing windows and a large roof light. The development further to the east on the site of No.41 and development to the rear of No.40 also have rooflights. The layout and relationship to the proposed development is such that there would not in my opinion, be any significant adverse impacts arising in terms of aspect or visual obstruction.

7.5. Other Issues

- 7.5.1. A number of other issues have been raised by the third party appellant. It is contended that the application made in 2006 makes reference to change of use from residential and that the established or permitted use of the third floor of the building is as a residential unit. It is noted by the appellants that there is no reference to residential in the current application and the planners report does not justify the proposed mix. From the information available, it is not possible to verify what the most recent permitted use of the third floor on the appeal site was. The information submitted with the application indicates that it was office and this has been accepted by the Planning Authority who validated the application. Other than the description given in the 2006 application no clear information to contradict the office use at third floor level has been put forward by the third parties.
- 7.5.2. The site is located within a zone of archaeological potential. The recommendations of the city archaeologist are noted as is the fact that the proposed development does not involve any development at basement level. In the event of a grant of permission it is recommended that a condition requiring that works be overseen by an archaeologist would be attached.
- 7.5.3. It is noted that the proposed development does not propose to provide any off street parking. Given the central location of the site in close proximity to public transport routes and termini it is not considered necessary that off street parking would be required.
- 7.5.4. It is noted that the Conservation Officer raised issues with regard to the lack of detail regarding the proposed new shopfront to be added. I would agree that there is limited detail provided in the application with regard to the design and materials of the proposed shopfront including signage. The drawings do indicate that the existing non original shopfront is to be removed and it is indicated on the drawings that a proposed stone shopfront is to replace the existing. In the event of a grant of permission it is recommended that conditions be attached that would require the submission of details of the proposed shopfront including signage for agreement.

- 7.5.5. The application is not accompanied by a screening for appropriate assessment. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the Objective Z8 zoning objective for the area, to the existing developed nature of the site and extent of site coverage, to the nature and design of the proposed works including the fact that the development would result in protected structures being brought back into beneficial use and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would be consistent with the location within a conservation area, would not have a significant adverse impact on the character or setting of any protected structure and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance 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 7th day of July 2016 and 18th day of August, 2016, and by the further plans and particulars received by An Bord Pleanála on the 1st day of November, 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 proposed atrium shall be set back from the northern site boundary as indicated on drawing No. P-110-C submitted to An Bord Pleanála on 1st day of November, 2016.

(b) The western end of the north facing terrace at second floor level of the new office building shall be screened to ensure that no overlooking of the second floor terrace to the rear of No.44 Westland Row arise. Details of this screening shall be submitted for the written agreement of the planning authority prior to the commencement of development.

(c) The second floor terrace on the northern side of the permitted new office building shall not be accessed by staff or other occupants of the building other than for maintenance purposes.

Revised drawings and / or details 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 amenity.

3. 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.

4. Prior to commencement of development, the developer shall comply with the following conservation requirements:
- (a) The appointment of a conservation architect, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.
 - (b) All repair/restoration works shall be carried out in accordance with best conservation practice as detailed in the application and the “Architectural Heritage Protection Guidelines for Planning Authorities” (Department of the Environment, Heritage and Local Government, 2004). The repair/restoration works shall retain the maximum amount possible of surviving historic fabric in-situ including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and/or fabric.
 - (c) Prior to the commencement of development, the applicant shall submit a comprehensive Conservation methodology and specification for the proposed works detailing the retention and repair of existing fabric. This methodology should include, inter alia, the following:
 - Drawings of stripping out work and the protection of primary built fabric,
 - Schedule of demolitions and materials to be salvaged,
 - Structural interventions to have regard to remaining historic fabric in situ and be agreed in writing with the planning authority on foot of opening up works,
 - Chimney, roof and rainwater good,
 - Brickworks, stone repair and repointing,
 - Windows to include details of proposed conservation repairs and fire upgrading strategy,
 - Internal joinery including staircases,
 - Internal plasterwork,

- Repairs to boundary walls and details of junctions between old and new structures,
- Damp proofing and thermal upgrading works proposed, the removal of redundant mechanical and electrical elements, wiring and conduits,
- Proposals for new mechanical and electrical elements and services which will reuse existing service runs where possible and omit new service runs within the protected structure.

(d) Works shall be carried out in accordance with the submitted report on structural issues (Conservation Planning Report prepared by Garland, dated December, 2015).

Reason: To ensure that the integrity of the historic structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

5. Prior to the commencement of development the developer shall submit details, including design, signage, materials and glazing, of the proposed shopfront for the written agreement of the planning authority.

Reason: In the interests of visual amenity and to ensure that the character of the historic structures is maintained.

6. Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs including any signs installed to be visible through the windows, advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

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. 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

9. Site development and building works shall be carried only out between the hours of 07.00 to 18.00 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.

10. The developer shall pay to the planning authority a financial contribution of €7,076.06 (seven thousand and seventy-six euro and six cent) 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. 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 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.

. Stephen Kay
Planning Inspector

23rd January, 2017

