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Bord  
Pleanála

## Inspector's Report 29N.247761

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### Development

Amendment to previously permitted student accommodation and café scheme, reg. ref. 2990/14, to provide an additional storey, and extension, new signage and associated works.

### Location

27-31 Church Street, Dublin 7

### Planning Authority

Dublin City Council

### Planning Authority Reg. Ref.

3821/16

### Applicant

Mortar Developments Properties Ltd

### Type of Application

Permission

### Planning Authority Decision

Refuse Permission

### Type of Appeal

First Party

### Appellant

Mortar Developments Properties Ltd

### Observer

Residents of St Michan's House

### Date of Site Inspection

21<sup>st</sup> March 2017

### Inspector

Dolores McCague

## 1.0 Site Location and Description

- 1.1. The site is located along the east of Church St to the north of the Four Courts and to the west of the fruit and vegetable market. This site lies within the city block bounded by Mary's Lane to the north, Greek Street to the east, Chancery Street to the south, and Church Street to the west. This is an inner city area, on one of the oldest routes (and river crossings) in the city, close to the Four Courts, St Michan's Church and other protected structures. The frontage to Church Street is 32.9m wide. Bounding the site to the north and east is St. Michan's House: two blocks of four storey, deck accessed flats and their grounds, within which there is an enclosed area occupied by a single storey crèche. The flats comprise two narrow, dual aspect blocks, at right angles to each other, set back behind shallow fenced in gardens and forming the street edge to the north and east of the subject site. Each unit is accessed from the side of the block facing the subject site. Their grounds includes outdoor space comprising a children's playground, a basketball court, a parking area and an area used for clothes drying, to the rear of the blocks and therefore immediately adjoining the subject site.
- 1.2. To the south of the site a masonry wall to the rear yard of the Bridewell Garda Station (3 storeys) forms the site boundary.
- 1.3. The site is of regular shape and extends over an area of 0.19 hectares. The site is currently under development with deep excavation and steel piling in evidence. The development underway, permitted by the Board under ref 244466, is for a multi-storey student accommodation building, ancillary facilities, a café, an electrical sub-station, signage, lighting, access and parking, boundary treatments, courtyards, and site services. That proposed development was revised at planning authority stage, arising from a request for further information; by: omitting the top storey, reducing the number of storeys to six and the number of house units to 32 with 217 bedspaces (from the original 232 bedspaces) (212 single, including 5 disabled, and 6 twin). The revised total floor area was 6,616 sqm and permission was granted by the Board, on foot of a third party appeal, on the 9<sup>th</sup> July 2015.

## 2.0 Proposed Development

- 2.1. The proposed development comprises amendments to the previously permitted student accommodation and café scheme, reg. ref. 2990/14, (Board Ref 244466) to provide an additional storey, an extension, new signage and associated works. An additional storey is proposed at sixth floor. The fifth floor is to be extended at the southern end where, as permitted, it was set back to reduce the scale. The proposed revisions to the signage (pin mounted, rear illuminated) arise from the need to match the two proposed areas of signage to the areas on the elevations on where they are to be located, which would increase with the increase in scale proposed.
- 2.2. The proposed development would result in a part seven storey building maximum height of c22.425 m rather than the 19.525m height permitted, with a total of 237 bedrooms, 243 bedspaces; as compared with the permitted 212 bedrooms, with 217 bedspaces; floor area 7,310.8m<sup>2</sup> proposed, 6,616.3 m<sup>2</sup> permitted.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for the reason that the proposed additional storey would result in the development being out of keeping with the streetscape and with the scale and character of the immediate area, thus being seriously injurious to the visual amenities of the area and to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

14.8.5 Zone 5 the primary purpose of this zone is to sustain life within the centre of the city through intensive mixed-use development and to provide a dynamic mix of uses which interact with each other, help create a sense of community and which sustain the vitality of the inner city both by day and night. Ideally, this mix of uses should occur both vertically through the floors of the building as well as horizontally along the street frontage. A general mix of uses e.g. retail, commercial, residential is

desirable, however retail should be the predominant use at ground floor level on principal shopping streets.

The proposed café and managed student accommodation and associated facilities is considered to be in keeping with the zoning. Section 16.10.7 of the plan sets out the planning authority's policy in relation to student accommodation. Student accommodation should make a positive contribution to the built environment in terms of design quality, scale, height and relationship to adjacent buildings. The external layout, including any necessary security arrangements, should avoid isolating the development from the surrounding community. While standards in relation to dual aspect are not applied, developments should be designed to ensure optimum orientation to provide daylight to habitable rooms.

The planning authority should also have regard to the pattern and distribution of student accommodation in the vicinity. Overconcentration of such schemes should be resisted.

In areas of the inner city which are not designated for medium or high rise development, the development plan allows for a height of up to 28m in the case of commercial developments and 24m in the case of residential development. Student accommodation is considered to be commercial in nature.

Policy SC17 is to protect and enhance the skyline of the inner city, and to ensure that all proposals for mid-rise and taller buildings make a positive contribution to the urban character of the city, having regard to the guiding principles of the plan (chapter 15) and development standards (chapter 16).

A visual impact assessment has been submitted. This includes computer generated images showing the proposed development from a number of viewpoints, including the Civic Offices / Christchurch area, Bridge Street, Wood Quay (facing the Four Courts diagonally across the river), Merchant's Quay, from various points along the quays and from the Church at the junction of Hammond Lane, directly facing the site and at the junction with Mary's Lane / May Lane. Other than when viewed along Church St, the proposed development does not appear to be particularly visible. The main impact is from the May Lane junction with Church Street to the northwest of the site, where the view of the Four Courts is obscured. In this regard there is already a

proposal for a six-storey building on the site, so it is likely that the view of the Four Courts from this area would already be obscured.

Concern was expressed in the planner's report on the previous application regarding the impact of the proposal on the important group of buildings in the adjacent Z8 area which includes the Four Courts, in addition to the possible impact on the residential amenities of the adjoining St Michan's development. The report refers to the abrupt change in scale in the frontage of the building onto Church St where the originally proposed seven storey building would be located between the four-storey St Michan's House and the tree-storey Brideswell Garda Station. The applicant was requested to submit amended contextual elevations and visual impact assessment views. This resulted in the height of the building being reduced to a maximum of six storeys, on which the decision to grant permission was based.

A conservation assessment has been submitted. It includes: that the proposal is for a new building at the side of a city street which would address the street in a traditional way. The façade in predominantly brick would reflect the traditional building type on Church St. The separation distance of 35m from the front of St Michan's Church is noted; at that distance the proposed development would not dominate the church. The distance from the Public Records Office is such that it would have no appreciable impact on the character of the protected structure. Heritage buildings along Church St are too far distant to be affected in terms of character. The main focus of the Bridewell building is on Chancery Street. The proposal would not detract from Chancery Street Courthouse. It is not considered that the view of the dome of the Four Courts is a necessary element of the character of the Four Courts or of this part of the city. The building as permitted would already obscure the view of the Four Courts from Church St and the proposals would have no additional impact on this. The assessment concludes that the proposal would have no impact on the built heritage of the area.

A shadow analysis has been submitted.

Shadow diagrams have also been submitted. The proposed additional storey would create some additional overshadowing but this would be confined to areas close to the site boundary. The permitted development would result in some overshadowing near blocks E and F to the north, while areas near to blocks C and D to the east are

less affected. The proposed additional storey would result in some additional overshadowing of blocks E and F, while blocks C and D would be unaffected.

The site is on a prominent route into the city centre leading from Phibsborough to the quays and the Christchurch area, which contains a number of historic buildings, in addition to the protected structures in the vicinity, including the dome of the Four Courts. John's Lane church is also visible from this area of Church St. The permitted building would be visible along this route and would already exceed the height of both adjoining buildings to the north and south and the proposal would increase this further. Having regard to the inner city location and changing context, some additional height relative to the immediately surrounding buildings would be considered acceptable. In the previous application it was considered that due to the visual impact of the seven storey building, the need for consistent street frontages and the likely encroachment of the building on views, a five-storey building fronting Church St would be more appropriate. This issue was addressed following a request for additional information and permission granted for a six storey building.

The site is not on a corner and would sit between a three storey building and a four storey building, neither of which is expected to be redeveloped in the near future. Having regard to this and to the importance of Church St as a prominent route into the site it is considered that the proposed additional storey would result in the development being out of keeping with the streetscape and with the scale and character of the immediate area and seriously injurious to the visual amenities of the area.

### 3.2.2. Other Technical Reports

Roads Streets and Traffic Department Road Planning Division – conditions.

Engineering Department Drainage Division – conditions.

Waste Regulation Section Waste Management Division Committee – conditions.

### 3.3. Prescribed Bodies

An Taisce – requesting refusal.

TII – no observations to make.

### 3.4. Third Party Observations

Observations were received by the planning authority from the following individuals, all, with the exception of the City Councillor, residents of St Michan's House:

Rose Savage, Ryan Savage, Sandra Bates, Garry Mooney, Lorraine Byrne, Joan Dalton, Dolores Farrell, Betty Walsh, Sandra Walsh, Cllr Janice Boylan, Lisa O'Connor, Darren Kenny, Vivianne Tracey, Joanna Boylan, Carmel McCormack, Joan Bates, Audrey Toale, Gillian Mooney, Annemarie Flood, Ingrid Duggan, Phyllis Cully, Catherine Peers, Anna Boylan, Gemma Watson, Marie Judge, Kirsty Watson, Marisa O'Reilly, Karen McKenna, Sasha Staunton, Geraldine Rooney, Eileen Cahill, Fiona Weil, Bernie McKeivitt, Lillian Fitzgerald, Jade Kearns, Andrea Levesen, Eve Keogh, Mrs Ann Taffe, Margaret Fitzgerald Michael Tracey, Collette Grouse, Carol Mooney, Frances Poland, Sandra Flynn, Debi Kenny, Shirley Kenny, Jaqueline Pender, Una O'Reilly, Maureen McKenna, Tracy Devereux, Marion Dayman and Margaret Hayes. The letter of observation, the same in each case, states support for the proposed development and refers to commitments made by the developer to carry out development on behalf of the St Michan's House residents or to financially support relevant projects.

### 4.0 Planning History

- 244466, PA reg ref 2990/14: permission granted (9<sup>th</sup> July 2015), for a multi-storey student accommodation building, ancillary facilities, a café, an electrical sub-station, signage, lighting, access and parking, boundary treatments, courtyards, and site services. This is currently under construction.
- 3717/08: Eight storey office block to Church Street, including 2 retail units and four storey block to the rear linked by a central glazed atrium, all over basement car park. The former block would have 3 balconies to the south and latter block would have set back terrace areas to the north and east at third floor level. Total gross floor area 6,839 sqm. Permitted on 22<sup>nd</sup> October 2008.
- 2656/06: Six storey office block to front and rear of the site linked by a central glazed atrium, all over a basement car park. (Front block would include retail

floorspace). Total gross floor area 7,520 sqm. Refused at appeal (PL29N.219484) on 21<sup>st</sup> March 2007 for the following reason:

Notwithstanding the fact that a high density development is considered acceptable in principle on this location, it is considered that, by reason of design, scale, height and proximity of the proposed buildings to the site boundaries, the proposed development would seriously injure the residential and visual amenities of adjoining properties. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 3122/97: Part four/part five storey block for use by legal profession including retail floorspace on the ground floor and penthouse on top floor, all over two stories of basement car park. Total gross floorspace 4,500 sqm. Permitted on 19<sup>th</sup> January 2001.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Dublin City Development Plan 2016-2022 is the operative plan. The site is zoned Z5: to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity,

### **5.2. Natural Heritage Designations**

None relevant.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

The appeal by Tom Phillips Associates on behalf of the first party includes:

- They refute the reason for refusal, support the scheme as proposed and present an alternative scheme for the Board's consideration, which they say could have been presented to the planning authority as further information.



- An increased quantum of student accommodation on the site complies with the objective of maintaining a dynamic mix of uses, strengthening the area's vitality and vibrancy and delivering much-needed high quality professionally managed student accommodation, promoting Dublin as a student city. Policy CEE19. They refer to support for the scheme as evidenced by the observations.
- The scheme complies with the Development Plan policy on height.
- There is a precedent for an eight storey office block on the site.
- Church Street's historic yet architecturally varied character can accommodate the proposed development.
- The horizontal emphasis of the scheme, along with the materials used results in a scheme that is in keeping with its surroundings.
- The separation distances and street widths results in a proposal that can be comfortably accommodated.
- The provision of additional student bedspaces aligns with government policy on housing.
- Alternative proposals are presented for the Board's consideration to address the issues arising from the refusal. The alternative proposal uses the form of the permitted 6 storey block to Church Street as the main frame of the building. The additional top floor of accommodation is set back away from the street, with glazed curtain walling proposed resulting in the top storey becoming lighter in appearance and blending into the sky, thus lessening further any perceived impact the scheme has on the streetscape. The fifth floor levels reverts to as permitted, incorporating changes to Unit 29. This results in a total of 230 no. bedrooms (237 bedspaces); compared to 237 bedrooms (243 bedspaces) originally proposed. The alternative design reduces the perceived scale and massing of the building on the street.
- Accompanying the grounds are five drawings showing the revised proposals and a schedule of accommodation.

## 6.2. **Planning Authority Response**

The planning authority has not responded to the grounds of appeal.

## 6.3. **Observations**

An observation has been received from St Michan's House Residents Association supporting the appeal.

## 6.4. **Correspondence**

The Board referred the appeal to The Heritage Council; The Development Applications Unit, Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs; and the Department of Justice, Equality and Law Reform. No response has been received.

## 7.0 **Assessment**

7.1. The issues which arise in relation to this appeal are: appropriate assessment, visual amenity and overshadowing and the following assessment is dealt with under those headings.

### 7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

### 7.3. **Visual Amenity**

7.3.1. Photomontages of the proposed development from representative viewing points are provided in a booklet titled Architectural Visual Impact Assessment, as part of the application documents.

7.3.2. This application follows on from a previous application / appeal, wherein the impact on the visual amenities of the area were considered at some length. In the previous

application this issue (in part) led to the amendment of the proposed development at further information stage, by the omission of the sixth floor. In the current proposal the sixth floor has been reinstated. As stated in the planner's report on the current file the six storey building previously permitted was a balanced decision. A five storey building was the planning authority's preference having regard to the visual impact, the need for consistent street frontages and the likely encroachment of the building on views, six storeys was a compromise having regard to the inner city location and changing context, such that some additional height relative to the immediately surrounding buildings was considered acceptable. This decision was upheld by the Board as recently as the 9<sup>th</sup> July 2015.

7.3.3. The Board should note that revised plans were submitted with the grounds of appeal for their consideration. The revised proposal includes a setback of the fifth floor, along the southern elevation and a setback of the proposed sixth floor along the southern, western and northern elevations. The permitted signage would not be altered in the revised proposal. The effect of the proposed revisions would be to reduce the visual impact of the additional floor.

7.3.4. Notwithstanding the proposed revisions, I agree with the planning authority's assessment that as that the proposed additional storey to the proposed building, siting between a three storey building and a four storey building, neither of which is expected to be redeveloped in the near future, along Church St ,which is an important and prominent route in the city, would result in the development being out of keeping with the streetscape and with the scale and character of the immediate area, seriously injuring the visual amenities of the area; and should be refused for this reason.

#### 7.4. **Overshadowing**

7.4.1. The proposed development includes the addition of a sixth floor. It should be noted that the sixth floor in this proposal is not similar to the original 2014 proposal, which was subsequently omitted. The proposed sixth floor extends further eastwards, towards St Michans House Block C-D and this eastward extension is to the south of

St Michans House Block E-F, than the development originally proposed under ref. 2990/14 in 2014. Drawing No. PL-004 on the Board's file 244466 refers.

- 7.4.2. The BRE report submitted with that application (dated 10 June 2014) showed that for Block C-D (table 1) (to the east) 22 of 32 windows analysed would meet the guidelines in the BRE Guidance: Site Layout Planning for Daylight and Sunlight: a guide to good practice, October 2011, by having a vertical sky component, with the proposed development in place, of greater than 27% or more than 0.8 times the value before. All of the 10 windows which did not meet the guidelines are positioned under overhanging access walkways. For Block E-F (table 3), 15 of the 24 windows analysed would meet the guidelines. All of the 9 windows which did not meet the guidelines are positioned under overhanging access walkways. The report analyses the impact in a situation where no overhanging walkways exist, to demonstrate the extent to which the overhanging walkways cause overshadowing. Without the overhanging walkways there is a significant reduction in the number of windows failing to meet the guidelines, with the proposed development in place. Loss of sunlight to open spaces is also analysed and diagrams showing sunlight hours for the 21<sup>st</sup> March, prior to and post development identify the areas which will be impacted on that date. The area with two or more hours of sunlight post development represent 0.83 of the area currently receiving two or more hours of sunlight.
- 7.4.3. A revised BRE report accompanied the revisions to that application, with the sixth floor omitted, per drawing FI – 002 submitted on the 15<sup>th</sup> December 2016. The report dated 11 Dec 2014 is more detailed than the earlier report and includes shadow diagrams, which allow comparison between the existing and proposed situation. On each floor of the residential flats 16 windows are analysed rather than the 6 on each floor in the earlier report. For Block E-F (table 3) 30 of the 64 windows analysed would meet the guidelines. For Block C-D (table 1) 36 of 64 windows analysed would meet the guidelines. Without the overhanging walkways there is a significant reduction in the number of windows failing to meet the guidelines. Outdoor area with two or more hours of sunlight hours for the 21<sup>st</sup> March are calculated separately for the play area to the north of the proposed development, the basketball court (to the east) and total area, as shown in Figure 5 and Table 5. Relative to the existing situation, the areas receiving two hours sunlight will reduce to 0.61, 1, and 0.83 of existing proportions, in each of these respective areas.

- 7.4.4. A BRE report accompanied the current application. The proposed sixth storey is shown on drawing PL 110. The report dated 23<sup>rd</sup> September 2016 includes shadow diagrams which would allow comparison between the permitted and proposed situations, except that only 'permitted' shadow diagrams are shown, with duplicates presented in lieu of 'proposed'. On each floor of the residential flats 16 windows are analysed. For Block E-F (table 3) 27 of the 64 windows analysed would meet the guidelines in the BRE guidance. In the permitted development 30 of the 64 windows analysed would meet the guidelines. For Block C-D (table 1) 31 of 64 windows analysed would meet the guidelines. In the permitted development 36 of the 64 windows analysed would meet the guidelines. The impact of the overhanging walkways is again referred to.
- 7.4.5. Outdoor area with two or more hours of sunlight hours for the 21<sup>st</sup> March are calculated separately for the play area (to north), the basketball court (to east) and the total area, as shown in Figure 5 and Table 5. The impact shown is identical to that found in the previous permitted scheme. Some additional impact arising from the addition of the sixth floor would be expected.
- 7.4.6. There is no doubt that the additional storey will impact on the daylight and sunlight received by the windows, walkways and outdoor areas of the residential development at St Michans House. The permitted development already impacts on the daylight and sunlight received, and in permitting that development it is implicit in the decision that protection of existing residential amenities was balanced against the increased density and height required to make the best use of scarce inner city land. In my opinion the further impact on the daylight and sunlight received by the St Michans House residential development has not been justified in this application, and the proposed development is excessive in scale, whereas the existing permitted scheme achieves the proper balance between impact and benefit. The proposed development should be refused for this reason.
- 7.5. Should the Board be minded to grant permission, as previously noted in this report, the revised proposals which accompanied the grounds of appeal, would be preferable, in terms of visual impact, to those submitted with the application.

## 8.0 Recommendation

- 8.1. In accordance with the foregoing assessment I recommend that planning permission be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

It is considered that the increase in scale by the addition of a sixth floor would be excessive having regard to the location between a three storey building and a four storey building, neither of which is expected to be redeveloped in the near future, the need for consistent street frontages, and the impact on views from Church St, an important route within the city, where it would be seriously injurious to the visual amenities of the area; and having regard to proximity to residential development where the excessive overshadowing which it would cause would seriously impact on the residential amenities of the area; and the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

24<sup>th</sup> March 2017

Appendices

- 1 Photographs
- 2 Extracts from Dublin City Development Plan 2016-2022