



An
Bord
Pleanála

Inspector's Report PL 29S.248166

Development	Demolition of five-storey commercial development and construction of 1 no. commercial building 5-7 storeys over basement.
Location	IPC House, 35-39 Shelbourne Road and Shelbourne Lane. Ballsbridge Dublin 4.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4336/16.
Applicant(s)	October Management Ltd.
Type of Application	Permission.
Planning Authority Decision	To Refuse Permission.
Type of Appeal	First Party
Appellant(s)	October Management Ltd.
Observer(s)	None.
Date of Site Inspection	June 12 th , 2017.
Inspector	Breda Gannon

1.0 Site Location and Description

- 1.1. The site is located at IPC House, Shelbourne Road Dublin 4. It consists of a triangular area of ground, with a stated area of 0.26 ha, that is bounded to the east by Shelbourne Road and by Shelbourne Lane to the north and west. It accommodates a five-storey flat roofed office building (built c 1970) with ground floor surface car parking. The building is set back from the adjoining roadway with a hedgerow forming the front boundary.
- 1.2. The area is one which is undergoing significant redevelopment, with higher buildings infiltrating the area. To the north 'One Ballsbridge', comprising residential, office and retail accommodation is under construction. Further north at the corner of Shelbourne Road/Lansdowne Road, the Ballsbridge hotel site is being developed with a mix of uses. To the west, the former Franklin House has been demolished and is being developed for office use.
- 1.3. Moving south, the higher buildings give way to 2-3 storey buildings with residential retail uses towards the junction with Pembroke Road. To the west of the site on Shelbourne Lane, apartment blocks (Shelbourne Hall & Shelbourne Court) extend up to 6 storeys. On the east side Shelbourne Road opposite the site, there is the Oval and IBM building which give way to lower buildings to the north and south.
- 1.4. The area is one of mixed uses, comprising office residential, commercial and retail establishments. It lies proximate to public transport services including the Dart at Lansdowne Road and the Quality Bus Corridor (QBC) operating on the Merrion Road.

2.0 Proposed Development

- 2.1. Permission is being sought for modifications to the development previously permitted under Reg Ref 2868/16 at 35-39 Shelbourne Road and Shelbourne Lane Ballsbridge Dublin 4. The proposed development will consist of;
 - (a) the demolition of the existing 5 storey commercial building (c. 3290m²),
 - (b) the addition of one storey to the permitted development resulting in the construction of a commercial building 5-7 storeys over basement level with

pedestrian access from Shelbourne Road consisting of office space (c. 10,987m²) at ground to sixth floor and 1 no. unit to be either retail or café(c.230m²) at ground floor level. There are terraces at fifth floor (c.159.3m²) and sixth floor (c.353.9m²) and screened external plant is located at 6th floor level.

Permission is also sought for all associated site development and landscaping works including improvements to adjacent public realm at Shelbourne Lane and Shelbourne Road; the provision at basement level of 26 no. car parking spaces, 96 no bicycle spaces, bin store and plant, with vehicular ramp access from Shelbourne Lane.

2.2. The application is supported by the following reports;

- Planning Application Report
- Visual Appraisal
- Public Realm Plans and Visualisations.
- Drainage Report
- Flood Risk Assessment
- Waste Management Strategy
- Mobility Impact Assessment.
- Road Safety Audit
- Sustainability/Energy Report

The proposed development would result in an overall increase in the height of the building and the quantum of office space provided, over that of the permitted development (2868/16). The floor area of the basement, ground, first, second and third floors remain unchanged. The floor area of the fourth floor would be marginally increased (44 m²) and the terrace omitted. The floor area of the fifth floor would be increased by 578m² and the size of the terrace would be reduced. A new sixth floor would be provided (652m²) with a terrace (353m²).

The basement would incorporate lift lobby, lockers, shower facilities, car and bicycle parking, access ramp, waste management and plant. The ground floor would incorporate the main entrance with four storey glazed atrium space and reception

area, office space and café/retail space. Floors 1-6 would incorporate office space with a terrace on the fifth floor. The sixth floor would have reduced office space, a set back terrace to the Shelbourne Road elevation and an open plant area to the Shelbourne Lane elevation. A green roof (Sedum) would be provided with a set back terrace to Shelbourne Road and open plant area to Shelbourne Lane.

The building would be set back at the upper two levels and would be curved at each end to address Shelbourne Lane. The building would be finished in a combination of curtain wall facades with window units and spandrel panels, aluminium glazing to the rear and with stone cladding to the main front entrance façade and the stair core to the rear. Significant improvements would be carried out to the public realm.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority decided to refuse permission for the development on the grounds that it would result in a development with a building height of 28m, which would exceed the maximum height standards specified in the Dublin City Development Plan 2016-2022 for a site located in the Outer City within 500m of public transport, which is 24m. It was concluded that the development would, therefore, contravene the height policy of the Plan and be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The **Planning Officer's** report of 16/2/17 notes that the main element of the proposal is the introduction of an additional floor to the permitted development with amendments to the proposed top floor.

The proposed insertion of an additional middle floor would increase the gross floor area from 8072 m² permitted to 9346m² and would have the effect of raising the height of the building by 4m to an overall height of 28m. In support of the proposal, a justification on economic grounds has been presented, a detailed rationale has been outlined and a visual impact assessment has been carried out.

The development plan height policy is set out in section 16.7.2. The relevant category for this site is Outer City Rail Hub (Within 500m of Public Transport) where the maximum height that can be considered is 24m for either a commercial or a residential scheme. It is further clarified in the plan that the heights stated in the low-rise and mid-rise categories are maximum heights and that notwithstanding the maximum permissible heights specified, proposals will be subject to assessment against standards set out elsewhere in the development plan. The development plan does not allow any qualitative or quantitative analysis or design rationale to surmount the height limits established in the Plan. The development contravenes the height policy of the plan and refusal is therefore recommended.

3.2.2. Other Technical Reports

The **Roads & Traffic Planning Division** report of 7/2/17 notes that the principal of the redevelopment of this site has previously been accepted by the Roads & Traffic Planning Division. The maximum car parking standards in this area for office developments are 1 no. space per 200 sq.m. This equates to a maximum car parking provision of 47 no. spaces. It is proposed to provide 26 no. spaces at basement level, which comprises a reduction of 1 no. space from the development permitted under Ref No 2868/16. The proposed parking provision is considered acceptable. It is proposed to provide 96 no. bicycle spaces at basement level which exceeds the development plan requirements of 93 spaces.

Vehicular and cycle access to the basement car park will be from Shelbourne Lane close to the location of the existing vehicular access. The access reflects that permitted under 2868/16. The existing office development has 61 no. car parking spaces which will be reduced to 26 no. spaces. The traffic generated by the proposed development will be less than that generated by the existing development.

The decision to upgrade the public realm in the vicinity of the site is welcome. Whilst the proposed works are acceptable in principle it is noted that there are no details of the radii at junctions, which will be required. Evidence that all proposals comply with DMURS is required.

No objection is raised to the development, subject to compliance with conditions.

The **Drainage Division** in their report of 20/1/17 raised no objection to the development.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

None.

4.0 Planning History

Subject site

2868/16 – Permission granted for the demolition of the existing five- storey commercial building and the construction of a new building 4-6 storeys over basement level with pedestrian access from Shelbourne Road. The development would consist of office space at ground to fifth floor and 1 no unit to be either retail or café at ground floor level, as well as terraces at 4th floor and 5th floor with screened external plant at 5th floor level. The basement would include 27 no. car parking spaces, 80 no. bicycle spaces refuse storage and plant with vehicular ramp access to Shelbourne Lane.

Neighbouring Sites

PL 29S.228224 – An Bord Pleanála granted permission on the former veterinary college site to the north for the demolition of existing buildings on the site and the construction of a mixed use scheme. The scheme was modified reducing the overall height to 9 storeys northwest of the site. The proposed office block would have a Y shaped configuration with blocks ranging in height from 23m, 30.5m and 34.5m. The height of the building would be 5-9m higher than the existing and would be stepped down from the permitted 9 storeys to the north to 6 storeys to the southwest, with a similar design and external appearance as the adjoining 4 storey Franklin House. The plot ratio of the development would be 3.88. The permission has been extended to 11th September, 2020.

PL29S.245342 – Permission granted for alterations to the permission granted under PL29S.236211 relating to Hume House including the omission of -2 and -3 basement levels and modifications to -1 level. The proposal did not involve alterations to the permitted height.

PL29S.242088 – Permission granted for the demolition and redevelopment of Franklin House to the west and its replacement with a 3-5 no storey over lower ground floor office building. The permission limited the height of the building to 24m (Condition No 1(2)).

5.0 Policy Context

5.1. Development Plan

The operative development plan is the **Dublin City Council Development Plan 2016-2022**. The site is located in an area zoned Z6 – Employment/Enterprise with the following objective;

‘To provide for the creation and protection of enterprise and facilitate opportunities for employment creation’.

The Plan states that Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the city region.

The permissible uses will be accommodated in primarily office based industry and business technology parks developed to a high environmental standard and incorporating a range of amenities.

The incorporation of other uses, such as residential, recreation and retail uses, will be at an appropriate ratio where they are subsidiary to the main employment generating uses and shall not conflict with the primary land-use zoning objective, nor with the vitality and viability of nearby district centres.

Section 16.7 of the Plan details the policy on building height within the city.

Relevant extracts from the Plan are appended to the back of the report for the information of the Board.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are summarised as follows:

- The assertion by the planning authority that the proposed development represents an inappropriate building height is unfounded and without substance. The planning authority has not taken a balanced view on the matter of height and has been too stringent in the application of the provisions of Section 16.7.2 of the Development Plan.
- The Development Plan explicitly provides for the provision of 28m. The Board is referred to Section 16.7.2-Point 3 in considering this issue. There is scope within these sections for the Board to grant permission for the additional height. The Board is requested to take a considered view on the matter given the unique context associated with the site. It is evident that there is provision for additional height at certain locations where a proposal is compliant with various qualitative and quantitative development plan standards and that additional height exists in the immediate locale.
- Should the Board share the view that the proposed development is a material contravention of the development plan, it has the ability under section 37(2)(a) to grant permission that materially contravenes a development plan where the development accords with the surrounding development context. The subject site is located within a unique regeneration and urban consolidation setting, where parapet heights of up to 41m have already been approved.
- The proposal at 28m is appropriate to the local character and streetscape. Based on the existing site context and the gradual increase in the height of the proposal, there is adequate justification for the proposed height at this location. The proposal is not overbearing or oppressive in terms of height and will not injure the visual amenity or local character of the area.
- Every effort has been made to ensure that a quality commercial scheme is delivered at the site and that there is no direct impact from the proposed height on the established levels of commercial amenity afforded to the area.
- Revisions to the permitted development have been shaped by analysis of surrounding heights and plot depths to arrive at a building which is not overbearing in relation to adjoining properties and softens the transition between the established commercial core and emerging area of Ballsbridge One. The heights of existing and permitted schemes immediately adjacent to

the site have been considered in developing the massing of each element of the proposal. The aim of the proposal is to form an appropriate infill structure that will provide state of the art flexible commercial space and promote and sustain the objectives of the Dublin City Development Plan.

- The visual impact assessment concludes that the magnitude of change that would arise from the modifications to the permitted development, is similar to the rapidly changing urban environment within the immediate surrounding area and as such the impact is low to neutral.
- The proposal offers increased and appropriate density and enhanced public realm at the front of the development through upgrade works to the existing footpath and interface between the public road and the development.
- The documented planning history in the vicinity of the site demonstrates the trend for increased density and height of development in the Ballsbridge area that occurred in recent times. Permission exists for development of significant scale and in excess of 28m on lands in close proximity to the subject site.
- The permitted context is relevant precedent which should be acknowledged and referenced accordingly and gives the Board grounds to contravene the development plan in relation to building heights. It provides an appropriate benchmark for the subject development.
- The built form modifications proposed will assimilate into the evolving context of large scale development in the immediate area, namely One Ballsbridge, Franklin House, Hume House re-development and the former Berkley Court site.
- The proposal is the most appropriate form of development for this site in that the subject proposal is in full accordance with the proper planning and sustainable development of the area and also with the Dublin City Development Plan 2016-2022.

The appeal is supported by a Visual Appraisal and Planning/Architects Design Statement.

6.2. **Planning Authority Response**

The planning authority response of 11/4/17 states that the planning officer's report on file adequately deals with the proposal.

7.0 **Assessment**

I consider that the main issues that arise for determination by the Board in respect to this appeal relate to the following;

- The principle of the development.
- Height of proposed building.
- Visual impact on streetscape.
- Appropriate Assessment.

7.1. **Principle of the development.**

The site is located in an area zoned Z6, the primary objective of which is 'to facilitate long term economic development in the city region'. Office use is 'open for consideration' in Z6 zoned areas. The Plan (section 6.5.2) also recognises that a choice of good quality and cost competitive office and commercial space is critical in attracting investment, supporting enterprises and generating employment. The need to encourage the high quality redevelopment of outdated office stock is also supported.

The proposal will replace an existing office building that is considered to be functionally obsolete, with a development, which is capable of meeting modern day standards. It will result in an increase in the quantum of office space (1274m²) already permitted and accords with the zoning objective and other provisions of the plan in terms of improving the attractiveness of the city and creating the potential for employment opportunities in Ballsbridge. The proximity of the development to a wide range of transport facilities included the DART on Lansdowne Road and the Quality Bus Corridor on Merrion Road, will also encourage more sustainable use of public transport, which is also supported in the plan.

Having regard to the zoning objectives for the area, the long established office use associated with the site and the extant permission for office development, I accept

that the proposed development is consistent with the provisions of the development plan and is acceptable in principle in this location.

I would point out to the Board that the main difference between the current proposal and that permitted by the planning authority under Reg Ref No 2868/16 is the addition of a new floor raising the overall height of the building by 4m. The overall design, elevational treatment and finishes of the building remain unchanged as do building lines, access arrangements and public realm enhancement proposals.

On the basis of the foregoing it is not my intention to revisit the matters already determined but to focus on the modifications proposed. The assessment will focus on whether the increase in the height of building is consistent with the provisions of the development plan and whether it has the potential to negatively impact on the streetscape and the amenities of the area.

7.2. Height of proposed building.

The existing permission permits a six storey building on the site. The applicant seeks to justify the increase in floor area and resultant height increase by reference to market conditions and the documented shortfall in office accommodation in the city.

The planning authority's sole reason for refusal relates to the height of the new proposal. It will increase the height of the permitted building by 4m to 28m. It is applicant's contention that the planning authority has been too stringent in its application of the development plan standard and has not been cognisant of the existing context and existing/permitted development in the locality, where higher buildings have been facilitated.

The development plan acknowledges that Dublin is a low rise city and it is policy that it should predominantly remain so. It sets height limits for various parts of the city to ensure that the existing skyline is protected/ enhanced and that low rise sensitive areas (including conservation /residential conservation areas) are adequately protected.

The proposed development is located in the Outer City area, designated as Low Rise (for the purpose of building height control (Fig 19 of the Plan)). In these areas heights of up to 24m is considered acceptable near rail hubs, or 16m in other areas. From my interpretation of the development plan there is no provision for heights of up to 28m in Low Rise areas of the Outer City, as contended by the applicant. The

maximum height permitted in this area is clearly stated to be 24m. As noted by the planning authority there is no provision for any qualitative or quantitative analysis or design rationale to surmount the height limits established by the Plan.

I accept that this part of the city is a rapidly changing urban environment and there is considerable variations in building height. The trend generally has been to facilitate higher buildings. The highest building in the locale is One Ballsbridge to the north of the appeal site. It is currently under construction and will be just over 40m in height. To the west are Hume House where a development ranging in height up to 34.5m has been permitted but not yet implemented. I note that Franklin House which is currently being redeveloped is limited to a height of 24m.

The height of the building is clearly at variance with the provisions of the development plan. The question that arises is whether it could be considered acceptable in terms of the prevailing site context, as contended by the applicant, which is discussed in more detail below.

7.3. Visual impact on streetscape

The site is well removed from sensitive areas including the residential conservation area along Lansdowne Road and Pembroke Road and associated Protected Structures. The closest Protected Structures/Residential Conservation Area lies to the south east (Estate Cottages). The majority of these dwellings align a cul de sac and are orientated away from the site. The dwellings on the east side of Pembroke Road are not Protected Structures but are located within a Residential Conservation area and are separated from the site by the higher Shelbourne Hall/ Court apartment blocks fronting onto Shelbourne Lane. There will be no increase in impacts on the character or setting any of the protected structures or residential conservation areas arising from the proposed increase in the height of the building. The site is also well removed from the centre of Ballsbridge which presents a very different character to this area in terms of the quality and style of architecture, height of buildings urban grain etc.

A Visual Appraisal of the proposed development supports the application and the appeal. It provides an assessment of the visual implications of increasing the height of the building within the existing and emerging urban context. Photomontages (4

no.) were prepared to demonstrate the likely impacts. These include views towards the site from both directions along Shelbourne Road, from Pembroke Road north eastwards over the residential properties and from Beatty's Avenue further east across the Dodder River. The photomontages demonstrate that the proposed development will sit comfortably within its surroundings and that it can will be effectively integrated into the streetscape with no significant additional adverse impacts on the character or visual amenities of the area. It will be framed to the north by the higher elevation of the One Ballsbridge development and the recessed upper floors will reduce the scale and massing of the building. I accept that the proposal can form a satisfactory transition between the higher large scaled buildings to the north and the lower smaller scaled buildings to the south.

The proposed development will replace an existing redundant building with a well-designed office space, which is more responsive to the existing character of the area. It will provide more effective interaction with the street through the provision of retail space/café facilities on the ground floor and through significant improvements in the public domain. Whilst I accept that the height of the building is at variance with the provisions of the plan, having regard to the existing and emerging site context, I do not consider that it will result in adverse impacts on the existing streetscape.

7.4. **Material contravention of the plan**

The First Party refers to section 37(2) of the Planning and Development Act, 2000, as amended and the scope it affords to the Board should it be minded to grant permission for a development that materially contravenes the provisions of the development plan.

Under the provisions section 37(2)(b) of the Planning and Development Act, 2000, where a planning authority has decided to refuse permission for a development on the grounds that it would *materially* contravene the development plan, the Board may only grant permission in certain limited circumstances i.e.

- (i) the development is of strategic or national importance,
- (ii) there are conflicted objectives or the objectives are not clearly stated insofar as the proposed development is concerned, or

(iii) the proposed development should have been granted having regard to the regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted in the area since the making of the development plan.

I draw the attention of the Board to the wording of the planning authority's reason for refusal which does not reflect the precise wording of the legislation. It states '*The proposal would, therefore contravene the height policy of the Dublin City Development Plan 2016/2022 and would, thereby, be contrary to the proper planning and sustainable development of the area.* It does not refer to a *material* contravention of the Plan as provided. On this basis, should it consider a grant of permission is appropriate, it would appear that the Board is not constrained by the provisions of section 37(2)(b).

Should the Board consider that it is bound by the provisions of section 37(2)(b), it is my opinion that a grant of permission cannot be justified in accordance with the provisions of section 37(2)(b)(i)(ii) or (iii). Whilst the First Party considers that there is scope for consideration under 37(2)(b) (iv) having regard to the pattern of development in the area, and permission granted in the area, I note that the current development plan came into effect on 21st October, 2016, which post-dates previous permissions facilitating adjacent development and the emerging pattern of development in the area. On the basis of the foregoing, I consider that should the Board conclude that it is constrained by the wording of the planning authority's reason for refusal, it is my opinion that a grant of permission cannot be considered under the provisions of section 32(2)(b)(i)(ii)(iii) or (iv).

7.5. Appropriate Assessment

The closest Natura 2000 sites are South Dublin Bay SAC (Site Code 000210), located c 1.7km from the site and North Dublin Bay SAC (Site Code 000260). The development will not encroach into the European sites and will not result in any loss or fragmentation of habitat. There are no direct pathways between the site and the

Natura 2000 other than via the drainage network, which is discharged via the Ringsend WWTP.

Having regard to the location of the development within a built up area, the nature and scale of the development and the separation distance from Natura 2000 sites, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effect on any other European Site, in view of the sites conservation objectives and that, therefore, a Stage Appropriate Assessment and the submission of a Natura Impact Statement is not required.

8.0 Conclusion

- The development is acceptable in principle in this location.
- The height proposed exceeds the development plan standards for Low Rise Outer City locations.
- Having regard to existing and permitted development in the area, the height of the building is not out of context and will not detract from the existing /emerging character of the streetscape or the visual amenities of the area.
- The Board is not constrained by the provisions of section 37(2)(b) of the Planning and Development Act, 2000, and a grant of permission can be considered.
- The development will facilitate increased employment opportunities in the area, consistent with the zoning provisions for the area. Its proximity to good public transport facilities and reduced on site car parking will promote modal choice and more sustainable forms transport.
- The requirements of the Roads & Traffic Division are incorporated as conditions into the parent permission granted under Reg Ref No 2868/16.

9.0 Recommendation

- 9.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the Z6 zoning objective for the site (employment/enterprise), to the established use of the site for office use, to the pattern of existing and permitted development in the area and proximity to good public transport infrastructure, it is considered that subject to the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not have an adverse impact on the visual amenity or character of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application 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 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 interests of clarity.

2. The conditions attached to the parent permission governing the overall development of the site granted under Reg Ref No 2868/16 shall continue to apply to this development.

Reason: In the interests of clarity.

3. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunications aeriels, antennas or equipment.

Reason: In the interest of visual amenity

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Breda Gannon
Senior Planning Inspector

14th, June 2017