



An
Bord
Pleanála

Inspector's Report 29S.248680

Development	Demolish Tivoli Theatre and construct a 5-6 storey mixed use development (aparthotel, retail & recreation)
Location	135-143 Francis Street, Dublin 8
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	4447/16
Applicant(s)	Anthony Byrne
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Anthony Byrne
Observer(s)	None
Date of Site Inspection	15 th September 2017
Inspector	Karla Mc Bride

1.0 Site Location and Description

- 1.1. The appeal site is located in the Liberties area of Dublin on the SW side of the city and the surrounding area is mixed use in character. The rectangular shaped site is located to the S of Thomas Street and to the W of Francis Street and it comprises the Tivoli Theatre, 140-143 Francis Street which is 3-storey red brick building and a surface car park which is accessed off Francis Street.
- 1.2. The site is bound to the E by Francis Street and the Bertram Court apartment complex is located directly opposite the site with the Iveagh Market located to the SE. It is bound to the N by a terrace of 3-4 storey commercial buildings at nos.70-79 Thomas Street, there is a pedestrian access to the site located to the W of no.70, and no.72 is owned by the applicant. The site is bound to the W and S by Chadwick's Builders yard which is accessed off Thomas Street via an arched entrance opposite John's Lane Church, and the W and S site boundaries are mainly defined by storage buildings located within the builder's yard. The site is bound to the S along Francis Street by a 3-4 storey mixed use office and apartment building with an enclosed courtyard to the rear.
- 1.3. The site is located within an historic area which dates back to the 7th Century or earlier and there are several Recorded Monuments and Protected Structures in the vicinity including the Iveagh Market and the buildings along Thomas Street to the N of the site. The Tivoli Theatre, which dates from the 1930s, has been variously used as a cinema, bingo hall, theatre and nightclub. The boundary walls around the car park have been adorned by an array of graffiti artists.
- 1.4. Photographs and maps in Appendix 1 describe the site and surroundings in detail.

2.0 Proposed Development

2.1. The proposed development would comprise:

- The demolition of the Tivoli Theatre and all structures in the existing surface car park and buildings excluding the existing eight-bay building facades (Nos.140-143) on Francis Street.
- The construction of a 5-6 storey mixed use development (c.10,610sq.m.) on the c.3,920sq.m. site comprising:
 - A 298-unit aparthotel and courtyard,
 - Associated facilities (reception/foyer and operational areas),
 - Retail & non-retail services outlets along Francis Street,
 - Ground floor restaurant, gymnasium and bicycle hire shop,
 - Bicycle parking, electricity sub-station, landscaped courtyard.
- Access archway to pedestrian/cyclist priority street (restricted to emergency and service vehicle traffic) from Francis Street to internal courtyards;
- Signage, boundary treatments, site development works and services.

Accompanying documentation:

- Planning Report
- Design Statement
- Landscape Report
- Traffic Impact Assessment
- Archaeology Report
- Conservation report
- Drainage Report
- Flood Risk Assessment

3.0 Planning Authority Decision

3.1. The planning authority requested Further Information in relation to the following:

1. *Address the loss of a cultural venue (Tivoli Theatre) – indoor and outdoor performance spaces provided a ground level.*
2. *Excessive height facing the internal courtyard - No change proposed.*
3. *Provide an appropriate balance of unit types & sizes - the ratio of studio & 1-bed units altered by the addition of a number of linkable units to provide an appropriate balance (70% 1-bed, 25% 2-bed & 5% 1-bed accessible).*
4. *Omit or significantly reduce the 5th floor canopy along Francis Street, and set back & break up this element to reflect the plot rhythm - details provided.*
5. *Revised shadow analysis & photomontages to reflect these changes - details submitted and noted that overshadowing and sunlight impacts always exist in urban areas, with no significant overshadowing anticipated.*

3.2. Decision

Following the receipt of Further Information, the planning authority decided to refuse permission for one reason:

The height of the block of the proposed development located on the N boundary for the site would contravene the height recommendation provided in the Liberties LAP which is considered appropriate height guidance at a local context, it would also contravene a stated policy section 16.7.2 of the current development plan which requires that height relates to prevailing local height and context. The development by virtue of its height, proximity to boundary and the number of windows on that boundary would have an overbearing and overlooking impact on the adjacent properties many of which are protected structures. The development would therefore depreciate the value and seriously injure the amenities of property in the vicinity.

3.3. **Planning Authority Reports**

3.3.1. **Planning Reports**

The Planning Officer's report recommended the refusal of planning permission for the reason outlined above.

3.3.2. **Other Technical Reports**

Drainage Division: No objection subject to conditions.

Roads & Traffic: No objection subject to conditions.

City Archaeologist: No objection subject to conditions.

Conservation Officer: Raised concerns in relation to the impact on architectural heritage, nearby Protected Structures, the historic streetscapes, and the former city mills site to the W; no objection to the demolition of the Tivoli Theatre; and the buildings along Francis Street should be retained in their entirety.

3.4. **Prescribed Bodies**

An Taisce raised concerns in relation to:

- The loss of the Tivoli Theatre (cultural & social amenity)
- Break down 5th floor glazed penthouse house to take account of plot rhythm.
- The overhanging canopy is excessive.
- The penthouse setback should be increased.

3.5. **Third Party Observations**

Five submissions raised concerns in relation to the loss of a cultural venue; density & overdevelopment; overbearing design, excessive scale & height; inappropriate & transient use; over-concentration of similar uses; traffic congestion; residential amenity; stability of historic structures; River Poddle culvert; anti-social behaviour.

4.0 Planning History

Reg. Ref. 4450/16: Permission granted for works and change of use from retail to restaurant and from multiple occupation to a single dwelling unit at no.72 Thomas Street. PS owned by the current applicant.

Reg. Ref. 0914/97 (PL29S.103959): Permission granted for the conversion of nos.140 to 143 Francis Street to 4 ground level retail units with apartments over.

Reg. Ref. 6032/03 (PL29S.209616): Permission granted for a mixed use development at nos.135 to 143 Francis Street & 72 Thomas Street. Works to include the demolition of the Tivoli Theatre and construction of 130 apartments, retail units/offices, and theatre/cultural venue (c.1, 296sq.m) in several blocks (4-13 storeys). Condition no.2 required a reduction in the overall height to 5 stories (4-storey with penthouse level) and the widening of the entrance to the new street between Blocks B & A off Francis Street from 6m to 8m, to provide a greater visual connection.

5.0 Policy Context

5.1. Architectural Heritage Guidelines for PAs, 2004

These Guidelines provide a practical guide in relation to Part IV of the 2000 Planning Act which deals with the protection of architectural heritage in respect of the Record of Protected Structures, Architectural Conservation Areas, Declarations and Places of Worship as well as development control advice and detailed guidance notes on conservation principles.

5.2. Development Plan

Zoning objective:

The site is located within an area zoned with the objective Z5 in the Dublin City Development Plan, 2016-2021 which seeks “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” Apart-hotels are permissible within this zone.

Built Heritage

- Historic Core:** Located within the Medieval City
- Archaeology:** Located within a Zone of Archaeological Interest
- Recorded Monuments:** Dublin City (DU018-02020)
- Protected Structures:** Thomas Street properties to the immediate N & NW
Iveagh Market to the SE
- Architectural Conservation Area:** Located within Thomas Street & Environs ACA

Relevant policies

Policy CHC1: seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

Policy CHC2/4/5: seeks to ensure the protection of the special interest, character and setting of Protected Structures and all Conservation Areas.

Policy CHC12: seeks to promote tourism in the medieval city and suburbs.

Policy CEE12 (i): seeks to promote & facilitate tourism as one of the key economic pillars of the city's economy & a major generator of employment & to support the provision of necessary significant increase in facilities (hotels).

Policy CEE13 (iii): seeks to promote and support the development of additional tourism accommodation at appropriate locations.

Policy CEE22: seeks to promote and facilitate the crucial economic and employment potential of regeneration areas in the city such as Dublin 1, 7 & 8

Policy CHC33: seeks to support the national cultural institutions and facilitate the provision of fit-for purpose, sustainable cultural infrastructure such as museums, libraries, theatres, exhibition spaces, cinemas, and music venues in the city centre.

Policy CHC40: seeks to support existing, and encourage the growth of emerging, cultural clusters and hubs in the city, and section 11.2.5.3 states that the Council will continue to support the development Cultural Clusters and that the Liberties/Temple Bar cluster is regarded as the key cultural/creative quarter of the city.

Site development standards:

Building Height: Section 16.7.2 states that proposals for high buildings should be in accordance with the provisions of the relevant LAP in addition to the assessment criteria for high buildings and development plan standards. The site is located within an Inner City Low Rise area (relates to the prevailing local height and context)

Height: 28m maximum (commercial)

24m maximum (residential)

Site coverage: 90%

Plot ratio: 2.5 - 3.0

Apart-hotels (Appendix 16)

- Accommodation can range from apartment suites containing a number of bedrooms, to open plan studio-style units.
- Aparthotels cannot be used or occupied by permanent households.
- Should include a fully-serviced reception desk, administration facilities, concierge, security, housekeeping facilities and related entertainment and café uses.
- The design and layout should enable the amalgamation of individual units to cater for the needs of visitors especially families.
- A range of different unit styles and sizes to cater for the needs of visitors.
- The over-provision of single-bed units will be resisted and a mix of unit sizes and styles will be required.
- The maximum occupancy period shall be two months.
- Cannot be used for the provision of student accommodation.
- Compliance with residential development standards for any future change of use to permanent accommodation.

5.3. **Liberties Local Area Plan 2009 (extended to 2020)**

The site is located in the E section of the Liberties LAP and the following general design requirements apply (section 7.1):

- Provide active and moderately active frontages along key walking routes and towards key local activity nodes.
- Promote the use of multiple architectural practices in the area to ensure high quality mix of architectural design.
- Protect existing amenity of adjoining sites with regards to overshadowing, daylight, sunlight, light spillage and noise.
- Ensure that all proposals which include the use of upper floor setback levels be of a suitable profile with regard to the scale and gain of existing buildings in the vicinity and would not render any adverse impacts on the streetscape, city skyline or the street level in terms of daylight and sunlight penetration.

The site is located within the Vicar Street and the Iveagh Markets Significant Development Site. The main objective seeks to establish a distinctive character for the Vicar Street area, with vibrant markets and creative industries as economic catalysts for its regeneration. The following land use provisions apply (section 7.2):

- The surrounding lands are suitable for residential and commercial use.
- The Tivoli Theatre is an existing cultural use.
- The central area should contain cultural/community uses & green open space.
- There should be pedestrian links off Thomas Street.
- New building heights should be 3-4 stories.
- Francis Street (in the vicinity of the site) has Pedestrian Priority.

5.4. **Thomas Street and Environs Architectural Conservation Area, 2009**

Development that affects the setting of the ACA will only be permitted where it will preserve or enhance its character or appearance. The retention and adaptation of existing historic structures should be favoured over new build. The Tivoli Theatre is identified as a local landmark.

5.5. Natural Heritage Designations

European sites: The following areas are located within a 5km radius of the site:

- South Dublin Bay SAC (Site code: 000210)
- South Dublin Bay & River Tolka Estuary SPA (Site code: 004024)
- South Dublin Bay pNHA (Site code: 000210)

Natural Heritage Areas: None in immediate vicinity of the site.

6.0 The Appeal

6.1. Grounds of First Party Appeal

Site precedent (PL29S.209616):

- ABP previously permitted a similar scheme on the site in 2009, particularly with regard to the N section close to Thomas Street, these buildings were permitted at 5-storey for apartment use with views towards the rear of Thomas Street (1 more than stated in the then valid Liberties Coombe DFW).
- The later Liberties LAP did not amend the height/urban block guidance which is indicative and not prescriptive, and there has been an increased awareness since 2009 of the need to provide student and aparthotel accommodation which does not require extensive car parking in historic areas.
- The proposed scheme fits better into the block than the previous scheme, with a greater separation distance to the N, a new public plaza of c.720sq.m. and improved access arrangements to the internal area.

Nearby precedent at Frawley's (2453/15):

- The permitted student accommodation at Frawley's site has a similar relationship to the PSs along Thomas Street as the proposed aparthotel, the proposed separation distances are greater than those permitted at Frawley's, and the PA's approach has been inconsistent with respect to similar uses.

- Only the ground floor buildings extend to the boundary at the rear of the building curtilages on Thomas Street; the distance from the lower floors are 19m from the gable to the rear façade; the distance at the upper levels is 27m

Conservation:

- The CO was satisfied that the 5-storey build with 6th floor setback would sit comfortably with the adjacent commercial building height and the historic mass of St. Catherine's Church, and would not be visible from Thomas Street.

Miscellaneous:

- Following discussions with the PA, a large public plaza was included, access was improved, and the urban design proposal improved on the LAP vision.
- Inaccuracies in the PO's report, dissatisfied with the inconsistent approach of the PA, and the single reason for refusal which related to the height issue could have been addressed by a FI clarification.

Grounds of appeal:

- The properties along Thomas Street to the N are in commercial use and there would be no impacts on residential amenity or property devaluation.
- No.72, which is owned by the applicant, has a recent permission for change of use to restaurant and apartment.
- There is one high level apartment in no.78 at the junction with Francis Street.
- No.76 was the HQ for Wardell Roberts coffee processors with a factory extension to the rear on the site of the current car park, and the remaining properties had limited rear curtilages with no development potential.
- No objections from the owners or occupants of the Thomas Street properties.
- Adequate above ground level separation distances to the N (21m to 29m).
- Proposal occupies almost the same footprint as the previous scheme with a similar height and relationship to the buildings at Thomas Street to the N and it would not have an overbearing/overlooking impact on adjacent properties.
- Aparthotel bedrooms are not usually occupied during the day.

Justification for development:

- Applicant has owned and operated the Tivoli since 1981.
- It was damaged by a fire before 1981 and later refurbished as a bingo hall.
- It is sometimes used as a theatre (with no Arts Council funding) but has inadequate seating capacity (c.500) to be viable unlike Vicar Street (c.1000).
- It is in relatively poor condition and does not contribute the streetscape, the redevelopment would remove the late night nuisance venue, and the site also comprises the former coffee processing factory site which is now a car park.
- Proposal complies with the zoning objective and the Council's policies for the City Economy & Enterprise, including tourism, regeneration and vacant land.

Modified proposal:

- The N side of the N wing would be modified by the reduction of one floor behind Thomas Street (details provided on file).
- This would produce a finished building that is no higher than the established height and context of the tall Georgian buildings along Thomas Street.

6.2. Planning Authority Response

No new issues raised.

6.3. Prescribed Bodies

Appeal circulated to the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs with no response received.

6.4. Observations

None received.

7.0 Assessment

The issues arising in this case are:

- Principle of development
- Design, height & built heritage
- Residential amenity
- Cultural heritage
- Access and movement
- Other issues

7.1. Principle of development

The proposed development would be located within an area zoned Z5 in the Dublin City Development Plan, 2016-2021 which seeks “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.” The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. The proposed uses are permissible within this zone and the proposed development would be compatible with the zoning objective for this area.

The proposed development would also be located within an area covered by the Liberties Local Area Plan (2009-2020) and within the Vicar Street and the Iveagh Markets Significant Development Site. The surrounding lands, which have been identified as being suitable for residential and commercial use, should also provide for cultural and community uses and green open space. The proposed development would be compatible with the vision for this LAP Development Site.

7.2. Design, height and built heritage

The proposed development would be located within the Liberties Architectural Conservation Area. Many of the buildings to the N of the site at nos. 68 to 80 Thomas Street are designated Protected Structures as are John’s Lane Church and St. Catherine’s Church to the NW along Thomas Street and the Iveagh Market to the

SE along Francis Street. A high standard of design which takes account of the historic setting of the area and the existing built heritage is therefore required.

The current Development Plan restricts building heights for commercial development in the Inner City to 28m. However, the current Liberties Local Area Plan, which identifies the site as being within the Vicar Street and the Iveagh Markets Significant Development Site, recommends that building heights in the area are no higher than 3-4 stories, which reflects the height recommendations of the previous Liberties Coombe Design Framework Plan. Therefore, the Liberties LAP also requires a high standard of design which takes account of the historic context and built heritage.

The Council's Conservation Officer raised concerns in relation to the impact of the proposed development on the architectural heritage of the surrounding area including the Protected Structures to the N at Thomas Street and the historic streetscape diversity and local area character. The Conservation Officer also raised concerns with regard to the complex configuration of the site, medieval burgage plots to the rear of Thomas Street and the impact of the monolithic mass on the hitherto undeveloped former city mills site to the W. The Officer requested that the buildings along Francis Street be retained in their entirety, and not just the facades as proposed, in the interest of cultural and architectural heritage. An Taisce raised concerns in relation to 5th floor glazed penthouse and the overhanging canopy.

Following the receipt of Further Information in relation to a reduction in the scale of the 5th floor canopy along Francis Street, and the decision of the applicant not to address the concerns raised by the planning authority in relation to the height of the blocks facing the internal courtyard, the Planning Authority decided to refuse planning permission for one reason. This reason stated that the height of the block located on the N boundary for the site would contravene the Liberties LAP height recommendation, contravene section 16.7.2 of the development plan which requires that height relates to prevailing local height and context, and overbearance and overlooking of the adjacent properties, many of which are protected structures.

The applicant, in the appeal submission, proposed to modify the N side of the N wing by the omission of one floor so that the finished building would be no higher than the tallest of the Protected Structures along Thomas Street.

Previously permitted proposal:

Planning permission was previously granted by the Board in 2005 under PL29S.209616 for a mixed use development of c.10,134sq.m. at the appeal site and no.72 Thomas Street subject to 19 conditions. The permitted works included the demolition of the Tivoli Theatre and the construction of 130 apartments, retail units, offices, and theatre/cultural venue in several blocks ranging from 4 to 13 storeys high, with a change use to bar and entrance to theatre/venue at ground level with offices over at no.72 Thomas Street which is a Protected Structure.

Condition no. 2 of the Boards permission required 9 amendments in the interest of visual amenity having regard to the historic context of the area. The overall height of the development was reduced to a maximum of 5 stories comprising 4 stories with penthouse level, and the width of the entrance off Francis Street was increased from 6m to 8m. This permission was assessed in relation to then current Dublin City Development Plan, the Liberties Coombe Integrated Plan and the Liberties Coombe Urban Design Framework Plan, which recommended that new buildings should be no more than 3-4 stories high.

Current proposal:

The proposed development would comprise the demolition of the Tivoli Theatre, the retention of the existing red brick building facades at 140-143 Francis Street and the construction of a 5-6 storey mixed use development of c.10, 610sq.m on the c.3, 920sq.m site. The scheme would mainly comprise a 298-unit aparthotel with ground level retail uses and pedestrian access from Francis Street and Thomas Street.

The proposed 5-6 storey development would be c.13m to c.15.5m to c.18m high and it would comprise 3 blocks to the N, E and W. It would have a contemporary design with a mix of finishes comprising brick, granite, zinc cladding and timber. The fourth floor elevation to Francis Street and the recessed fifth floor penthouse levels would comprise extensive glazing with projecting parapets. The blocks would have windows in the main elevations at all levels, except for the narrow S and W facing elevations along the site boundaries. The three blocks would be mainly arranged around two courtyard areas in the S section with two smaller spaces to the N.

The ground floor levels would contain the courtyards/open spaces, retail/recreational uses, the aparthotel foyer and plant/maintenance areas whilst the upper levels would contain the aparthotel units. There would be a c.3 to c.4m set back at fourth floor level along Francis Street from the neighbouring buildings to the N and S. There would be no fifth floor level along Francis Street and the narrow c.14m wide recessed fifth floor section (to the rear of Thomas Street) would be set back c.8m from the Francis Street elevation. The roof level would contain a small plant area that would be well set back from Francis Street the rear of the Thomas Street properties.

East block: This block would be c.13m to c.15.5m high with a c.51m long frontage to Francis Street. It would adjoin the neighbouring 3-storey building to the N which is c.12.5m high, and the neighbouring 3-4 storey office building to the S which is c.10.5m to 13.5m high. As previously described, the fourth floor level would be set back c.3 to c.4m from the neighbouring buildings, and the fifth floor level would be substantially set back and not visible from Francis Street.

North block: This block would be c.18m high and c.65 long at ground to 4rd floor level and c.55m long at fifth floor level. It would be located to the rear of the existing 3 and 4 storey buildings at nos.70 to no.80 Thomas Street. Although most of these buildings are Protected Structures, the scale of the plots they occupy has been substantially reduced as a result of previous interventions over the decades. The separation distances would range from c.9m (to the rear of no.76) to c.29m (to the rear of nos.73 & 74) at ground level, and from c.21m (to the rear of no.70) to c.28m (to the rear of nos. 73 & 73) above ground level. The narrow W section of this block, which would be c.15 wide, would be located along the site boundary with Chadwick's Builders Yard.

West block: This block would be c.18m high and c.32m long and it would be located parallel to the W site boundary with Chadwick's Builders Yard with a c.11m separation distance. The narrow S section of this block, which would be c.12m wide, would be located along the S site boundary with the Builders Yard.

Open spaces and entrances: There would be two large interconnecting courtyard areas in the S section which would be mainly overlooked by the proposed aparthotel units. The largest of the spaces would adjoin the neighbouring mixed use development to the S and part of the Chadwick's Builders Yard. The smaller space

would also abut the builders yard to the W but at a point identified in the Liberties LAP as forming part of a larger open space that would straddle both sites in the future. There would also be two smaller areas of open space located in the N section of the site at ground and first floor levels to the rear of the Thomas Street buildings. There would be a c.5.5m wide and c.15m long pedestrian entrance off Francis Street to the courtyard areas and a c.2m to 5m wide and c.32m long pedestrian entrance off Thomas Street.

Amended proposal (Further information)

The applicant was requested to submit Further Information in relation to the loss of a cultural venue, the excessive height of the blocks facing the internal courtyard which exceed LAP standards, and the omission of, or significant alteration to the 5th floor.

Cultural venue: A new performance space of c.367sq.m. would be provided a ground level in the West Block to accommodate cultural performances and it would occupy the space originally proposed to accommodate the gymnasium and 7 of the aparthotel units. An outdoor performance space and cinema space would also be provided in the centre of the larger courtyard to the E of the new indoor performance space. These amendments would not have a significant impact on the design or layout of the proposed development and are considered acceptable.

Height: The applicant did not propose any height changes. The applicant stated that the Liberties LAP envisaged a narrow laneway flanked by low buildings on a larger plot, however it is not possible to realise this vision because of land acquisition constraints. The proposed central public space would be overlooked by new buildings and this space can accommodate taller buildings around it. Although in excess of the LAP standards, the building heights comply with current Development Plan criteria to which the LAP is subservient. The heights would grade down from the higher buildings at Vicar Street which would be appropriate for the area.

Fourth & Fifth floors: The fourth floor units have been set back c.2m from the Francis Street elevation and the resultant space would be used as terraces, whilst the façade has been broken up by the use of vertical aluminium windows. The fifth

floor overhanging canopy has been removed and the roof level would be concealed behind a glazed façade.

Amended proposal (Appeal submission)

The applicant proposed to amend the entire N side of the North Block by reducing the height of this section by the omission of one floor behind the Thomas Street properties which would increase separation distances to between c.28m and c.35m at fifth floor level.

Discussion:

The proposed development would be located to the rear of an existing terrace of 3 to 4 storey buildings along Thomas Street, it would front on to Francis Street and the N section would be located behind the retained facades of the existing red brick buildings. The overall design and layout of the proposed development, as amended by the Further Information submission, and the palette of external materials is considered acceptable in terms of visual amenity with no adverse impacts on the Francis Street streetscape or nearby Iveagh Market anticipated.

The retention of only the red brick facades of the buildings along Francis Street is considered acceptable as they are not Protected Structures. Furthermore, a substantial amount of the internal fabric of has been removed and a large section of the buildings are used as a car wash facility associated with the surface car park. The original plots to the rear of the Thomas Street properties were long ago subsumed into the coffee processing factory that formerly occupied the surface car park, and the reinstatement of these plots would not be possible or practical.

The design and layout of the proposed development, as amended, has regard to the scale and height of the neighbouring buildings along Francis Street to the N and S. It also takes account of the Liberties LAP vision for the adjoining lands at the Chadwick's Builders Yard to the S and W which, along with the appeal site, forms part of the Vicar Street and the Iveagh Markets Significant Development Site.

The proposed pedestrian linkages off Thomas Street to the N and Francis Street to the E would improve permeability in the area in accordance with Development Plan

and Local Area Plan requirements. It is noted that Condition no.2(e) of the previously permitted scheme for the redevelopment of the site under PL29S.209616 required that the pedestrian entrance off Francis Street be widened from 6m to 8m to provide a greater visual connection, and that the proposed entrance would be c.5.5m wide. This concern could be addressed by way of a panning condition which requires that the width be increased to 8m in order to provide a more accessible and visually attractive connection between Francis Street and the internal courtyard area and cultural venues.

The proposed 5-6 storey development would be between c.13m to c.15.5m to c.18m high and the outstanding issue relates to the proposed height relative the Protected Structures along Thomas Street.

Section 16.7.2 of the Development Plan states that proposals for high buildings should be in accordance with the provisions of the relevant LAP in addition to the assessment criteria for high buildings and development plan standards. The site is located within an Inner City Low Rise area where building height should relate to the prevailing local height and context, and where the maximum height for commercial buildings is stated to be 28m. However, section 7.2 of the Liberties Local Area Plan 2009, which has been extended to 2020, states that new building heights should be 3-4 stories, which reflects the height recommendation contained in the previous Liberties Coombe Design Framework Plan for the area.

The previously permitted scheme under PL29S.209616 occupied a similar footprint to the proposed development and it had a similar relationship to adjacent properties with pedestrian linkages to Thomas Street and Francis Street. However, the heights as originally proposed were substantially different to the current proposal. Blocks A and B to Francis Street were 4-5 stories, Block C was 8-13 stories and Blocks D, E and F were 7-stories. Condition no.2(a) of the Board's decision to grant planning permission reduced the height of all of the aforementioned blocks to 4 stories with a penthouse level (5 stories in total) in the interest of visual amenity and the historic setting. It is noted that the Liberties Coombe Design Framework Plan was operational at the time of the Board's decision and that the height of the permitted development exceeded the recommended height by 1-2 stories.

It is noted that the Liberties Local Area Plan has stronger statutory basis than the previous Liberties Coombe Design Framework Plan and that section 16.7.2 of the Development Plan states that proposals for high buildings should be in accordance with the provisions of the relevant LAP. However, the Development Plan also states that building height should relate to the prevailing local height and context. Having regard to the previous Board decision for the redevelopment of this site, and the separation distances between the proposed North Block and the neighbouring buildings along Thomas Street, I am satisfied that the 5-storey element of the proposed 5-6 storey development would be acceptable in terms of visual amenity and its relationship to the nearby Protected Structures and surrounding historic area.

The proposed reduction in the height of the North Block by the partial omission of the sixth storey of the N section of this block and the increase in the separation distance with the Thomas Street properties is noted. However, notwithstanding this proposed amendment, the sixth floor element of the proposed 5-6 storey development would be excessive for this location in terms of its relationship with the adjoining site to the W, the historic context and the Development Plan and Local Area Plan vision for the surrounding area. This concern could be addressed by way of a planning condition requiring the omission of the sixth storey in its entirety.

Conclusion:

Having regard to all of the foregoing, and having regard to the amendments proposed by way of the Further Information and appeal submissions, and subject to compliance with the recommended conditions, the proposed development would not be visually obtrusive and it would not have a significant adverse impact on the character, setting or integrity of any Protected Structures in the vicinity, the streetscape or the visual amenities of the surrounding historic area.

7.3. Residential amenity

Proposed development: The proposed aparthotel, as amended by way of Further Information, would provide for an acceptable level of amenity in relation to dwelling style and mix for the future occupants of this tourist accommodation facility. It is noted that the proposed development would not provide an acceptable standard of residential amenity for permanent occupation or for use as a student residence in relation to the provision of private and communal open space and car parking.

Relationship to East: The proposed development would be located to the W of an existing apartment block at Bertram Court along Francis Street, both the existing and proposed units have windows that overlook the street and the separation distance between opposing windows would be approximately 12m. Having regard to the height of the existing buildings along Francis Street, including the retained façade, and the built-up inner city location, the proposed development would not seriously injure amenities of neighbouring residents by way of overshadowing. Furthermore, having regard to the short term tourist use of the proposed development, it is unlikely that the proposed units would overlook or give rise to a loss of privacy at the neighbouring apartments.

Relationship to North: The proposed development would be located to the S of the existing 3 and 4-storey buildings along Thomas Street which are currently occupied by commercial uses at ground level with commercial, residential and vacant space above. It is noted that the City Council has a policy to promote “Living Over the Shop” in the Inner City and it is possible that the upper floors may be occupied by residential uses in the future. The long rear gardens originally associated with these

building were long ago subsumed into the site now occupied by the surface car park which previously housed a coffee processing factory. The separation distance between the opposing rear windows above ground floor level in the existing and proposed buildings would vary between c.21.5m and c.28m which is adequate to prevent overlooking and loss of privacy. Having regard to the orientation of the proposed units to the SE of the neighbouring properties, there is some potential for overshadowing in the middle part of the day, however the impact would not be significant having regard to the depth of the separation distance and the long established built up character of the surrounding area.

Relationship to West: The proposed development would be located to the E of Chadwick's Builders Yard which is earmarked for a mix of similar uses as the appeal site (residential, commercial, cultural and open space) in the current Liberties LAP. The proposed development would be mainly set back by c.11m from the W site boundary the neighbouring site and the intervening space would form part of a new civic plaza that would eventually straddle both sites in accordance with the LAP vision for this area. Having regard to the provisions of the Liberties LAP and the separation distances proposed, it is unlikely that the proposed development would adversely affect the future use of the neighbouring site for residential uses.

Relationship to South: The proposed development would be located to the N of the rear section of Chadwick's Builders Yard to the E and the neighbouring mixed use development to the W. The proposed development would be located around a central courtyard which would adjoin the S site boundary with the Chadwick's site and the neighbouring offices, with no adverse impacts anticipated for existing amenities or the future development potential of the Chadwick's site.

Conclusion: Having regard to all of the foregoing, the proposed development would not have a significant adverse impact on the residential amenities of any neighbouring sites by way of overshadowing, overlooking, loss of privacy or overbearance.

7.4. Cultural Heritage

Archaeology: The proposal would be located within an historic area that has a rich archaeological heritage which dates back to the 7th Century or earlier. The standard

archaeological conditions should be attached to ensure that the site is properly investigated and that a record of maintained of all relevant excavated materials.

Culture: The loss of the Tivoli Theatre, which dates back to the 1930s, is noted, however the building is not covered by any heritage designations and the structure has been significantly altered over the years. The internal and external performing arts element of the proposed development would provide a cultural venue for local people and visitors to the area, notwithstanding its small scale relate to the size of the existing theatre. However, the nearby presence of the Vicar Street venue to the W and the proximity of the site to Temple Bar to the NE are also noted.

Graffiti art: The walls surrounding the car park have been decorated by graffiti artists, their work is emblematic of 21st Century European Urban Youth Culture and some of the art is to a high standard. Given that the proposed development would result in the demolition of all of the existing structures and the loss of the graffiti art, the applicant should be required to preserve the art by photographic record in the interest of cultural heritage. The photographic record should be undertaken by a professional photographer with an expertise in Urban Youth Culture, and the record should be submitted to the City Council for distribution to public libraries in the city.

7.5. **Access and movement**

The Development Plan does not require the provision of off street car parking spaces for aparthotels and none are provided. It is noted that the proposed development would be located in close proximity to the City Centre, the area is well served by public transport and there are several car parks in the vicinity. The proposed pedestrian linages through the site from Thomas Street to the N and Francis Street will provide for linkages and improve permeability in the surrounding area, in accordance with the Liberties LAP vision for the area.

7.6. **Other issues**

Affordable housing: Section 96 requirements in relation to the provision of social and affordable housing to not apply to aparthotels.

Appropriate assessment: The proposed development would be located within an established built up and serviced area which does not have a direct connection to any European sites.

Demolitions: The removal of existing structures is considered acceptable subject to an asbestos survey being undertaken prior to the demolition works, as some of the structures date back to the 1930s, when asbestos was used in construction.

Environmental services: The arrangements are considered acceptable subject to compliance with the requirements of Irish Water and the planning authority.

Financial contributions & bonds: Standard conditions apply.

Flooding: The site is not located within a flood risk zone and the proposed development would give rise to a flood risk within the site or surrounding area. The contents of the applicant's Flood Risk Assessment report are noted.

Landscaping: The applicant's landscaping scheme should be implemented in accordance with submitted details for the courtyard and open space areas.

Other elements: The other elements of the proposed development which include the retail units, café and sub-station are considered acceptable.

8.0 Recommendation

- 8.1. Arising from my assessment of this appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016 to 2021 and the Liberties Local Area Plan 2009 (as amended to 2020), and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. 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, including the Further Information response that was received by the planning authority on the 20th day of April 2017, and the modified proposal that was received by the Board on the 12th day of June 2017, 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 development shall be amended as follows:
 - (a) The fifth floor shall be omitted in its entirety.
 - (b) The fourth floor shall be set back from the Francis Street elevation in accordance with the details contain in Drawing no. PL-104 of the Further Information submission.

(c) The proposed entrance off Francis Street to the internal courtyards shall be widened to provide for a greater visual connection. This shall be increased from its present proposed 5.5 metre opening to 8 metre and the building along Francis Street shall be amended accordingly to provide for the greater opening.

Revised plans shall be submitted for the written agreement of the planning authority before development commences.

Reason: In the interest of visual amenity.

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

Reason: In the interest of the visual amenities of the area.

4. Prior to commencement of development, proposals for signage on the façades of the development, shopfront details or any historical wall inscriptions shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

5. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

6. The landscaping scheme for the courtyards shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the

completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

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 developer should preserve the graffiti art contained within the site by photographic record which should be undertaken by a professional photographer with an expertise in Urban Youth Culture. A written and digital report (on compact disc) containing the results of the photographic survey shall be submitted on completion to the planning authority for distribution to the Dublin City Library service.

Reason: In the interest of preserving by record cultural heritage material likely to be damaged or destroyed in the course of development.

9. Noise levels from the development should not be so loud, so continuous, so repeated of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.

Reason: To protect the residential amenities of property in the vicinity.

10. Water supply and drainage arrangements, including the disposal of surface water and internal basement drainage, shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

11. The management of waste during the construction and operational phases of the development, shall comply with the requirements of the planning authority for such works and services as appropriate.
Reason: In the interest of public health and to ensure a proper standard of development.
12. An asbestos survey shall be carried out on the existing structures warehouse to be demolished. Any asbestos containing materials (ACM) identified shall be removed by a licenced waste contractor.
Reason: In the interest of public health and to ensure a proper standard of development.
13. The site development and construction works shall be carried out such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.
Reason: To protect the residential amenities of property in the vicinity.
14. The site works, building works and deliveries of materials, plant or machinery required to implement the development shall only be carried out between 7.00 hours and 18.00 hours, Monday to Friday and between 08.00hours and 14.00 hours on Saturdays and not at all on Sundays or Bank Holidays.
Reason: To safeguard the residential amenities of adjacent dwellings.
15. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure the satisfactory completion and maintenance of this development.

16. 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. 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 An Bord Pleanála to determine.

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.

17. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

Karla Mc Bride
Planning Inspector
21st September 2017