



An  
Bord  
Pleanála

## Inspector's Report ABP300446-17

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| <b>Development</b>                  | Demolition of former post office garage/depot and the construction of a new office building with all ancillary works.              |
| <b>Location</b>                     | Sandwith Street Upper, Dublin 2.   |
| <b>Planning Authority</b>           | Dublin City Council.   |
| <b>Planning Authority Reg. Ref.</b> | 4177/16.   |
| <b>Applicant</b>                    | Rails Investment Limited (in Trust).   |
| <b>Type of Application</b>          | Permission.  |
| <b>Planning Authority Decision</b>  | Refuse.  |
| <b>Type of Appeal</b>               | First Party -v- Refusal.   |
| <b>Appellant</b>                    | Rails Investment Limited (in trust).   |
| <b>Observers</b>                    | (i) Geraldine Byrne, (ii) Zonda Properties Limited, (iii) Carmel McCormack, (iv) Transport Infrastructure Ireland, (v) Irish Rail. |
| <b>Date of Site Inspection</b>      | 6 <sup>th</sup> April, 2018.   |
| <b>Inspector</b>                    | Paul Caprani.  |

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## 1.0 Introduction

ABP300446-17 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for the demolition of a former post office garage/depot and the construction of a 4-7 storey over basement office building together with ancillary areas at Sandwith Street Upper, Dublin 2. Dublin City Council in a single reason for refusal states that the subject site is located on the indicative alignment of the Dart Underground and it is considered that the development proposed is premature pending agreements on the requirements of the delivery Dart Underground and as such the proposal would contravene Policy MT4 of the 2016 Dublin City Development Plan.

## 2.0 Site Location and Description

- 2.1. The appeal site is located in the south-east periphery of Dublin City Centre. It is approximately 1 kilometre east of College Green and 1 kilometre south-east of O'Connell Bridge. The site is bounded to the west by Sandwith Street Upper, to the south by Boyne Street and to the north by elevated railway tracks to the immediate east of Pearse Street Station. The rear gardens/yards of a row of 7 two-storey Victorian brown bricked terraced dwellings which front directly onto Erne Street to the east. The blocks in the vicinity of the subject site have accommodated more recent infill development mainly in the form of office and other commercial development ranging from c. 4 to 6 storeys in height. The wider area in the vicinity of the site is on the whole characterised with small scale traditional 1 and 2 storey urban cottage type development dating from the late 19<sup>th</sup> century and more recent office development constructed from the 1970s onwards.
- 2.2. The site itself comprises of the entire block between Sandwith Street Upper, Boyne Street and Erne Street with the exception of the two storey Victorian dwellings and rear gardens fronting onto Erne Street Upper, and a small single storey structure which appears to be used as storage at present (Nos. 38 to 39 Boyne Street) which is located at the corner of Sandwith Street and Boyne Street.

- 2.3. The site itself accommodates a building which was previously used as a post office storage facility. This building comprises of a two storey structure probably dating from the mid-20<sup>th</sup> century which incorporates a brown brick elevation finish with granite plinths and a granite stringcourse between the first and second storey. A series of narrow windows at ground floor level run along the Sandwith Street elevation. The windows are interspersed with a series of three roller shutter doors. Pay and display parking is located on the streets contiguous to the subject site.

### **3.0 Proposed Development**

The existing post offices stores on site amounting to 1,596 square metres are to be demolished. It is proposed to be replaced with a new five storey office structure on the subject site. Originally it was proposed to construct a 7-storey over basement office block on the subject side, however this was reduced in size as a result of an additional information request from Dublin City Council.

At ground floor level it is proposed to incorporate a new reception area with entrance from Sandwith Street Upper. The ground floor is also to incorporate a new commercial unit to the rear of the building (685 square metres) together with switch rooms, substations and refuse area. The ground floor area is also to accommodate circulation space in AHU and boiler unit and ancillary accommodation including WCs and showers. The building line is to front directly onto Sandwith Street and is to be set back from the northern boundary and eastern boundary. A circulation area is provided to the rear of the building and five car parking spaces are to be provided adjacent to a vehicular entrance onto Boyne Street to the south. The first, second, third and fourth floors are to comprise of open plan office area set out around a central core area within the building providing toilets and lift accommodation as well as a central stairwell providing access to each of the floors. Typically, each of the floors would accommodate between 1,330 square metres (first floor level) down to 886 square metres (fourth floor level). The building is set back at fourth floor level along the eastern elevation overlooking the rear of the dwellings facing onto Erne Street Upper. The building rises to an overall height of 21.2 metres. The bottom three floors ostensibly comprise of brick cladding with transparent glass while the upper two floors comprise of an external cladding comprising of opaque glass interspersed with transparent glass. A terraced area is provided at four floor level on

the eastern elevation of the building. The total gross floor area of the proposal under the original drawing submitted was 10,187 square metres. Under the original drawings submitted with the planning application it was proposed to construct a seven storey over basement building. The gross floor area of the building by way of additional information was reduced from 10,187 square metres to 6,163 square metres.

#### 4.0 **Planning Authority Assessment**

- 4.1. The planning application was lodged with Dublin City Council on 22<sup>nd</sup> November 2016. In its decision dated 17<sup>th</sup> November 2017, Dublin City Council issued notification to refuse planning permission for a single reason which is set out in full below.

*“Map J of the Dublin City Development Plan 2016 – 2022 illustrates the indicative alignment of the Dart Underground through the application site. Policy MT4 of the 2016 Dublin City Development Plan seeks “to promote and facilitate the provision of Metro all heavy elements of the Dart expansion programme including Dart Underground (railway interconnector), the electrification of existing lines, the expansion of LUAS and improvements to the bus network in order to achieve strategic transport objectives. The submission on the application by the Dart Underground Office outlines that the lands are necessary for the delivery of the Dart Underground and the development as proposed has the potential to compromise the integrity of the Dart Underground. The development as proposed therefore is considered premature pending agreement on the requirements for a Dart Underground and would contravene Policy MT4 of the 2016 Dublin City Development Plan and is therefore contrary to the proper planning and sustainable development of the area”.*

#### 4.2. **Documentation Submitted with the Application**

The following documentation was submitted with the application.

##### Planning Report prepared by McGill Planning Limited

- 4.2.1. The report sets out the site context and notes that the site is located within an area characterised by a ‘mish-mash’ of architectural styles. It also sets out the planning policy context, making reference to the zoning and development plan standards as

they relate to the site and various policies contained in the development plan which are relevant to the proposal before the Board. It also highlights the presence of taller buildings (five to seven storeys) in the wider site context. Appendix A sets out an appropriate assessment screening report where it is concluded that the development will not have a significant impact on the Natura 2000 network. Appendix B sets out the application's compliance with the requirements under the Planning and Development Regulations.

4.2.2. Preliminary Environmental Analysis Report

4.2.3. Also submitted with the original application (the Board will note that this report does not appear to be file) is a preliminary environmental analysis report. The preliminary environmental analysis report submitted on foot of the additional information request is contained on file. It sets out the energy targets for the building as well as the building specification. It sets out the energy saving targets which can be achieved in respect of the proposed development where it is stated that if the targets were to be implemented the building would enable goal certification.

4.2.4. Daylight/Sunlight Analysis

4.2.5. A daylight analysis was also submitted which concluded that all daylight areas were assessed for daylight availability against BRE standards. All perimeter spaces were determined to have good daylight availability. The basement courtyard was deemed to have adequate daylight availability while core spaces of the lower floor did not achieve the required daylight penetration but it is stated these can be used for non-desk based works or as ancillary office spaces. The natural ventilation requirements were found to be compliant as was the building energy rating.

4.2.6. Civil and Infrastructure Report

4.2.7. A civil and infrastructure report was also submitted. It sets out details of the surface water drainage system and foul drainage system. In relation to the surface water drainage system it states that the proposal is fully in compliance with the requirements of the GDSDS. In terms of the foul drainage system, it is stated that the existing foul sewer network has the capacity to cater for the proposed development. The report also sets out details of a flood risk assessment. In relation to this assessment, it is recommended that all access points to the proposed development be detailed with flood resistant barriers and all finishes to the area local to those

access points to be of flood resistant construction. Any drainage connection should have a non-returning valve facility incorporated. Finally, the report sets out details of traffic management including a management system for construction traffic.

#### 4.2.8. Waste Management and Construction Plan

4.2.9. A waste management construction plan was also submitted.

#### 4.2.10. Design and Access Statement

4.2.11. Finally, the application was accompanied by a design and access statement. It sets out details of the site context and analysis and the existing access and connectivity of the site to its surroundings. It also sets out the design context including the materials to be incorporated into the scheme. The report also includes shadow casting studies. The report also sets out the landscape design concept and a series of photomontages.

### 4.3. **Planning Authority Assessment**

A number of **observations** were submitted in respect of the application which are briefly summarised below.

- An observation from Transport Infrastructure Ireland notes that the subject development is located within the extension of the LUAS Red Line Docklands Extension Section 49 Levy Scheme. If planning permission is granted, the submission states that a supplementary contribution required under Section 49 be attached to any grant of planning permission.
- A report from the Dart Underground Expansion Scheme states that the proposed development site occupies the lands necessary for the construction of the Dart Underground Pearse Station and it notes that this is a cornerstone of the Transportation Strategy for the Greater Dublin Area and the current City Development Plan aims to protect the Dart Underground Corridor. It concludes that on the basis of the assessment of the planning application Iarnrod Eireann concluded that, if the proposed development advances before the construction of the Dart Underground, the integrity of the Dart Underground will be significantly compromised as it will preclude the future construction of the Dart Underground Station beneath the site.

- A number of letters of objection were also submitted from the residents of Erne Street to the immediate east of the site arguing that the proposed development would have an unacceptable impact on residential amenity by way of lack of sunlight, traffic and overlooking. It is also argued that office block would constitute an abrupt transition of scale within the area.
- A report from Iarnrod Eireann sets out a number of conditions which should be attached to ensure the integrity of the adjoining railway line.

#### **4.4. Dublin City Council Internal Reports**

- 4.4.1. A report from the Drainage Department states that there is no objection to the proposed development subject to complying with the Greater Dublin Regional Code of Practice for Drainage Works.
- 4.4.2. A report from the Roads and Traffic Planning Division notes that the proposal for 18 car parking spaces (as per the original documentation submitted with the application) is acceptable. Likewise, it is concluded that the provision of cycle parking is also acceptable.
- 4.4.3. In relation to Dart Underground, it is stated that the applicant should liaise with Dart Underground in respect of the proposal to ascertain the requirements in relation to the site. Recommendations are made in respect of the reinstatement of the footpath along Boyne Street and Sandwith Street and a mobility management plan should be submitted as part of the proposed development.
- 4.4.4. In relation to construction management, it is stated that the applicant should liaise with Iarnrod Eireann in respect of the development proposals. It is concluded that additional information is required.
- 4.4.5. The initial planner's report dated 23<sup>rd</sup> January, 2017 assesses the proposed development. It considers that an architectural conservation report is justified having regard to the architectural quality of the building to be demolished. It notes that the car parking and cycle parking is deemed to be acceptable. In relation to Dart Underground it notes that the subject application does not reference Dart Underground and it is considered premature to deliberate on a decision on the application in the absence of an agreement with Dart Underground. In terms of building height, it is suggested that further information is required in the form of



photomontages to assess the impact of the development on the wider area. The Planners Report also assess the impact on residential amenity and concludes that additional information is required in relation to the following issues:

- Submission of an architectural conservation report justifying the demolition of the existing building on site.
- The applicant is requested to liaise with the Dart Underground Office and demonstrate how the proposed development can be delivered in the context of Dart Underground proposals.
- The Planning Authority has serious concerns in relation to the proposed height where it is considered to be overbearing and visually discordant with the existing streetscape. The applicant is therefore requested to significantly reduce the height of the building.
- The applicant is requested to submit a full visual impact assessment indicating the views of the proposed development from a wider area.
- The proposed building's proximity to adjoining buildings is noted and the applicant is requested to propose design features to prevent overlooking to adjoining buildings including residential buildings in the vicinity. The applicant is requested to resubmit drawings in this regard.
- The applicant is requested to liaise with Iarnrod Eireann in respect of the development proposal and demonstrate how each of the points raised in the submission by Iarnrod Eireann can be addressed.
- The proposed green walls (green planted walls were proposed as part of the original application) raise issues in relation to maintenance and the applicant is therefore requested to submit a maintenance plan for the proposed green wall.
- Finally, the applicant is requested to clarify the height of the existing granite wall on site and to ensure that it is indicated at the correct height on the drawings submitted.

## 5.0 Additional Information Response

- 5.1. A response was received on behalf of the applicant by McGill Planning details of which are summarised below:

A **Conservation Report** was submitted by Cathal Crimmins Conservation Architect. It concludes that the structure is deemed to be of local architectural interest only as it is not a protected structure and is worthy of recording not retention. Furthermore, the subject site's location in the city centre and proximate to good public transport links and as such represents an inefficient use of prime city centre land.

In relation to Dart Underground it is stated that the applicant has met with Irish Rail and detailed drawings of the proposed underground station were obtained. These were assessed and on foot of this assessment, the basement level is now omitted. The layout of the ground floor has been altered to identify the area required by Irish Rail when the station will be developed. Details of the interaction with Irish Rail and the accommodation of the proposed station design are included in a comprehensive report by Barrett Mahony Consultant Engineers entitled "*Report on Development Assessment for a Proposed Development at the former Post Office Garage site at Sandwith Street Upper, Dublin 2 in the context of the proposed Pearse Dart Underground Station and the existing Irish Railway Assets*". The assessment indicates how the proposed development can be delivered without prejudicing the Dart Underground proposals for an underground station at this site and how the development meets the criteria set out by Irish Rail. Drawings and sketches are included to demonstrate potential techniques that can be employed which illustrate that solutions are available as a means of addressing the challenges presented. It is envisaged that the development of the technical detail of the ultimate foundation solution to be employed will be further developed at detailed design stage and further liaison with Dart Underground and Irish Rail will be undertaken at that stage.

In response to Item No. 3 it is argued that the potential of the site should be maximised having regard to its central location and its proximity to public transport. Notwithstanding this and having regard to the Planning Authority's concerns about the height the proposed development has been substantially reduced to four storeys above ground (as detailed in my development description above). It is considered that the revised proposal addresses the concerns of the Planning Authority.

A further visual impact assessment comprising of wider views in the area have been undertaken by 3D Design Bureau. These are attached in the separate volumes submitted.

In relation to Item No. 5 which relates to changes in the external elevation have been addressed in the revised drawings submitted.

The report prepared by Barrett Mahoney addresses concerns in relation to the construction of the development in close proximity to the railway line.

With regard to the proposed green wall on the rear elevation as per the original proposal, the green wall has now been omitted and opaque glazing is used on the rear elevation to protect the amenities of residents on Erne Street.

Details including cross sections of the existing granite wall are indicated on additional drawings submitted.

## **5.2. Further Assessment by the Planning Authority**

5.2.1. On foot of the additional information submitted, a further submission was received from the Dart Underground Office. It notes that the Barrett Mahoney consulting engineers report in respect of the proposed Pearse Street Dart Underground Station. Notwithstanding the findings of this report, Iarnrod Eireann having examined the report have a number of specific concerns in relation to:

- The coordination of the proposed design with the Dart Underground design.
- Issues in relation to construction coordination issues.
- Issues in relation to structure and design.
- Details in relation to planning issues.
- Details in relation to ownership and responsibility.

5.2.2. While acknowledging that many of the issues raised could possibly be addressed during detailed stage, and given the proposal for a Dart Underground station beneath the proposed development, Iarnrod Eireann would have reasonably expected a far greater level of engagement with the applicant to agree on technical details. This did not occur in advance of the submission of the modified design presented in the further information response. Therefore, Iarnrod Eireann contend that the proposal does not demonstrate that the planning application can be

completed without compromising the development of the Dart Underground station. Iarnród Éireann consider that the planning application creates risk to the Dart Underground station and therefore has the potential to compromise the integrity and cause an adverse effect on the project.

- 5.2.3. A further planning report dated 17<sup>th</sup> November 2017, assesses the additional information response. It concludes that the further information justifies the demolition of the building and addresses the Planning Authority's concerns in relation to the height of the building by reducing it and addresses concerns in relation to overlooking. However, concern is expressed that the proposal as revised does not demonstrate that the planning application can be completed without compromising the development of the Dart Underground Station. It is noted that Policy MT4 of the City Development Plan aims to promote and facilitate the strategic transport objectives including the Dart Underground. For this reason, it is recommended that planning permission be refused for the reasons set out above.

## **6.0 Planning History**

There are no appeal files attached nor are there any details of any relevant planning applications contained in a pouch to the rear of the file. The planner's report makes no reference to any site planning history associated with the site.

## **7.0 Grounds of Appeal**

- 7.1. The decision of Dublin City Council to issue notification to refuse planning permission was the subject of the first party appeal on behalf of the applicant by McGill Planning. The grounds of appeal are set out below:
- It is argued that the proposed development fulfils several key objectives of the Dublin City Development Plan having been rezoned due to the site's location in proximity to the city centre and Pearse Street rail and Dart Station. The original development as proposed was in fact deemed to be appropriate in terms of the quantum of development. The proposal as originally submitted represented a high quality design delivering office accommodation in close

proximity to public transport. The proposal is consistent with the zoning objective and has regard to the need to provide sustainable development in the form of high Density employment beside a public transport node. Concerns nevertheless were raised in respect of the potential impacts of construction on site. It is argued that these concerns were satisfactorily dealt with in a comprehensive report by Barrett Mahoney Consulting Engineers. The grounds of appeal go on to outline the various policy statements contained in the development plan in relation to Dart Underground. Map J of the development plan indicates the indicative alignment for the proposed Dart Underground. It notes that the line traverses the south-eastern corner of the site. There is no indication in the map or the written statement of the potential location of the underground stations. It is also noted that the NTA Strategy 2016 to 2035 refers to the Dart expansion programme and notes that this also incorporates a Dart Underground Project.

- Other than the above references, there is nothing in the current development plan or transport strategy to clearly identify the roof of the underground and certainly not the location of the underground stations. As a result, it is considered that the reason for refusal is unreasonable and indeed unnecessary. It is stated that if it is determined that the subject site be the location of the Dart Underground station, it is argued that both the station and proposed development can be accommodated on the subject site.

Attached to the grounds of appeal is a submission from Barrett Mahoney Consulting Engineers which responds in detail to the various concerns raised in the submission from Iarnrod Eireann in relation to the Dart Underground. It is briefly set out below:

- In relation to the coordination of the proposed design with the Dart Underground, it is stated that the finalisation of the technical detail of the ultimate foundation solution will be employed for this development and will be further developed at detailed design stage. Reference is made to various techniques including topdown construction, plunge columns, subsequent construction of intermediate underground floors etc. The report notes that the use of plunge columns and follow-on intermediate floors was recently employed at the Shelbourne Road Vet College.

- While there are slightly different column profiles in relation to the proposed development and the Dart Underground development, any misalignment can be easily adjusted to suit. Issues in relation to vibration from rock building and blasting can also be addressed by appropriate engineering solutions. Again it is argued there are trusted methods to overcome any “out of tolerance” installations of the perimeter pile wall construction. It is argued that the limitations during construction are no different than in the event that the stations construction proceeds in isolation.
- Iarnrod Eireann has significant reservations regarding the practicality of constructing the Dart Underground Pearse Station from the residual lands available once the over site building is completed. It is noted that access to the basement dig is, by its nature, more constricted than the open dig but given the scale of the dig it is suggested that it is no more onerous than topdown construction which was proposed by the Dart Underground in any event. Reference is made to an attached extract from the EIS which is appended to the appeal.
- The response also sets out a detailed assessment of the column loadings. It is stated that given that the tunnel bores are in the bedrock for the Dart Underground containment loads due to derailment are easily accommodated. It is stated that preconstructed piles can be chased out in order to allow bearing for new floors and reference is made to the Shelbourne Road project where this type of construction methodology was employed. Any concerns in relation to vibration impact can also be appropriately overcome by way of engineering solutions.
- With regard to a coordinated strategy for addressing fire safety for the underground station, reference is made to the EIS for the original Dart Underground proposal and it is noted that the station has been designed to give passive provision for an over site development. It is stated that the staircores and access to the proposed building have been carefully planned in this regard.
- Iarnrod Eireann also suggest that the proposal is at variance with the Dart Underground Fire and Ventilation Strategy. The applicants will allow a

ventilation shaft on the eastern gable of the development to be constructed as part of the Dart Underground construction. The architectural layout should allow blank walls at this location to allow the ventilation shaft to be constructed at a later time.

- In relation to ownership and responsibility it is acknowledged that the nature of the modified design and sequence of works give rise to a lot of potentially difficult, logistical and legal issues which have not been discussed between the applicant and Iarnrod Eireann. However, it is contended that this is no different from a normal building where ownership is split horizontally and the legal responsibilities are not a planning matter. It is also stated that there are mechanisms that can be employed to indemnify Iarnrod Eireann in respect of noise and vibration during the works and the development of such undertakings can be part of a detailed coordination process between the development team and Dart Underground.
- The apportionment of responsibilities between the developer and the station/railway operator will need to be carefully developed as part of Dart Underground procurement process and prior to construction, appropriate undertakings to satisfy Iarnrod Eireann will need to be developed to the satisfaction of both parties. It is appropriate to grant planning permission at this stage and the coordination of detailed design to take account of a complex undertaking. However, if An Bord Pleanála see fit to grant planning permission it will enable both parties involved to agree these coordination issues within the constraints of the application documents. It is agreed that a large amount of engagement between Dart Underground and the development team is essential in order to ensure a satisfactory delivery of the project. Such engagement would be premature prior to the grant of planning permission. It is contended that any adverse effects on the Dart project can be detailed out, mitigated or off-set during the development process.

## 8.0 Appeal Responses

Dublin City Council submitted the following response to the grounds of appeal. The submission from Iarnrod Eireann states that the proposal as revised does not demonstrate that the planning application can be completed without compromising the development of the Dart Underground station. The submission also states that the proposed planning application has the potential to compromise the integrity of the Dart Underground and cause adverse effects on the project. Policy MT4 of the City Development Plan aims to promote and facilitate the delivery of strategic transport objectives including Dart Underground. In light of the above, the Planning Authority considers that insufficient information has been provided with the further information response and that the development as proposed has the potential to impact on the delivery of the Dart Underground. Given that a time extension was approved for this application, there was insufficient time for clarification of additional information to be requested. The planner's report still stands and the inspector is respectfully requested to uphold the decision of the Planning Authority.

## 9.0 Observations

A number of observations were submitted which are summarised below:

### 9.1. Transport Infrastructure Ireland

An observation was submitted by Transport Infrastructure Ireland reiterating that the proposed development falls within an area set out in the Luas Red Line Docklands Extension and therefore if planning permission is to be granted for the proposed development, it is requested that a supplementary contribution levy be attached in accordance with the adopted supplementary development contribution scheme.

### 9.2. Observation by Zonda Properties

This observation states that Zonda Properties is the owner of the adjoining property within the same city block fronting onto Boyne Street and Sandwith Street (to the south-west of the subject site). It is noted that the applicant has included indicative proposals for development of the observer's site. The Board are requested to note that the observer has not been consulted or notified by the applicant prior to the lodgement of the planning application or the appeal. The applicant welcomes the



principle of development on site. However, wishes to ensure that the development of the site does not in any way constrain or limit the future development of the observers site. The principle of redevelopment of the subject site is welcomed and it is considered to blight city centre sites for an indefinite timeframe pending the delivery of Dart Underground is unreasonable. A statement in the Local Authority's Planner's Report that the observer's site has development potential into the future is welcomed. However, it is considered that the proposed design of the southern elevation would need further consideration should the proposed development be granted. The southern elevation of the proposed development provides a number of windows opening and is reliant on light penetration to the observer's lands. Should An Bord Pleanála decide to grant planning permission for the subject development a condition should be attached requiring the southern elevation of the proposed development to be set back a further 2 metres (c.6 metres in total) from the boundary of the observer's site in order to protect the future development potential of the lands. It should also be noted that the observer's property is not vacant as stated in the planner's report but it currently in use as an office.

### 9.3. **Observation from Geraldine Byrne – 5 Sandwith Street Upper**

This observation raises the following concerns in relation to the proposed development.

The proposal constitutes a material contravention of the development plan. It is stated that the entrance to the underground Dart station is on the subject site. The observer therefore argues that the site should be sterilised. How can this be reconciled with the current application before the Board?

The proposed development is considered to be overbearing in terms of height, massing and design. It dominates over the existing residential enclave and its design pays scant regard to the surrounding neighbourhood and the overall mass is in excess of permitted standards in terms of plot ratio. The proposal also significantly damages the observer's property and residential amenity in respect of right to light.

### 9.4. **Observation from Carmel McCormack**

While the decision of Dublin City Council is welcome it is considered that this design is generally too weak as it fails to protect and preserve the existing properties both commercial and residential in the immediate area. The Local Authority have only

taken into account issues arising with regard to Dart Underground. It is argued that the opinions and submissions of a property owner/resident in the local area should have been given as much, if not more, consideration than the concerns raised by the Dart Underground team. Reference is made to the observer's original objection to the Planning Authority.

Should the Inspector and the Board of An Bord Pleanála decide to grant planning permission, it is requested that stringent conditions be attached to any grant of planning permission so as to protect and preserve residential amenities both during and after construction. And that an insurance bond be requested to be put in place by the developer in the interests of protecting and safeguarding neighbouring properties and the occupants of those properties. The Board are also asked to consider only the amended application which involved the removal of the basement area and the upper storeys of the building.

In conclusion the inspector is recommended to uphold the decision made by Dublin City Council and refuse planning permission for the proposed development. However, the Board is requested to include additional reasons for refusal so as to further safeguard, protect and preserve the amenities and interest of local property owners in the area.

#### **9.5. Observation from Iarnród Éireann Infrastructure**

This submission set out the details of the negotiations which have taken place between the applicant and Irish Rail. It is stated that all necessary information has been submitted to the applicant in relation to DART Underground from Irish Rail. It is considered that the proposed office development, if permitted to go ahead, introduces risks and constraints to the DART Underground Project. It is Irish Rail's opinion that the information submitted in the Barrett Mahoney Report does not provide either further clarification or solutions to address the concerns previously raised.

## 10.0 Development Plan Provision

- 10.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan.
- 10.2. The subject site is located in an area zoned Z5 – City Centre the zoning objective of which is to “*consolidate and facilitate the development of a central area, and to identify, reinforce, strengthen and protect its civic design, character and dignity*”.
- 10.3. Office Use is a permitted use under the Z5 zoning objective. In terms of plot ratio, plot ratios of up to 3.0 are acceptable. However, higher plot ratios are considered acceptable on sites adjoining public transport termini and corridors and in areas facilitating comprehensive redevelopment. In terms of site coverage, up to 90% is permitted on sites governed by the Z1 zoning.
- 10.4. Policy CEE11 seeks to promote and facilitate the supply of commercial space where appropriate.
- 10.5. Policy CEE15 seeks to promote and facilitate the transformation of regeneration areas, especially in inner city areas as a key public priority and opportunity to improve the attractiveness and competitiveness of the city including by promoting high quality private and public investment and seeking European Union funding to support regeneration initiative for the benefit of residents, employees and visitors.
- 10.6. In terms of public transport Dublin City Council’s policy on public transport will be implemented in collaboration with the NTA’s Dublin Transport Strategy for the Greater Dublin Area and the key public transport elements of this strategy include:
  - Metro North and South.
  - The Dart Expansion Programme including Dart Underground.
- 10.7. Policy MT4 seeks to promote and facilitate the provision of a Metro all heavy elements of Dart expansion programme including Dart Underground (rail interconnector), the electrification of existing lines and the expansion of Luas etc.
- 10.8. Policy MT22 seeks to require the submission of a development assessment for all development proposals located in the vicinity of both Dublin Port Tunnel and the proposed Dart Underground protected corridor or any proposed public transport tunnel. Iarnrod Eireann should be consulted in relation to heavy rail.

## 11.0 Planning Assessment

I have read the entire contents of the file and visited the site in question. I have also had particular regard to the issues raised in the Planning Authority's sole reason for refusal and the issues raised in the various observations submitted. I consider the critical issues raised in relation to the application and appeal are as follows:

- Principle of Development
- Height, Scale and Form of the Proposal in the Context of Surrounding Development and Potential Impact on Amenity
- Impact on the Development Potential of Adjoining Sites
- Potential Impact on Dart Underground Station
- Financial Contribution Condition under Section 49 Supplementary Development Contribution Scheme

### 11.1. Principle of Development

The principle of office development on the subject site is an acceptable use and is fully in accordance with the land use zoning provisions for the Z5 zoning objectives set out in the development plan. Office is a permissible use under this land use zoning objective. In terms of precedent there are numerous precedents for similar type developments in the area. There are numerous buildings accommodating offices that are of a similar height and scale in this area of the city to that proposed under the current application. The development plan and numerous other planning guidance documents stress the importance of utilising as efficiently as possible brownfield sites in urban areas where services and infrastructure exist to cater for a higher intensity of development. The fact that the site is located in such proximity to the city centre and in proximity to a major transport terminal in my view justifies the delivery of a higher quantum of development on the subject site. The proposal will provide additional modern office space at a more sustainable density adjacent to the Central Business District. The proposal fully complies with the numerous planning statements contained in the development plan which seeks to promote, facilitate and increase the supply of commercial/office space in appropriate locations.

## 11.2. Height, Scale and Form of the Proposal in the Context of Surrounding Development and Potential Impact on Amenity

- 11.2.1. Concerns are expressed in a number of observations to the Planning Authority and the two observations to An Bord Pleanála that the height and scale of the development is totally inappropriate in the context of the surrounding residential development. It is further stated that the height, scale and massing will have an overbearing impact on surrounding residential development particularly two-storey period residential dwellings fronting onto Erne Street Upper.
- 11.2.2. The wider area in which the subject site is located is somewhat unique in that it accommodates the remnants of a network of artesian type 19<sup>th</sup> century brick cottages and two-storey houses in very close proximity to the city centre. But it has also been an area that has been subject to higher density infill development in close proximity to these houses. Initially much of this infill development comprised of inner city flat complexes but more recently office and commercial development predominantly 5 to 7 storeys in height have been constructed in the area. In this context the proposed development in terms of height and scale would not be out of context with the nature and scale of the infill development in the area. As referenced in the previous section, policy guidance documents seek to ensure that the inner city brownfield sites are developed in a more sustainable manner. The recently adopted National Planning Framework requires that cities acquire a more compact urban form which emphasises the need for increased building height on infill and brownfield sites and with higher density development to enable greater use of public transport. The proposal in my view fully accords with the overall policies as set out in National and Local Planning Guidance in that it seeks to increase the quantum of development at appropriate locations within the city. The subject site is deemed to be such an appropriate location. I acknowledge that this results in an abrupt transition of scale in the context of the housing on Erne Street. However, I do not consider it appropriate in land use terms having regard to the above policy guidance that the historical lower density development in such close proximity to the city centre should dictate or inform development scale in this segment of the city.
- 11.2.3. I further consider that the reduction in the overall quantum of development as required by the additional information request by the Planning Authority represents a fair compromise in terms of respecting existing densities in the area and fulfilling

policy guidance and objectives in respect of development on brownfield sites within the city centre.

- 11.2.4. The revised proposal before the Board is set back 12 metres from the common boundary of the rear gardens/yards of the houses fronting onto Erne Street. The top floor incorporates a further setback amounting to an overall separation distance of 26 metres between the eastern boundary of the site and the top floor of the development. This is a considerable setback in the context of the city centre environment and will in my opinion result in the proposed development not having an overbearing impact on adjacent buildings. It will also aid daylight and sunlight penetration to the rear gardens and rear elevations of the dwellings in question. This has been adequately demonstrated in the documentation submitted with the revised proposal. The eastern elevation of the block does incorporate a terraced area which will overlook the rear yards of the houses on Erne Street. This terraced area will however only be occupied during normal business hours and is unlikely to be utilised during the later evening period. However, if the Board deem it appropriate it could omit the terraced area by way of condition in order to address any potential issues in terms of overlooking.
- 11.2.5. The overall height of the building at 21.2 metres cannot be considered excessive in this central location. The eastern elevation also incorporates a significant amount of opaque glaze which will further reduce the potential for overlooking.
- 11.2.6. In my opinion therefore, I consider the height and scale of the development to be acceptable and I further consider that the proposal will to unduly impact on residential amenity on the grounds that acceptable mitigation measures have been incorporated into the design in order to offset any significant adverse potential impact.

### **11.3. Impact on the Development Potential of Adjoining Sites**

- 11.3.1. One observation submitted by Zonda Properties Limited does not object to the development of the site per se, but does express concerns that the proposed development will affect the potential of the adjacent site to the south in terms of development. This site is relatively large (35 metres by 18 metres) and in my view there is scope to accommodate a reasonable quantum of development on the

adjacent site. It is difficult to comment on whether or not the proposal will impact on the development potential of the adjoining site and this obviously depends on the land use proposed, the configuration of the building/buildings on site, fenestration arrangements, car parking requirements etc., before any detailed conclusion can be reached in respect of same.

11.3.2. However, I do not consider it appropriate to reduce the quantum of development on the subject site on the grounds that it may or may not affect the future development potential of an adjacent site. Particularly having regard to the prime location of the site adjacent to public transport routes and its proximity to the city centre. It appears that the most appropriate solution may lie in the possibility of submitting a coordinated scheme or indeed a joint scheme to maximise the potential and to ensure that a more coherent development occurs within the overall plot. This would necessitate coordination of behalf of both property owners prior to any subsequent application being submitted.

#### **11.4. Potential Impact on Dart Underground Station**

11.4.1. The potential of the development to affect the Dart Underground is perhaps the most significant issue in determining the current application having regard to the decision of the Planning Authority and its reference to same. The submission from Irish Rail expresses concerns that the proposed development may impact on the ability of the Railway Authority to deliver an underground station at this location. The submission raises concerns in relation to:

- Construction/coordination issues.
- Structural design issues.
- Ownership and responsibility for the undertaking of works etc.

11.4.2. The applicant in the grounds of appeal argues that any technical construction issues can be easily overcome and that there are precedents for technical solutions to overcome any construction issues that may arise in terms of coordinating between the two projects. Issues in relation to the coordination and ownership etc., it is argued, can be agreed through detailed design and coordination after the Board makes its decision.

- 11.4.3. I consider that the Board may not be in a position to critically or assertively determine whether or not the construction techniques to be employed as suggested in the grounds of appeal would or would not be technically, financially or otherwise appropriate particularly in the absence of any detailed designs regarding the proposed underground station. The Board granted approval for the Dart Underground system in 2010 and the decision was confirmed in the high court in 2014 however, no physical works have taken place to date.
- 11.4.4. The Board will note that the Pearse Street underground station was envisaged to play a very important strategic role in linking the east/west underground rail corridor with the existing north/south corridor. Pearse Street was to become the main intersection between the north/south and east/west route. For this reason, the station has added strategic importance and any development which could potentially compromise the location and construction of such a station would need to be carefully considered in my view. The proposal to construct a Dart Underground programme is referred to in Section 5.22 of the Transport Strategy for the Greater Dublin Area and the objectives set out in this strategy have been included in the NPF. As referred to in the Local Authority planner's report, there are also a number of important policy objectives contained in the development plan; specifically Policy MT4 which seeks to facilitate the provision of the Dart Expansion Programme including the Dart Underground. Thus, it can be argued that the provision of the Dart Underground system is firmly back on the agenda under current policy proposals.
- 11.4.5. While it is unreasonable in my view that the current development be held up for an undefined and prolonged period of time on the grounds that it may or may not have implications for any underground station at Pearse Street, it is likewise inappropriate that a development would be permitted to proceed where it may have profound implications for the provision of a strategic underground station at Pearse Street.
- 11.4.6. To this end I would recommend that the Board should refuse planning permission as set out by Dublin City Council on the grounds that the proposal is premature. It is inappropriate in my view as suggested by the applicant that the Board grant planning permission for the development as proposed and then any details regarding the coordination and delivery of both projects be agreed between the parties involved. It would be much more appropriate in my view that the applicant and Iarnród Éireann be required to discuss and iron out all potential issues which could arise in respect of



delivering both projects prior to any development consent being granted. It would be more appropriate that the applicant would submit an application which has been agreed and has the support of Irish Rail in respect of being able to deliver both projects in a coordinated and integrated way notwithstanding the fact that they may not be provided simultaneously. It is therefore in my view, incumbent on both the applicant and Irish Rail to discuss and agree an acceptable resolution for the site that allows the development potential of the subject site while at the same time provides comfort and satisfaction to Irish Rail that the proposal will in no way compromise the future construction at an underground station at this location.

#### **11.5. Supplementary Development Contribution**

The observation from Transport Infrastructure Ireland highlights the fact that the subject site is located within the boundary of the Luas “C Line” extension as adopted by the Council. TII are correct in this assertion and as such a rate of €38 per square metre should be applied under the supplementary scheme adopted. I estimate that the gross floor area of the revised plans submitted are 6,065 square metres hence a financial contribution of €230,470 should be applied in the case where the Board are minded to grant planning permission for the proposed development.

#### **12.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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.

#### **13.0 Decision**

Arising from my assessment above I consider that the Board should uphold the decision of the Planning Authority and refuse planning permission for the proposed

development on grounds of prematurity based on the reasons and considerations set out below.

#### **14.0 Reasons and Considerations**

It is considered that the proposed development would contravene Policy MT4 of the current Dublin City Development Plan which seeks to promote to facilitate the provision of Metro, all heavy elements of the Dart expansion programme including Dart Underground (rail interconnector) in order to achieve strategic transport objectives. The development as proposed is therefore considered to be premature pending the agreement of the requirements of Dart Underground and would therefore be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

23rd April, 2018.