



An
Bord
Pleanála

Inspector's Report ABP-300057-17

Development	Demolition of buildings & construction of 7 storey Aparthotel with hotel facilities, bicycle spaces, substation, pedestrian access, ground floor café and all associated works.
Location	180, 182, 183 and 184 James's Street, Dublin 8
Planning Authority	Dublin City Council (South Area)
Planning Authority Reg. Ref.	2950/17
Applicants	Mullins Investments Limited
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	First / Third Party
Appellant(s)	Ronan McDonnell
Date of Site Inspections	20 February 2018 12 March 2018
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1. The site is located at no.s 180, 182, 183 and 184 James's Street, Dublin. As it faces south towards James's Street it is U shaped wrapping around a recently constructed 5/6 storey apartment block at No. 181 James's Street. The site extends in depth north of James's Street, having a boundary of c 42m with a pedestrian route, known as Cromwell's Quarters, which descends via steps along it's western boundary from James's Street to Bow Lane, a drop of some 9½m. There is an electricity substation within the site at the boundary with Cromwell's Quarters at about mid point along the frontage.
- 1.2. The eastern boundary adjoins under-utilised land and buildings, which include 2 and 3 storey vernacular buildings fronting James's Street. From references to these lands on the file, nos. 172-178 appear to be in a single ownership, awaiting re-development. No 179 is the property immediately adjoining to the east, occupied by a two storey building.
- 1.3. To the north, the site adjoins residential blocks which are accessed from Bow Lane West, except at the north west corner where a vacant brownfield site with frontage to both Cromwell's Quarters and Bow Lane West adjoins the boundary. The Bow Lane West development has a retaining wall to the rear along the boundary with the subject site and has created a ground level for the building and yard at the Bow Lane street level. The ground floor level of the Bow Lane development is below the level of the site at the nearest point and significantly below the level of the majority of the site.
- 1.4. To the west of Cromwell's Quarters a building facing James's Street forms part of the western boundary of the laneway and along the remainder there is a long building of two/three storeys in two blocks, the larger, with a pitched corrugated roof, and the smaller at the northern end, with a parapet wall concealing the roof. This building, a hostel, is accessed via a gated entrance from Bow Lane and has windows on the elevation to the laneway.
- 1.5. The subject site comprises brownfield land which includes a large disused warehouse type building, on ground which slopes steeply down from James's Street,

a fall from south to north of some 10m. Within the site the slope is not uniform being flat nearest to James's Street where it appears to have been partly filled with builder's rubble; and with a sharp division between this level and lower levels to the north. Because of instability in the fill material and a sharp drop in level it was not possible to access the northern portion of the site. Weedy undergrowth on site includes invasive species.

- 1.6. A large pair of industrial type adjoining buildings on the site extend to the rear of the apartment block at No 181 James's Street and have a floor at a similar level to street level so that they are supported on stilts over part of their northwards extent, where the building is up to several metres above ground level.
- 1.7. This part of James's Street is opposite James's Hospital and Ceannt Fort. James's Hospital is also the site of the National Childrens Hospital which is currently under construction.

2.0 Proposed Development

The proposed development is the demolition of the buildings on site & the construction of an aparthotel with hotel facilities, electricity substation, pedestrian access, ground floor café, bicycle spaces, and all associated works. The proposed aparthotel ranges in height from 3 and 7 storeys above two lower ground levels described as 6 storey plus penthouse with an overall height of 22m to James's Street, reducing towards the northern boundary; as shown in section AA on drawing no. 870-06-00.

- 2.1. The gross floor area of 6,346.8 sq m. includes ancillary staff and guest facilities, plant storage, waste/refuse storage areas and bicycle parking.
- 2.2. The main guest entrance is via the reception/café area at the south western end of the frontage onto James's Street. A service entrance and emergency exit are located towards the north-eastern end of the frontage.
- 2.3. An ESB substation is proposed at ground floor level, a double volume space at the north-eastern corner of the proposed building.
- 2.4. The layout forms three sides of a rectangle with a landscaped courtyard to the rear of the existing apartment block. There is a landscaped strip and a pedestrian

pathway from Cromwell's Quarters which extends along the north of the building and along-over about half of the eastern side of the building. The pathway is for fire access.

- 2.5. Guest bedrooms face towards the internal landscaped courtyard at all floors from the lowest level, i.e. second level below entrance level, upwards. Guest bedrooms face towards the eastern landscaped strip. These bedrooms extend only from the second level below entrance level to first floor.
- 2.6. At the northern end, the building is indented, so that the guest bedrooms in this area do not face northwards but face east and west. Guest bedrooms extend from the second level below entrance level to first floor.
- 2.7. There are no guest bedrooms at the lowest level along the western elevation, which is below the external ground level. This area is occupied by a plant room and store. At one level below entrance level part of the western boundary is below external ground level near the south western corner. There are no guest bedrooms in this location, which is occupied by staff and guest facilities. To the north of this area guest bedrooms face towards Cromwell's Quarters from one level below entrance level upwards. With allowance for the use of the south western corner as a reception area and the set back of the building line from Cromwell's Quarters at the junction with James's Street, guest bedrooms face towards Cromwell's Quarters from entrance level upwards. Guest bedrooms face towards James's Street from first floor upwards at the western portion of the site frontage, i.e. above the reception/café, and from second floor upwards at the eastern portion of the site frontage, ie. above the (double volume) ESB substation and fire escapes. These parts of the building are separated by the existing 5/6 storey apartment block which comprises No 181 James's Street. Some guest bedrooms overlook green roof areas.
- 2.8. Guest bedrooms are accessed via a corridor extending from the staircore/lifts located to the rear of the reception area north, then east and then south, running parallel to the perimeter of the building, as far as a stair core at the south eastern end of the site.
- 2.9. All floors of guest accommodation at the eastern end facing James's Street are accessed via the corridor and via a stairwell / lift located at the eastern end of the

building; where there are five floors of accommodation served by the ground floor corridor at second to sixth floor levels.

- 2.10. The portion of the building east of the inner courtyard extends only to first floor. The portion along the northern half of Cromwell's Quarters extends to second floor. The portion along the southern half of Cromwell's Quarters extends to fifth floor. Both portions facing James's Street, with the exception of the western corner along Cromwell's Quarters, extend to sixth floor.
- 2.11. An area at the north eastern corner of the site is indicated as a plant compound. It is a triangular area adjoining and to the north of the landscaped strip.
- 2.12. Bicycle parking is proposed at the level below reception, in the vicinity of a service lift.
- 2.13. A substantial retaining wall will run along the western, eastern, southern boundaries, including wrapping around No 181 James's Street. There is an existing retaining wall along the northern boundary.
- 2.14. Along Cromwell's Quarters the treated face of the retaining wall will extend above ground by 2m in places and above the wall level there will be a railing of c1.4 height. Together these form the boundary with Cromwell's Quarters. The building will be set back from the edge of the laneway by c 0.5m and a number of planters are proposed within the area between the building and the boundary edge.
- 2.15. The application is accompanied by:
 - drawings by McCawley Daye O'Connell Architects;
 - An Architectural Design Statement by McCawley Daye O'Connell Architects;
 - Daylight Assessment by BPG3;
 - Services Report by Garland;
 - Flood Risk Assessment by Garland;
 - Transport Report by Garland; Outline Plan:
 - Demolition & Waste Management Plan by Garland;
 - Screening Report for Appropriate Assessment by Openfield Ecological Services;
 - Archaeological Assessment by IAC Archaeology;

Energy Strategy Report by EDC;

Architectural Presentations / Visual Impact Assessment by Dunes Visuals Ltd;

Landscape Report by ÁIT;

Planning Report Declan Brassil & Co Ltd.;

A letter from the owner of 172-178 James's Street supporting the application; and

A copy of the minutes of a pre-application meeting.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to grant planning permission subject to 19 conditions:

- 1 Compliance
- 2 Development charge.

3 a) The apart-hotel units shall only be occupied for short-term letting periods of no more than two months and shall operate within the definition of an aparthotel as set out in appendix 16 of the Dublin City Development Plan, 2016-2022. In addition, the aparthotel shall be managed by a reception facility on the ground floor with twenty-four hour reception and security facilities. The apart-hotel units shall not be used as independent and separate self-contained permanent residential units.

b) Tthe proposed use of the development is as an aparthotel only. Aparthotel units shall not be used for the purpose of providing student accommodation. Planning permission will be required for the change of use from commercial short-term accommodation to residential.

Reason: To ensure that the development would accord with the provisions of the Dublin City Development Plan, 2016-2022, and the proper planning and sustainable development of the area.

4 All plant equipment to the north east corner of the site shall have acoustic attenuation and be located within an enclosure designed to buffer and screen the area at all times.

Reason: In order to safeguard the amenities of adjoining residential occupiers.

5 Signage subject to separate planning permission.

6 External finishes to be agreed.

7 Construction times.

8 Construction noise.

9 Street cleaning, (during construction).

10 No advertisements, banners etc

11 Sound levels.

12 No additional development shall take place above roof level, including lift motors, air handling equipment, storage tanks, ducts or other external plant other than those shown on the drawings hereby approved, unless authorised by a prior grant of Planning Permission.

Reason: To safeguard the amenities of surrounding occupiers and the visual amenities of the area in general.

13 Drainage.

14 Construction and Demolition Waste Management Plan.

15 a) The requirements set out in the Bye-Laws for the Storage, Presentation and Collection of Household and Commercial Waste, 2013 or any revision thereof must be adhered to and, in particular, the requirement to segregate waste into separate fractions to facilitate the collection of dry recyclables, organic kitchen/garden waste and residual waste in line with Waste Management (Food Waste) Regulations 2009 (S.I. 508/2009), and the Waste Management (Food Waste) Amendment Regulations S.I. 120 of 2015, and the Eastern – Midlands Region Waste Management Plan 2015-2021.

- b) The following are also requirements:
- i) Receptacles that are designed for reuse, with the exception of in specific areas designed by a local authority as being only suitable for the collection of non-reusable receptacles such as bags, ideally of 1,100L capacity, must be used.
 - ii) Adequate storage space for a minimum of 1 No. 1,100 litre receptacle.
 - iii) Sufficient space must be provided to accommodate the separate collection of dry recyclables and organic food/garden waste.
 - iv) Adequate space and height for a standard Refuse Collection Vehicle (RCV) to access site.
 - v) Sufficient access and egress must be provided to enable receptacles to be moved easily from the storage area to an appropriate collection point on the public street nearby.
 - vi) Receptacle storage areas must not be visible from or on a public street.
 - vii) The receptacle storage areas should be designed so that each receptacle within the storage area is accessible to occupants/employees of the development (including people with disabilities).
 - viii) Suitable wastewater drainage points should be installed in the receptacle storage area for cleaning and disinfecting purposes.
 - ix) Waste storage areas should not present any safety risks to users and should be well-lit.
 - x) Adequate ventilation of waste storage areas so as to minimise odours and potential nuisance from vermin/flies.

Reason: To ensure a satisfactory standard of development.

16 The application shall comply with the following waste management requirements in the planning process:

- a) The requirements set out in the Dublin City Council Bye-Laws for the Storage, Presentation and Collection of Household and Commercial Waste, 2013 or any revision thereof must be adhered to and, in particular, the requirement in the Bye-Laws to segregate waste into separate fractions to facilitate the collection of dry recyclables, organic kitchen/garden waste and residual waste in line with Waste

Management (Food Waste) Amendment Regulations 2015 (S.I. 190 of 2015), and the European Union (Household Food Waste Bio-waste) Regulations 2015 (S.I. 191 of 2015), and the Eastern – Midlands Region Waste Management Plan 2015-2021.

b) Waste storage issues should be considered at the initial apartment design stage to ensure access for all (including people with disabilities) in a brightly lit, safe and well designed area, spacious enough for easy manoeuvrability, good ventilation and ready access if required for the control of potential vermin.

c) Where storage is provided in a basement area sufficient access and egress must be provided to enable receptacles to be moved easily from the storage area to an appropriate collection point on the public street nearby.

d) The following are also requirements:

ii) To provide a three bin collection system for residents in communal collection schemes, for each type of waste: general waste, dry recyclables and organic food/garden waste. A proposal on the three bin system including bin quantity, type and frequency of collection must be submitted in writing to the Waste Regulation Unit for Dublin City Council for agreement.

17 Archaeological assessment.

18 The developer shall comply with the following conditions from the Roads and Traffic Division:

i) Prior to the commencement of the development, the applicant shall submit a servicing plan for the proposed development, including refuse collection, for agreement with Environmental and Transportation Department of Dublin City Council. The plan shall indicate how servicing and refuse collection shall be managed so as to minimise impact on the adjacent road network.

ii) Prior to the commencement of the development, and on appointment of a contractor, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including traffic management, hours of working, noise management measures and off-site disposal of construction/demolition waste.

- iii) The interface of the proposed development including boundary treatment shall be agreed, prior to the commencement of the development, with Environment and Transportation Department of Dublin City Council.
- iv) Cycle parking shall be to Development Plan Standards. Cycle parking shall be secure, conveniently located, sheltered and well lit. Shower and changing facilities shall also be provided as part of the development. Key/fob access should be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.
- v) Costs of road repair.
- vi) Compliance with requirements set out in the Code of Practice.
Reason: To ensure a satisfactory standard of development.

19 Bond.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. An initial planning report was followed by a request for further information on 5 points:

- Review the number and mix of units to provide more family friendly units.
- Greater clarity between the existing amenity enjoyed by the residents to the northern boundary and the impact: e.g. daylight, sunlight and shadow analysis. Submit revised proposals.
- Clarify proposals for north east corner.
- Review materials on elevations to Cromwell's Quarter, consider light colour.
- Consider the provision of appropriate lighting along Cromwell's Quarter boundary.

3.3. Further information response to the 5 points includes:

1 *Mix of units and more family friendly units* – the aparthotel requires flexibility. Many units are provided as flexible suites, which can be used as individual studios or family friendly options. The amended scheme can provide 51 one bedroom suites-two room; 6 two bedroom suites – three room; comprising 57% of accommodation. The number of rooms available at maximum letting has been reduced from 150 to 149.

2 *Existing amenity enjoyed by the residents to the northern boundary and the impact*: e.g. daylight, sunlight and shadow analysis – detailed daylight, sunlight and overshadowing assessment was carried out during the design phase, with the building designed in 3D using BIM software. A copy of the report was included in the planning application. Great care has been taken to ensure that the height of the proposed building does not exceed the existing structures. Resident's amenity can be improved by their removal.

Any impacts on adjoining properties are minor or negligible and well within the guidelines proposed by BRE for an urban location such as this.

The analysis does not consider existing shrubbery on the site which will be removed, and the proposed use of light coloured materials which will further enhance daylight penetration to adjoining properties.

Locations, where detailed analysis of the developments impact were carried out, are identified. The proposed building height and massing have been sympathetically considered and is appropriate for this location.

3 *Clarify proposals to north east corner* – here the mechanical plant area will be located which will have acoustic attenuation and will be located within an enclosure designed to buffer and screen.

4 *Elevations to Cromwell's Quarter* – revised proposals: selected off white/ light coloured brick with a white mortar joint. The stone plinth / shop front to James's Street and Cromwell's Quarter will be a light brown polished granite or similar. As previously shown the building addressing James's Street directly will be light red

brick with white grout on all sides; and the brick to the northern courtyard will be off white/ light coloured brick with a white mortar joint.

5 *Appropriate lighting along Cromwell's Quarter boundary* – street lighting will be integrated in the proposed railing at 3m height. The lighting has been developed using suitable fittings, which ensure light pollution/interference to existing accommodation is avoided. Suitable uplighting is to be provided in the planters at the corner. An analysis of the lighting impact is provided.

The response includes revised drawing: elevations, sections and plant enclosure drawings; and a report which includes photomontages, railing details, external lighting layout, flexible occupancy arrangements, an obtrusive lighting report by EDC and a revised report by BPG3.

3.3.1. The final planning report includes:

- Hostel and hotel are open for consideration. Therefore an aparthotel is considered an appropriate use at this location.
- The site has a stated area of approx. 2,501.9 sq m. The indicative site coverage and plot ratio standards are set out in the Dublin City Development Plan 2016-2022. Site coverage standards are 45%-60% for Z1 and plot ratio standards are 0.5-2.0. The site coverage for the proposed development is stated as 57%. The stated plot ratio for the development is 3.09.

Per the Development Plan, sustainable densities promoting the highest quality of urban design and open space will be sought by the City Council in all new developments. The density of a proposal should respect the existing character, context and urban form of an area and seek to protect existing and future residential amenity. Public transport capacity will also be used to determine the appropriate density allowable.

All proposals for higher densities must demonstrate how the proposal contributes to place-making and the identity of an area, as well as the provision of community facilities and/or social infrastructure to facilitate the creation of sustainable neighbourhoods.

Plot ratio - Plot ratios can determine the maximum building floorspace area or volume on a given site, but on their own cannot determine built form. The same area or volume can be distributed on a site in different ways to generate very different environments. Consequently, plot ratio standards need to be used in conjunction with other development control measures, including site coverage, building height, public and private open space, the standards applied to residential roads, and parking provision.

National guidance has moved away from prescriptive density, placing the emphasis on the role of good design.

The Development Plan notes that urban land is scarce and should be used as efficiently as possible. This is a reiteration of national and regional planning guidelines. The Dublin City Development Plan 2016-2022 sets no actual upper unit density limit for any zoned lands, including Z1, with each proposal to be assessed on its own merits.

The site is in need of regeneration. Redeveloping this brownfield land and providing active frontage onto public spaces and the street will provide some much needed vibrancy and footfall to this prominent location along James's Street and Cromwell's Quarter. It is considered, given the historic and prominent location of the subject site, that any new scheme on the lands should be of exceptional architectural quality.

The area is identified as 'low rise' where a maximum height of 28m is set.

Plant is provided at level - 02 and not at roof level.

The design is considered appropriate.

CGI images taken at critical points in the immediate vicinity are provided.

The 6 storey building will greatly enhance the streetscape along James's Street while providing a strong focal point demarcating Cromwell's Quarter and also providing passive policing along Cromwell's Quarter. The construction of a 6 storey building along James's Street, in this instance, is considered acceptable.

The reporting planner has some reservations regarding the potential impact of the proposal in particular the impact on adjoining residential amenities along Bow Lane West. The development proposes set-backs to the northern boundary of the site which will limit the impact on the existing dwellings along Bow Lane West. Further information has been submitted by the applicant providing greater clarity between the existing amenity enjoyed by the residents to the northern boundary and the impact of the proposed scheme.

Chapter 4.5.9 Urban Form and Architecture

The proposed development, by removing the hoarding and extending the building line out to the public footpath, will enhance the public realm.

The use of large picture windows and double height entrance into the proposed aparthotel at ground level along James's Street is likely to animate the street and provide generous natural light into the building. The café at ground level will provide footfall and vibrancy to the street.

Elevations are punched with recessed large 'picture' windows which have a rhythm and proportion on all sides. Finishes include selected brickwork, stone plinth with a darker brick proposed to the elevation along James's Street and lighter brick to Cromwell's Quarter.

City Development Plan

SC28

To promote understanding of the city's historical architectural character to facilitate new development which is in harmony with the city's historical spaces and structures.

The proposed finishes tie in with the palette of Dublin 8. The contemporary design, solids interspaced with glazing, is considered acceptable.

The light colour will make Cromwell's Quarter brighter.

A management plan for the aparthotel can be addressed through condition.

Impact on adjoining residents – a number of observations were received regarding potential blocking of natural light/sunlight into neighbouring properties in particular the residential building to the north on Bow Lane West. The applicant has submitted a daylight assessment prepared by BPG3 consulting, outlining the potential impact of the proposal on neighbouring property.

The report states that the setbacks of the building along the northern boundary have been designed to ensure that the existing buildings on Bow Lane West will experience minimal levels of impact.

Parking standards - 1:30 bedspaces for hostel; 1:3 per room for hotel / guest house; none to be provided; city centre location close to public transport.

Bicycle parking standard 1 per 15 bedrooms; proposed 15 spaces at lower ground floor accords with standards.

Archaeological Report – archaeological testing required.

Natura Impact (NI) screening report – AA stage 2 not required.

The planner's report considers the further information responses acceptable.

Recommending permission.

3.3.2. Other Technical Reports

3.4. Engineering Department – Drainage Division

Separate system with combined final connection required.

SUDS with attenuation of surface water to two litres per second.

Effluent discharge licence required.

Outfall manholes to be constructed in accordance with CoP for Development Works – drainage.

Flood Risk Assessment Revision A, submitted - site specific flood risk assessment shall be adhered to and implemented.

3.4.1. Roads & Traffic Planning Division

The location is 200m from James's Street LUAS stop and served by existing bus services. Heuston Station is 0.5km away and serves Inter City and Commuter trains. Dublin Bike depots are within walking distance, at the St. James's campus and at Mount Brown.

The development allows a maximum of 1 car space per 3 rooms and 1 cycle space per 12 bedrooms. No objection to zero parking as proposed. A minimum of 15 bike parking spaces will be provided at lower ground accessed via the service lift.

The primary construction access will be from James's Street.

Waste refuse storage – bin storage is shown at level 002 Lower ground level. No details of refuse collection are given. Details to be submitted regarding how refuse collection will be managed so as to minimise impact on the surrounding road network.

Servicing details are limited. A service entrance is shown to James's Street. There are double yellow lines along James's Street adjacent to the proposed development. Delivery / services should be managed so as not to obstruct traffic along James's Street and pedestrians along the public footpath adjacent to the proposed development.

A fire exit footpath is proposed to surround the building footprint at the boundaries and will exit the site at Cromwell's Quarters alleyway.

Recommending conditions – attached as condition 18 of the decision.

3.4.2. Waste Regulation Section – Waste Management Division – recommending conditions, reflected in conditions 14, 15 and 16 of the decision.

3.4.3. City Archaeologist – site is within the zone of archaeological constraint for the recorded monument Dublin City and within the Zone of Archaeological Potential in the City Development Plan. The archaeological assessment submitted with the application recommends mitigation: it is recommended that, following demolition within the proposed development area, a programme of archaeological testing be carried out. This should be undertaken by an archaeologist under licence to the

Department of the Arts, Heritage, Regional, Rural & Gaeltacht Affairs. It is the developer's responsibility to ensure full provision is made available for the resolution of any archaeological remains that may be discovered, both on site and during the post excavation process, should that be deemed the most appropriate manner in which to proceed. Recommending condition reflected in conditions 17 of the decision.

3.4.4. The decision was in accordance with the planning recommendation.

3.5. **Third Party Observations**

Observations on the file from:

Cllr Tina MacVeigh

Ceannt Fort Community Resident's Association

Mairead McNamee & A McNamee Royal Court, Bow Lane West

Ronan McDonnell

Natasha West, Royal Court Bow Lane

Ciaran Kearney Royal Court, Bow Lane West

Willie Kearney Royal Court, Bow Lane West

Lourda Finn, Royal Court, Bow Lane West

David Keane, Royal Court, Bow Lane West

have been read and noted.

4.0 **Planning History**

The site:

1688/05 planning permission granted for change of use (No 180 James's Street), from existing garage into temporary doctor's surgery, existing door and window to be removed and new door and 5 windows to be installed.

0841/97 planning permission refused for change of use of snooker hall to car sales/servicing/showrooms/offices and car compound to front, with advertising to front of building.

PAC 0096/17 - Pre planning.

On the opposite side of Cromwell's Quarter (from the DCC website):

2559/05 planning permission refused for stepped 5 storey block of residential development, for 3 reasons:

1 - The proposed development would, having regard to the proposed internal layouts and size requirements of the Dublin City Development 2005-2011 (15.9.4) constitute a sub-standard and inappropriate mix of residential development...

2 - The proposed development having regard to the lack of any proposed off-street car parking would materially contravene the requirements of the Dublin City Development Plan 2005-2011 (Table 15.1)...

3 - The proposed development having regard to the site area and the proposed bulk, scale and design of the development as currently configured would constitute an inappropriate overdevelopment of the site and as would be contrary to the Dublin City Development Plan...

5.0 Policy Context

5.1. Development Plan

5.2. The Dublin City Development Plan 2016-2022 is the operative plan. Relevant provisions include:

The site is zoned Z1 - to protect, provide and improve residential amenities.

The vision for residential development in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.

In both new and established residential areas, there will be a range of uses that have the potential to foster the development of new residential communities. These are uses that benefit from a close relationship with the immediate community and have high standards of amenity, such as convenience shopping, crèches, schools, nursing homes, open space, recreation and amenity uses.

The list of permissible uses reflect the foregoing whereas those open for consideration are more diverse and include hostel and hotel.

Zoned land must accommodate the expected growth in population and other growth needs of Dublin city within the lifetime of the plan. There is circa 440 hectares of available zoned residential land that is capable of meeting a target of circa 29,500 units for the period 2016 – 2022 as per the core strategy.

That intensification of sustainable development should be permitted adjacent and close to public transport nodes and corridors in order to maximise the use of public transport, to minimise trip generation and distribution and to promote sustainable development.

A conservation area adjoins the northern boundary.

Chapter 16.4 density standards sited.

16.5 plot ratio cited

Urban Form and Architecture (4.5.9) Well-considered urban design and architecture, through its context to the public realm, use of materials and finishes, can make a positive contribution to the townscape and urban environment, and can improve the environmental performance, competitiveness and attractiveness of the city.

Making Sustainable Neighbourhoods (4.5.8) The importance of creating good neighbourhoods is imbued throughout the development plan, with regard in particular to residential, community and connectivity perspectives. However, these aspects must be fully integrated with the physical shape of neighbourhoods, which together contribute to the form and structure of a consolidated city.

The City Council's aim to physically consolidate the city includes the goal of bringing vacant or under-utilised buildings into use, thereby preventing urban sprawl and optimising the use of scarce urban land, a finite resource.

It is policy (CEE12) to promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels, apart hotels, tourist hostels, cafes, and restaurants, visitor attractions, including those for children.

It is policy (QH 11) to ensure that developments and refurbishments should be designed to promote safety and security and avoid anti-social behaviour including by maximising passive surveillance of streets, open spaces, play areas and surface parking.

Appendix 16 sets standards for aparthotels, which can provide tourists and visitors with the flexibility, space and luxury of a fully furnished apartment managed and serviced like a hotel with accommodation ranging in style and luxury from apartment suites containing a number of bedrooms, to open plan studio-style units. As a minimum they should include: a fully serviced reception desk and administration facilities, concierge, security and housekeeping facilities; and may contain entertainment and uses considered to be associated with the management of the aparthotel. The provision of food and refreshment facilities is also desirable but regard will be had to the level of amenities accessible within the immediate area.

The design and layout of the aparthotel units should be such to enable the amalgamation of individual units to cater for the needs of visitors, especially families.

A range of different unit styles and sizes will be required in order to cater for the needs of visitors; the planning authority will resist the over-provision of single-bed aparthotel units and shall require a mix of unit sizes and styles.

5.3. **Urban Design Manual A Best Practice Guide**

A companion document to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009, Environment, Heritage and Local Government.

Re. daylight, sunlight and energy efficiency - where design standards are to be used (such as the UK document Site Layout Planning for Daylight and Sunlight, published by the BRE), it should be acknowledged that for higher density proposals in urban areas it may not be possible to achieve the specified criteria, and standards may need to be adjusted locally to recognise the need for appropriate heights or street widths.

To achieve people friendly streets and spaces the layout should focus activity on the street by creating active frontages with front doors directly serving the street.

5.4. **Natural Heritage Designations**

The nearest natura sites are South Dublin Bay SAC and the South Dublin Bay and River Tolka SPA, both c 2.5km from the site.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The third party appeal against the decision to grant permission has been submitted by Thornton O'Connor Town Planning, supported by a report by Chris Shakleton Consulting reviewing the daylight assessment; on behalf of Ronan McDonnell, Tahony House, Bow Lane West, Kilmanham. The grounds includes:

- The third party's site is located on the opposite side of Cromwell's Quarter a laneway measuring approximately 7 metres at it's widest point and 5.3m at its narrowest, between the subject site and the third party's site. The laneway changes in level from James's Street to Bow Lane West accommodated by steps, known locally as the forty steps.

- The third party is concerned regarding the design and form of the development which, as currently proposed, will have a severe negative impact on his property and on the running of his business.
- The third party is concerned that the loss of daylight will impact on his business and also that it may hamper future development potential of his property. It represents overdevelopment of the site that, if permitted, will seriously impact the amenities and property rights of his property.
- The lack of active frontage onto the laneway is a cause for significant concern.
- The third party's concerns were not addressed in the planning officer's report.
- The request for further information on daylight did not address the impact on Tahony House as raised by them, or discrepancies in the daylight impact assessment raised in their objection: that there are 2 locations assessed (points G and H) relating to Tahony House which are upper floor level rooms. Nor did it address the objection that point 'H' is so far north that it does not even appear to be directly opposite the proposal, or at least at the very edge. They requested the planning authority to seek a robust daylight impact assessment.
- The third party's daylight specialist, Mr Chris Shakleton, advises that the application is inconsistent in how it assesses daylight impact on various neighbours. Only first floor windows were tested.
- The loss of daylight is 63% at point 'G' which should not be deemed negligible.
- Mr Shakleton's assessment is that the two points tested fail.
- Mr Shakleton's concludes that the use of a target of 9.1% in the BPG3 report, as against the standard of 27%, by using Cow's Lane as a reference, is unacceptable, as Cow's Lane is c 2km away and in a completely different context.
- The standard VSC (Vertical Sky Component) set as good practice in the BRE guidance document, is 27%. The proposed 9.1% represents only $\frac{1}{3}$ of that

value. If this is accepted, then it sets a new precedent and thus design target for other developments and for impact on neighbours.

- Previously the third party was informed by Dublin City Council of their concerns regarding the quantum of natural lighting that the hostel receives that:

adequate natural lighting was not provided. Every room used as a habitable room must have adequate natural lighting. This contravenes Article 10(1) of the Housing (Standards for Rented Houses) Regulations 2008.

- Mr McDonnell has since been unable to rent one hostel unit. If the subject development is granted in its current form he is concerned that the additional reduction in daylight will result in him being required to cease to use other rooms, which would likely lead to the closure of his business.
- The development will hamper future development of his property. The planning authority did not consider this as requested.
- A significant number of windows, located 5.3m from his property, will overlook it. If he proposes a similar residential / hotel use in the future with a similar number of windows in the eastern elevation he may have significant difficulties because of the windows opposite.
- A development at Drimnagh Road is referred to: (PI29S.246433): refused by the Board because of impact on future development potential of the neighbouring site. The Board is requested to have regard to reason no. 2 which is cited as relevant to the present case:

2. The proposed development, by reason of its arrangement and layout, including the inadequate separation distance between proposed balconies and windows (within 1.6 metres) from the party boundary with the adjacent commercial site to the east, would seriously compromise the future development potential of that District Centre site, and depreciate the relative value of same, by imposing significant constraints to the possible arrangement of development thereon necessary to protect the amenity, in terms of light, privacy

and visual amenity of the proposed residential units (numbers 03, 04, 08, 09, 12, and 13). The proposed development would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

- A development at James's Street is referred to: (Reg Ref 5282/08), within which a previous split decision (Reg Ref 6012/07) was referred to in the assessment: that Block B was refused for the reason:

Having regard to its configuration, massing and close proximity to properties on the adjoining sites, it was considered that the proposed development would seriously injure the residential amenities and/or development potential of property in the vicinity by reason of overshadowing, overlooking and visual intrusion. A reconfigured reduced block B was submitted and because the extent of glazing along the gable elevations and given the separation distances to the boundaries they were requested to indicate that the proposed units will gain sufficient light if a similar development occurs on the adjoining site to the west. Revisions with reduced glazing on these elevations was submitted in response and details showing that glazing on other elevations was sufficient to ensure full and direct natural light to all units.

- The Board is requested to require any development to ensure that the quantum of glazing respects the future development potential of Tahony House and to ensure that if Tahony House is subject to a similar development, in the future, the subject aparthotel will receive sufficient light.
- The third party considers that the massing has failed to harmonise with the scale and arrangement of adjacent structures and will have a severe negative impact on the third party's property. A refusal reason in a decision by Dublin County Council for development on the third party's property (Reg Ref 2559/05) is referred to, which cites bulk, scale and design, and inappropriate development. A drawing of the eastern elevation of that development proposal is provided. The third party states that it was less bulky and overbearing than the subject development.

- A development permitted in 2006 on the first party's site, has expired.
- The plot ratio is excessive.
- Lack of frontage onto the laneway will negatively impact on the vitality of the area.
- Appendix 14 of the CDP is cited.

New developments and refurbishments should be designed to promote safety and security and avoid anti-social behaviour by maximising passive surveillance of streets, open spaces, play areas and surface parking.

- Ground floor uses should be active to provide a safe and secure route for pedestrians and bedroom / apartment windows should not be located at ground floor. Active ground floor uses would allow for natural surveillance.
- The architectural design statement refers to addressing the laneway and that it is an unwelcoming place and will benefit from regeneration, however the ground floor uses will further compound the current unwelcoming presence of the laneway.
- Dublin City Council's assessment of the former Myra Glass site (Reg Ref 2164/17) is referred to, for a development which proposed amendments to a previously permitted development Reg Ref 2246/15. A request for additional information on 2246/15 included:

The applicant is requested to consider the omission of the ground floor bedrooms facing out onto Kevin Street Upper as they will provide for a poor quality amenity and to reconsider incorporating the floor area into the proposed lounge area, which will provide for a more active street frontage.

- The condition attaching to 2164/17, requiring the omission of two proposed bedrooms, is cited.
- These are cited as evidence that DCC consider ground floor bedrooms as unacceptable.

- The Board is requested to have regard to previous decisions in respect of the need to promote active street frontage and refuse permission for the development in its current form with a substantial number of ground floor bedrooms facing Cromwell's Quarters which will play no role in improving the safety, security or quality of public realm at this location and contravenes Appendix 14 of the Development Plan.

6.2. The grounds attach a report from Chris Shakleton Consulting reviewing the daylight assessment BPG3 Rev 1.

Citing BRE guidelines regarding the Vertical Sky component calculated from the centre of all potentially impacted windows and evaluating this against a target percentage and or reduction factor of less than 0.8, clause 2.2.7 of the guidelines:

If this VSC is greater than 27% then enough skylight should still be reaching the window of the existing building. Any reduction below this level should be kept to a minimum. If this VSC, with the new development in place, is both less than 27% and less than 0.8 times the former value, occupants of the existing building will notice the reduction in the amount of skylight. The area lit by the window is likely to appear more gloomy, and electric lighting will be needed more of the time'.

His assessment of the points are:

'F' Novis Hostel, a 34% reduction, fail;

'G' Tathony House Hostel, 63% reduction, fail;

'H' Tathony House Hostel, 0.82 of former reduction pass; and

'I' Royal Court, 0.77, 23%, fail.

The report notes that ground floor windows would be impacted even more.

It also notes that the core contention is the application of different criteria for different neighbours; that it was determined that the conventional standards which the BRE recommends for daylight would not be compatible with the section of the development which flanks Cromwell's Lane and would impose inappropriate constraints on the form of development which could be achieved in this location. No explanation was given.

He notes that there is nothing intrinsically wrong with setting alternative targets. Using Cow's Lane as a base, calculations were completed which resulted in an average angle of 56.5° and, interpolated from table C1, would yield a VSC target of 9.1%. Using Cow's Lane as a reference is unacceptable, as Cow's Lane is c 2km away and in a completely different context; dead centre of the city and surrounded by existing tall developments 5-6 stories high, and not comparable.

The proposed 9.1% represents only $\frac{1}{3}$ of the good practice value of 27%. If this is accepted, then it sets a new precedent and thus design target for other developments, and for impact on neighbours, and is well below the values expected by other councils.

He cannot find reference to any planning / urban design guidance as to why Cow's Lane was selected, other than it was a street that met a requirement to give a low VSC (daylight) value, which in turn met the applicant's development strategy.

To be applicable as a reference for this development, Cow's Lane needs to be a location which delivers the 'special requirements' defined in Appendix F of the BRE guidelines:

Different targets may be used based on the 'special requirements of the proposed development or its location. Such alternative targets may be generated from the layout dimensions of existing development, or they may be derived from considering the internal layout and daylighting needs of the proposed development itself.'

He questions whether the proposed development would be un-neighbourly and prejudice other development in this area including that of his client and so impact on the value of his land.

2.3.1 of the guidelines gives guidance on how to assess such impact:

From a daylighting standpoint it is possible to reduce the quality of adjoining development land by building too close to the boundary. A well designed building will stand a reasonable distance back from the boundaries so as to enable future nearby developments to enjoy a similar access to daylight. By doing so it will also keep its own natural light when the adjoining land is developed.

He considers that despite the impact on No 178 James's Street being discounted because the owner has compromised, the right to adequate daylight and sunlight for current and future users or owners of this building still needs to be considered and the letter provided with the application should be set aside and the analysis expanded to include impact here.

6.3. Applicant Response

A response to the grounds of appeal has been submitted by Declan Brassil & Company Ltd on behalf of the first party. It includes:

- The response is informed and supplemented by specialist daylight and sunlight assessment results from BPG3 consultants.
- The development is supported by DCC and is consistent with the zoning and will contribute towards achievement of economic and tourism objectives and policies CEE15, CEE12.
- It is estimated that the ground level is some 4.5m (at the northern end of the site) to 10.75m at the southern end, higher than the prevailing level of Bow Lane West to the north.
- Responses to the grounds of appeal are stated to be submitted under the headings:
 - Potential for adverse daylight impacts and continued operation of hostel.
 - Potential impact on development potential of hostel site.
 - Overbearing scale of development.
 - Inappropriate interface with laneway would undermine vitality of area.
- Re. **Daylight** – a cover letter and supplementary daylight assessment prepared by BPG3 is attached. It addresses the concerns in respect of the daylight assessment methodology, the interpretation of results and identification of any resultant impacts. It also provides a comprehensive assessment of all windows in the eastern elevation of the hostel.
- There are no discrepancies in the daylight assessment and the interpretation of results.

- The misinterpretation arises from the dismissal of the association of Cow's Lane, as an appropriate alternative target baseline.
- The supplementary assessment provides a robust case in support of setting alternative daylight target values and justification for use of Cow's Lane as a target baseline.
- Both lanes are orientated in the same axis, both are in the same city quarter despite their physical separation, and both are narrow and fronted by some form of residential use. They submit that the use of Cow's Lane daylight levels as a revised target baseline, impose a more stringent requirement on the applicant than would otherwise be the case.
- The residential use on Cow's Lane is apartments. The proposed use and established use is proposed aparthotel and existing hostel, presenting a different use and character, being use on a short term basis, and not constituting normal places of residence. It is submitted that in a city centre context it is unreasonable to expect that the daylight amenity standards applied to transient and permanent uses would be comparable or equivalent.
- Figures 1 and 2 of the submission clearly illustrate that existing daylight penetration to the hostel rooms, at the lowest levels to the eastern elevation, are already highly compromised by their position hard-up against the Cromwell's Quarters building line, which in turn demands defensible security measures such as the heavy vertical 'burgler bars' and dense protective mesh to the inside thereof.
- The windows are at ground level and recessed within deep walls. The deep window cills and treatment thereof in dark paint aids little to reflect light into these rooms. Were the hostel site to be considered for redevelopment, a similar design solution as proposed on the appeal site would be appropriate – setting the building slightly back from the existing building line to create a defensible space between window locations and the public realm and to incorporate sensitive siting, treatment and proportioning of windows. This approach would aid significantly in improving daylight conditions to the hostel site.

- The claim that the daylight impacts on the hostel will be so material and significant that it would undermine its continued operation, is not accepted. It was intended to redevelop the site. The proposed aparthotel facing the site would establish a significantly improved context for the future redevelopment and would create less constraints than a residential development which is also permissible in principle.
- Re. the comparator Cows Lane; it is acknowledged that high levels of daylight cannot always be guaranteed, especially in highly urbanised contexts, which the BRE anticipates; hence the provision of the alternative methodology.
- The appellant has failed to demonstrate that such an alternative methodology is unacceptable; and does not recognise the regenerative and economic benefits of the development.
- A redevelopment of the hostel site would complement and enhance the regenerative benefits.
- Sound principles of land use and urban design, coupled by the significant regenerative and economic benefits, must be given significant and appropriate weighting when considering aspirational VSC daylight targets. A dated city hostel building that is suitable for redevelopment should not be permitted to frustrate regenerative objectives of the city and stifle good quality much needed development of valuable urban land.

Potential impact on development potential of hostel site:

- **Re. Windows overlooking and detracting from development potential: ABP decision Drimnagh Road; DCC's decision to the east at No 179 James's street; the physical separation provided by Cromwells Quarters is inadequate.**
- The historic relationship will be improved by setting the building line back by approx. 1m, from Cromwells Quarters, while this was incorporated primarily to create a defensible buffer between the low level windows and the public realm, it also effectively increases the separation distance between opposing windows.

- Having regard to the inner-city context, the transient nature of the aparthotel use and the hostel use it would be unreasonable to expect generous separation distance. The precedent is in a different context.
- Cow's Lane is a suitable comparison to illustrate that inner city living demands a lesser degree of physical separation, where expected privacy levels are less.
- Cow's Lane is 8m in width separating apartments with directly opposing windows; yet providing good quality accommodation.
- The development (permitted 3172/14, but not yet developed) directly to the north of the site and at the boundary of Cromwell's Quarters provides a number of habitable room windows and roof terraces serving residential apartments immediately opposite the hostel. The hostel owner has not objected to this proposal on either daylight or overlooking although it presents a much more intimate relationship with the eastern elevation of the hostel building. This sets a precedent for acceptance of dense urban development along the eastern boundary of Cromwell's Quarters.
- The massing, position and design of the western elevation of the proposed aparthotel has been sensitively considered to complete development along Cromwell's Quarters. Elevations of the permitted development are shown and floor plans of the permitted development 3172/14, are provided.
- **Re. Overbearing scale of development.**
- The site benefits from generous frontage onto James's Street. This is the significant difference between the sites.
- While the massing and height of the proposal under 2559/05 was informed by the existing 3 storey building to the south fronting James's Street, the massing and scale of the subject development was the requirement to provide an appropriate urban design response along James's Street, and the site's surrounding context and topography. The planner's report is cited.
- Re plot ratio, the planner's report is referenced as is the City Plan which states that plot ratio is subservient to building height as an appropriate

development control standard. The justification in the applicant's planning report that accompanied the application is restated.

- The site represents a finite land resource in the form of an underutilised brownfield site that occupies a highly accessible inner city location. The proposed height and massing ensures compliance with all relevant development plan standards while respecting the established context and ensuring no significant adverse impacts on adjoining or adjacent residential amenities. It is inappropriate to compare previous massing proposals on the hostel site on a like for like basis with the appeal site.
- **Re. Inappropriate interface with laneway would undermine vitality of area – increased security risk due to inactive street frontage and precedent 2246/15, where the planning authority refused to accept bedroom windows at ground floor.**
- The argument is inconsistent with the permission obtained for residential development on the hostel site.
- The laneway is not suitable for retail or other active type uses at lower levels, which rely on high levels of footfall and adequate servicing arrangements, due to steep gradient and low intensity pedestrian thoroughfare. Active uses are provided along James's Street.
- The proposed development is set back with a defensible space created by railings at the lower levels. The provision of windows at all the levels along the lane will aid in providing passive surveillance, greatly improving safety and security conditions.
- Detailed lighting proposals are proposed along the lane.
- The proposed development would significantly enhance the attractiveness and safety of the laneway; the planner's report is cited in this regard.

BPG3

- Their letter is attached stating that the alternative assessment approach and the use of Cow's Lane as the reference standard is appropriate.

- Re. the contention that the loss of skylight for point 'G' should not have been reported as negligible, guidance on how to classify impacts, following appendix 1 BRE guide:

Where the loss of skylight or sunlight fully meets the guidelines in this book the impact is assessed as negligible or minor adverse. At point 'G' with the proposed development in place the skylight levels was found to be 28% above the baseline target, predicated on the alternative baseline approach (as outlined in app 'F' BRE guide).

- Permissive interpretation of the guidelines is mandated in BRE and the DoEHLG Urban Design Manual 2009. In the exigency of making best use of scarce urban land, securing suitable levels of urban density and providing appropriate levels of street frontage. It is valid and necessary in this case to avail of the flexibility which exists within the guidelines.
- It is only reasonable that impact levels should be assessed and interpreted against this new baseline. At point 'G' levels will be 29% above the baseline target and negligible adverse. The contention that this should have been reported a failure represents a fundamental misinterpretation and misapplication of the guide.
- Re. robustness and number of receptor points – it is seldom feasible to carry out an exhaustive assessment of every sensitive window. Usually a representative sample is used.
- Two were used in the case of Tathony House; selected because they were deemed to be capable of capturing a level of impact which would provide a fair representation of the general impact which would register on the wider set of windows present. The assessment of lower level windows was discounted because they were deemed to be located unusually close to the ground. The neglected appearance also suggested that the rooms they served were of secondary importance.
- Without prejudice, an additional assessment of Tathony House with an expanded set of receptor points has been carried out. The results indicate that substantial levels of compliance with the BRE guidelines will be achieved. The majority of the accommodation located on the eastern elevation of the

Tathony House Hostel will receive levels of skylight which are at least as good as the baseline levels which prevail in Cow's Lane.

- Table 1 of the attached report refers.

A further report BPG3 is attached to the response, which includes:

- It was determined that the development of appropriate street frontage would require the specified daylight criteria to be locally adjusted. Cromwell's Lane is an important, yet somewhat marginalised, pedestrian thoroughfare. The design response has been to set a strong urban frontage along this lane in order to help define the urban block, to create welcome levels of enclosure and to increase levels of passive surveillance.
- Cow's Lane was selected because both lanes are pedestrian, both are orientated north/south and both are narrow, less than 8m wide. This lane has been selected because it demonstrates how the exigencies of compact urban form and daylight amenity can be reconciled to create a pleasant urban neighbourhood.
- On the basis that the established residences on Cow's Lane enjoy adequate levels of skylight at present, it is reasonable to assume that this level of skylight provision will also be acceptable for the quasi-residential hostel accommodation abutting the western edge of Cromwell's Lane.
- A total of 33 analysis points have been assessed.
- Ridge height 22.24m
- Table 1 gives the results as

VSC results for assessment points located on the eastern elevation of Tathony House					
Point	Existing L	Target L	Proposed L	Departure from target	Predicted impact
A	19.3	9.1	7.9	-13%	Minor adverse
B	30.5	9.1	10	10%	Negligible
C	17.6	9.1	7.5	-18%	Moderate adverse
D	30.8	9.1	10.7	18%	Negligible
E	16.7	9.1	7.5	-18%	Moderate adverse

F	30.7	9.1	10.9	20%	Negligible
G	16.9	9.1	7.7	-15%	Moderate adverse
H	31.5	9.1	12.3	35%	Negligible
I	19.2	9.1	8.4	-8%	Minor adverse
J	31.9	9.1	13.8	52%	Negligible
K	23.9	9.1	9.8	8%	Negligible
L	31.8	9.1	16.3	79%	Negligible
M	26.7	9.1	12.1	33%	Negligible
N	29.7	9.1	22.9	152%	Negligible
O	24.8	9.1	15.3	68%	Negligible
P	18.9	9.1	12.1	33%	Negligible
Q	18.1	9.1	12.4	36%	Negligible
R	22.8	9.1	16.2	78%	Negligible
S	27.3	9.1	23.5	158%	Negligible
T	13.6	9.1	9.7	7%	Negligible
U	18.4	9.1	14.7	62%	Negligible
V	24.5	9.1	22	142%	Negligible
W	11.7	9.1	9.7	7%	Negligible
X	16.6	9.1	14.7	62%	Negligible
Y	23.4	9.1	22	142%	Negligible
z	12.5	9.1	11.4	25%	Negligible
AA-AG	See report				Negligible

The conventions used in the impact classifications are outlined in appendix D

Appendix D

Relationship between predicted Vertical Sky Component (VSC) in the after-development scenario and baseline scenario	
	Associated impact classification
Above Target	Negligible

Between 0-15% below target	Minor adverse
Between 15-30% below target	Moderate adverse
Greater than 30% below target	Major adverse

While it must be acknowledged that a significant drop in skylight levels will register on some of the windows on the eastern elevation of Tathony House as a result of the proposed development, these reductions can be accommodated within the BRE assessment methodology.

Assessed against the Cow's Lane standard it is possible to conclude that substantial levels of compliance will be obtained.

Of the 33 points assessed 28 85% have been found to either meet or exceed the baseline target adopted. In the small number (15%) of cases, where full compliance has not been possible, the magnitude of departures are found to be towards the lower end of the scale, ranging from moderate to minor adverse. The windows where departures have been identified are particularly susceptible to daylight impact as they are located unusually close to ground level. In this case extending the full protection of the BRE guidelines to these low level windows would place undue restrictions on the development height that could be pursued on the adjacent site. It may be appropriate to extend a degree of relief to the identified departures on this basis.

The windows are heavily barred or grilled, are set within deep reveals and are served with sills that are painted dark in colour. All these features suggest that light penetration through these windows is not critical to the use of the room which they serve and they may not necessarily serve habitable rooms, or if they do that these rooms are of secondary importance to the main quantum of habitable rooms in the building. It may be appropriate to extend a degree of relief to the identified departures on this basis.

6.4. **Planning Authority Response**

6.5. Planning Authority have responded to the grounds of appeal referring the Board to the planner's report.

6.6. Further Response

6.7. The third party has submitted a response to the first party response to the grounds of appeal. The submission by Thornton O'Connor Town Planning, is supported by a further report by Chris Shakleton Consulting reviewing the daylight assessment. The response includes:

- Mr Shakleton's previous submission concluded that the daylight assessment submitted as part of the planning application is inconsistent with the BRE report methodology and demonstrates a 63% reduction in daylight to a first floor level window at the third party property, which demonstrates failure to comply; and that the applicant seeking to define a revised VSC of 9.1% as against the standard 27% by using Cow's Lane as a reference is unacceptable because Cow's Lane is c 2km away and in a completely different context. Mr Shakleton could find no planning / urban design guidance as to why Cow's Lane was selected other than it was a street that met a requirement to give a low VSC (daylight) value which in turn met the applicant's development strategy.

- Due to the clear difference of opinion between BPG3 and Mr Shakleton, relating to the appropriateness of the use of the Cow's Lane methodology, the author of the guidelines was written to, in order to seek clarification. His response is quoted as:

normally you would be looking at a typical (not a worst case) example from the immediate vicinity. I would be suspicious of an exemplar from 2km away, as it implies that the consultants had difficulty finding such a low vertical sky component in the areas closer to the site. 9.1% is an unusually low vertical sky component and I would be surprised if this was typical of Dublin as a whole.

- The proposed development would impact a significant number of windows (20, or 80% of those immediately adjacent) reducing skylight available to them by an average of 57%.

- The impact should be categorised as 'major adverse'.

- Refusal is requested.

- The first party statement that 'it is clear that it is intended to redevelop the site' is referred to. The third party does not intend to re-develop the site. The hostel units

currently play a very important housing role for a number of migrant families that are in receipt of rent allowance. During the current acute housing crisis it is very difficult to find landlords who accept rent allowance and the ability to operate as a hostel is critically important. As done previously, reference is made to the Dublin City Council's requirement for habitable rooms to have adequate natural light.

- The potential to hamper the future development potential of the site is reiterated and a Board refusal reason, previously cited, is restated. It is stated to be of equal relevance in Dublin 8 as Dublin 12. The sheer number of windows proposed, just five metres from the boundary will make it virtually impossible to obtain planning permission for any future redevelopment of the third party site.

6.8. A further report from Chris Shakleton Consulting reviewing the response re. daylight assessment, includes:

- Windows 'A' to 'R' directly face the development with 'S' to 'Y' peripherally impacted. It is unlikely that 'Z' to 'AG' will be affected much but they were included in the analysis.
- Clause 2.2.7 of BRE, as previously cited, is referred to and a table assessing the impact is provided.
- Of the 34 windows tested 20 or 59% would fail the standard test. If the windows across from and adjacent to the proposed façade are considered it would be 20 out of 25, 80%, and the average reduction would be 57%.
- Dublin City Council are already concerned with the light levels in Tathony House. The results show that there will be a significant reduction in skylight levels. Light to these windows is important since the usage is covered in clause 2.2.2 of the guidelines as hotel/hostel.
- Mr Shakleton does not accept the use of Cow's Lane as a target, and refers to consultation with Dr Paul Littlefair, the author of the guidelines, in this regard. It is reiterated that acceptance of such a reduced revised target would set a new precedent for using this VSC of 9.1% for other developments in Dublin City. The proposed target, as Dr Littlefair notes, is unusually low and is well below the BRE standard guideline of 27% expected by other councils. 5 windows fail to pass even these nominal targets.

- It is pointed out that reductions run as low as 0.33 ie. 67%, to windows which previously received good or reasonably good skylight.
- Dr Paul Littlefair's correspondence, which is provided, is referred to in relation to clarification of the classification of impact as negligible or otherwise. Dr Littlefair states that Paragraph 15 makes it clear that a negligible impact only applies where the loss of skylight or sunlight fully meets the guidelines and is well within them. Accordingly, an adverse impact would be correct. In classifying that impact you would have to balance any factors tending towards a major adverse impact (paragraph 17) against the last bullet in 16 ('there are particular reasons why an alternative less stringent guideline should be applied').
- Fully meets the guidelines being:
either the 27% or 0.8 times the previous VSC. Using a (reasonable) alternative target is allowed in the guidelines, but could still result in a significant impact on the people losing light.
- Mr Shakleton considers the negligible classification is not applicable. In this regard clauses 16 and 17 of the guidelines are cited.
- Clause 16 specifically refers to developments where the guidelines are not met and where appendix F reductions are applied.

Clause 16:

- Factors tending towards a minor adverse impact include:
 - Only a small number of windows or limited area of open space are affected
 - The loss is only marginally outside the guidelines
 - An affected room has other sources of skylight or sunlight
 - The affected building or open space only has a low level requirement for skylight or sunlight
 - There are particular reasons why an alternative, less stringent guideline should be applied,

It is clear that clause 17 better matches the BPG3 results.

Clause 17:

- Factors tending towards a major adverse impact include:
 - A large number of windows or large area of open space are affected
 - The loss is substantially outside the guidelines
 - All the windows in a particular property are affected
 - The affected indoor or outdoor spaces have a particularly strong requirement for skylight or sunlight, e.g. a living room in a dwelling or a children's playground.
- It is also noted that each neighbouring property should be assessed separately.
- Mr Shakleton would classify the impact as major adverse.

6.9. Copies of correspondence by e-mail between Mr Shakleton and Dr Paul Littlefair is attached.

7.0 **Assessment**

7.1.1. The issues which arise in relation to this appeal are appropriate assessment, the principle of the development, urban design and security, daylight, overlooking, overbearing impact, and designing for the site, and the following assessment is dealt with under these 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. **Principle of the Development**

7.4. The site is in an area zoned Z 1 with the objective to protect, provide and improve residential amenities. The proposed aparthotel would displace potential residential development.

- 7.5. The shortfall in residential accommodation throughout the city and environs is a well known and accepted fact.
- 7.6. In this regard it is worth noting that appeals to the Board with respect to aparthotel developments in the Dublin City area, total 12, since March of 2017 and are substantial developments.
- 7.7. It should also be considered that aparthotels are permissible in principle in several use zones: Z4, Z5, Z6, Z8 Z10 and Z14. In other zones, which include Z1, they are open for consideration.
- 7.8. To permit an aparthotel in a residential zoning facilitates much more intensive development of land than would be available to residential development, having regard to the need for residential development to provide private open space and public open space, such that less built area can be accommodated; and with regard to the development standards applying to residential development, such that fewer units can be provided.
- 7.9. It would be reasonable to expect, therefore, that if an aparthotel development were to be permitted in a residential zone other planning objectives would be achieved, such as quality in urban design and enhancement of public areas.
- 7.10. Notwithstanding these concerns, given the proximity to the National Children's Hospital, currently under construction, and the limited availability of such accommodation in the vicinity, where there is demand for short term accommodation such as from parents of patients, I consider that the proposed development of an aparthotel is acceptable in principle on the site.

7.11. **Urban Design and Security**

- 7.12. Designing for security has been an important consideration in urban areas for many years. It is nowadays considered as part of good urban design rather than as a stand-alone issue. There is compelling evidence that thorough consideration of design principles within the management of the built environment can positively impact upon an area's security.
- 7.13. The subject site is located adjoining a pedestrian route where its current vacant, derelict state contributes to security problems for users of the route. An important

objective of any development on the site would be to offer passive security to pedestrian users of the laneway. The proposed development is rather monolithic, with uniform floor levels throughout, notwithstanding the steeply sloping nature of the site. There are no doorways, and only a limited number of windows at a level equivalent to the ground level of the pathway, over the significant extent of frontage. The proposed development provides windows at upper levels facing the path and to that extent provides 'eyes on the street'. It will also include public lighting. However, the proposed development will bound the pedestrian route with a faced retaining wall, in places 2m in height above the level of the path, above which will be a security railing of 1.4m in height.

7.14. In my opinion the development does not meet the challenge of positively addressing the pedestrian route, by providing active frontage, contributing to the vitality of the area, generating pedestrian activity and offering security to pedestrians using the route. In my opinion the relationship created is that of a fortress. This failure to create a well-designed frontage, positively addressing the pedestrian route Cromwell's Quarters, does not improve the quality of this public space and this is a reason to refuse permission.

7.15. **Daylight**

7.16. The third party, whose property runs along most of the opposite side of Cromwell's Quarters has concerns regarding the impact of the proposed development on daylight received by the windows of his hostel.

7.17. Daylight is assessed in various reports provided by the first party to the planning authority, and in reports provided to the Board by the first party and the third party.

7.18. One issue which arises is whether it is acceptable to apply different standards to different adjoining residential development. In this case the use of the standard assessment set out in the BRE guidelines regarding impact on Vertical Sky Component (VSC) in relation to residential dwelling units to the north; the use of a VSC 'target' in relation to the hostel to the west; and to ignore the impact on residential apartments to the south (No.181), the separate property to the east (No. 179) and the underutilised land and buildings also to the east (No.s 172-178).

- 7.19. In relation to the use of a VSC 'target' the third party states that the adoption of Cow's Lane as a target has not been justified based on planning or urban design guidance, that it is c 2km away and situated in a completely different context and that he considers it was selected because it met a requirement to give a low VSC (daylight) value, which in turn met the applicant's development strategy.
- 7.20. Attached to the third party response to the first party response to the grounds of appeal, regarding the selection of a target values of VSC for existing buildings, is an e-mail comment from Dr Littlefair (author of the guidelines) regarding use of a 'target', that a typical (not a worst case) example from the immediate vicinity could be used as a target and he uses as an example a street with a vacant site where a target value could assume that the site is occupied by a house the same height as those to either side. His comment that a VSC of 9.1% is low for Dublin is also noteworthy.
- 7.21. I understand the reason why a target VSC is required in relation to Cromwell's Quarter; that it was determined that the conventional standards which the BRE recommends for daylight would not be compatible with development flanking Cromwell's Lane and would impose inappropriate constraints on the form of development which could be achieved in this location. I accept the benefit of having frontage development abutting the laneway, and that some diminution of daylight would necessarily arise; having regard to the current height of the security hoarding in comparison with any development proposal, and the narrow width of the laneway and the levels of daylight currently available to the development opposite.
- 7.22. I do not accept that the use of the Cow's Lane as a comparator target has been justified in the application or appeal. The statement made, that the established residences on Cow's Lane enjoy adequate levels of skylight at present, is not substantiated by evidence. It is worth noting, as stated by the third party, that even using the target VSC, the levels achieved with the proposed development in place, would represent a failure to achieve the target, in respect of several windows.
- 7.23. The loss of daylight to the extent proposed, has not been justified by reference to the need for development of this scale along the laneway. No exploration of alternative building profiles for a frontage building have been provided, such that the relative impact of a lower building could be assessed by comparison to the proposed.

Whereas the development has clearly been designed to minimise impact on the residential development to the north-west, the approach, with reference to the residential development on the opposite side of the laneway, is in stark contrast. The appeal response states that ‘a dated city hostel building that is suitable for redevelopment should not be permitted to frustrate regenerative objectives of the city and stifle good quality much needed development of valuable urban land’. I disagree with this evaluation. In my opinion appropriate evaluation of the impact on the development opposite, as it is at present, and having regard to any future development on that land, in order that the benefits of frontage development along this side of the laneway could be demonstrated to be worth the loss of daylight to the development opposite, was not carried out. I accept that some trade-off must be made, but in my opinion the excessive loss of daylight to Tathony House, disregarded in the first party submission, has not been unjustified, and this is a reason for refusal.

7.24. It is also of concern that no information has been provided in relation to loss of daylight to the existing block at No.181 James’s Street (although likely to be much less than that experienced by Tathony House, due to the lower height of the proposed building where it adjoins the block); the impact on No 179 James’s Street immediately adjoining a 6 storey portion of the proposed development; or the impact on 172-178 James’s Street, notwithstanding the owner’s letter of agreement.

7.25. **Overlooking**

7.26. Overlooking is raised by the third party, who regards the extent of glazing opposite, in close proximity to his property, as of concern for his existing building and any potential future building with windows similar to those opposite.

7.27. Having regard to the width of the laneway, it is difficult to provide for frontage development, good daylighting to rooms, and security to the laneway, while avoiding overlooking of the property opposite. The first party has pointed out that the nature of the proposed development and that which exists on the opposite side of the laneway, both being occupied by transient residents, means that the issue of overlooking is less important than in residential development.

7.28. It must be remembered that Cromwell's Quarters is a potentially busy public place and any windows overlooking this place will not enjoy the degree of privacy that they would if overlooking private gardens or semi-private communal space. Occupants of the proposed development, the existing development opposite or the potential future development on that site will have some control internally on the degree of overlooking experienced by rooms, using basic measures such as blinds or screens, or through more advanced measures. In my opinion the value of having windows overlooking the laneway, and the environment which eyes on the street would create for occupants of buildings on either side of the laneway, far outweighs the inconvenience of having to apply privacy measures to those windows. I do not consider that any perceived right to privacy, attaching to the windows in the proposed development, is likely to prejudice the development potential of the site opposite, which is stated as a concern. It is likely that a similar array of windows would be equally acceptable there. In my opinion restricted privacy distances between windows should not be a reason to refuse permission.

7.29. **Overbearing Impact**

7.30. The third party refers to the overbearing impact of the proposed development arising from the scale of the development and its proximity to the development opposite. The difference in scale between the proposal and the hostel is considerable. The first party states that they have taken their reference from the frontage to James's Street and, with reference to the refusal of a previous proposal (under 2559/05) on the site opposite, that benefitting from generous frontage onto James's Street is the significant difference between the sites.

7.31. The development as proposed fronting James's Street extends higher than the existing apartment block. In my opinion the existing apartment block should be the reference for this part of the development, but as a height to be matched not exceeded.

7.32. The existing hostel, would benefit from improvement and future development on that site would be likely to extend higher than the two/three storey development currently occupying the site. In its current condition it would not provide an appropriate reference for development on the subject site. The impact on daylight, referred to

earlier, indicates that a building of lower height is likely to be more appropriate and this would reduce overbearing impact.

7.33. Reference has been made to plot ratio and site coverage. I have no concerns regarding the proposed plot ratio and site coverage vis a vis the indicative standards set out in the development plan.

7.34. **Designing for the Site**

7.35. The obvious benefit of redeveloping a derelict site is referred to in the application and similarly in the planning authority planner's report. The existing condition of the site is not an argument for development which fails to achieve good urban design or imposes undue impact on adjoining properties. As stated by the first party the site represents a finite land resource in the form of an underutilised brownfield site that occupies a highly accessible inner city location. The significant development currently underway at the National Children's Hospital, vacant site legislation and improved economic conditions currently being experienced are forces that will promote the development of the site, regardless of the outcome of this appeal.

7.36. The site offers many design challenges to a unitary development: the site slope, the shape which wraps around the existing apartment block, and the pedestrian laneway which as a free boundary provides an opportunity as well as a security threat. The need to address more positively the 41.7m frontage to Cromwell's Quarters has been referred to earlier in this report.

7.37. In relation to the James's Street elevation I am not satisfied that the fenestration or the solid to void proportions facing James's Street bear any relationship to newer or older buildings along the street, as illustrated on drawing no. 870-05-00. It is worth noting that the elevation has been broken into blocks but the building still has a much coarser grain than anything in the area.

7.38. I agree with the planner's assessment that, given the historic and prominent location of the subject site, any new scheme on the lands should be of exceptional architectural quality. I do not consider that the design response is what the site requires.

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

1 The proposed development which does not provide any entrances along the extensive frontage to Cromwell's Quarters, establishes floor levels without reference to the levels of the laneway, and provides bounding walls and railings which would tend to create a fortress of the proposed aparthotel, is not an adequate design response to this historic and prominent location, would not create a secure environment along the pedestrian laneway and would accordingly be contrary to the proper planning and sustainable development of the area.

2 The loss of daylight to existing development on the opposite side of Cromwell's Quarters has not been justified by reference to urban design benefits of development of this scale and the proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity and be contrary to the proper planning and sustainable development of the area.

Planning Inspector

26th March 2018

Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022
- 3 Extracts from the Urban Design Manual A Best Practice Guide companion document to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, 2009, Environment, Heritage and Local Government.