



An  
Bord  
Pleanála

## Inspector's Report ABP-300987-18

**Development** Demolish buildings. Construct mixed use building ranging in height of between 3 and 7-storey above basement providing 343no. aparthotel units, with coffee shop, retail unit and artist studio space and electricity substation and switchroom at ground floor, with parking and ancillary facilities at basement level.

**Location** Site bounded by Little Mary Street (to the south), Little Green Street (to the west) and Anglesea Row (to the east), Dublin 1

<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3629/17
<b>Applicant(s)</b>	LMS Investments Designated Activity Company
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	GRANT with 23no. conditions
<b>Type of Appeal</b>	First party and third-party appeals
<b>Appellant(s)</b>	LMS Investments Designated Activity Company; Sean Harrington & others.
<b>Observer(s)</b>	None

**Date of Site Inspection**

29/08/18

**Inspector**

John Desmond

## Contents

1.0 Site Location and Description .....	5
2.0 Proposed Development .....	7
2.1. Description .....	7
2.2. Further information.....	8
2.3. Clarification of further information .....	9
3.0 Planning Authority Decision.....	9
3.1. Decision .....	9
3.2. Planning Authority Reports .....	10
3.3. Prescribed Bodies.....	13
3.4. Third Party Observations .....	13
4.0 Planning History.....	15
4.1. Pre-Planning Consultation .....	17
5.0 Policy Context.....	18
5.1. Development Plan.....	18
5.2. Natural Heritage Designations .....	21
6.0 The Appeal .....	21
6.1. Grounds of 3 <sup>rd</sup> party appeal.....	21
6.2. Grounds of 1 <sup>st</sup> party appeal.....	23
6.3. Planning Authority Response.....	27
6.4. Responses to appeal .....	29
7.0 Assessment.....	35
7.1. Policy / principle .....	35
7.2. Archaeological heritage.....	37

7.3. Architectural heritage and streetscape.....	39
7.4. Transport and roads design: .....	46
7.5. Impact on amenities .....	47
7.6. Other issues.....	50
7.7. Environmental Impact Assessment Screening.....	51
7.8. Appropriate Assessment .....	51
8.0 Recommendation.....	52
9.0 Reasons and Considerations.....	52

## 1.0 Site Location and Description

- 1.1. The application relates to approximately two-thirds of an urban block in Dublin's north inner city (c.600m west of O'Connell Street and c.290m north of the Liffey). The maximum dimensions of the city block measure 104m (N-S) and 49m (W-E). The character of the area is mixed, with intensely built up areas where the streets are relatively narrow and building heights between 3-5 storeys in height for commercial and residential uses, including historic and replacement buildings, to the south, east and north of the site; and development of lower intensity, less intensive use (wholesale fruit and vegetable distribution warehousing), limited to 2 storeys / double-height buildings and / or open yards. The latter characterises the application site and almost the entirety of the subject city block. It also characterises the city blocks to the west (up to Greek Street / Beresford Street), to the southwest and a large portion of the block to the south (up to Mary's Abbey),
- 1.2. The site has a stated area of 0.32ha, with maximum dimensions of c.75m north-south and c.49m west-east. It is bounded by Anglesea Row (c.6.4m width and finished in traditional stone sets) to the east, Little Mary Street (c.7-7.5m) to the south and Little Green Street to the west (10m-11m approximately). The site currently accommodates a double-height warehouse / storage type structures, with minor ancillary office space and a large open delivery area. Based on the design and materials uses, the existing development would appear to date from the 1980's. The site accommodates Keeling's Fruit, being one of the many fruit wholesalers within this section of the city, and The Complex, which is an arts and performance centre.
- 1.3. The existing buildings are built up to the street, without setback and in line with the existing building lines to the west and east and to the north, with no fenestration, access or other openings onto Anglesea Row and very limited fenestration (4no. at first floor level and 1no. boarded up window at ground floor level) and 1no. modest entrance door (to 'The Complex') onto Little Mary Street. The main activity is focused onto Little Green Street elevation, but this comprises principally HGV entrances and limited fenestration and openings.

- 1.4. The site is bound by pedestrian pavements of relatively narrow width (c.1.3m) to the south on Little Mary Street and west on Little Green Street (connecting Little Britain Street / Green Street to Aran Street East), but it is set flush to the carriageway to the east on Anglesea Row. Little Mary Street, forming an east-west connection with the wider street network from Mary's Lane to Capel Street, measures between c.7.05m and c.7.6m adjacent the site, similar to the balance of the street to the east. Little Green Street measures between c.10m and c.11.6m, forms a north-south connection with the wider street network from Little Britain Street / Green Street and Arran Street East. Anglesea Row measures between 4.85m and 5.8m and provides a connection between the east-west streets of Little Britain Street and Little Mary Street, and it is notable for retaining entirely its 19<sup>th</sup> C cobbled surface and the absence of any pedestrian footpath.
- 1.5. To the north the site abuts a collection of warehouse structures of no obvious architectural merit or heritage value, although given the site location, the built form, the older age of structures on the site and the archaeological issues that have arisen in this case the presence of upstanding archaeological remains on that site cannot be ruled out.
- 1.6. To the east of Anglesea Row there is a mix of new build and renovated / extended stone warehouse building in residential and commercial-office uses, with the buildings set flush to the vehicular carriageway, and with buildings of up to 5-storeys in height.
- 1.7. To the south of Little Mary Street there are a number of older / historic terraced buildings of 3-storeys in height, interspersed with mid to late 20<sup>th</sup> C structures including a warehouse and a replacement house.
- 1.8. Little Green Street is characterised mainly by a mix of 2-storey warehouse type structures dating, most probably from the mid-20<sup>th</sup> century, but with some earlier (probably turn of the century) structures including a 3-storey redbrick building with commercial ground floor at the northeast of the junction with Mary's Lane / Little Mary Street / Arran Street East, another similar structures at the southeast corner of the junction with Little Britain Street / Green Street and a 2-storey redbrick warehouse extending west to Halston Street.

## 2.0 Proposed Development

### 2.1. Description

- Demolition of all existing buildings on site;
- Construction of mixed use building of 14,364-sq.m GFA, ranging from 3-7-storeys in height above basement;
- Building proposed for aparthotel use at basement, part ground and all upper floor levels, to contain 343no. aparthotel units;
- Ancillary staff and guest facilities, plant, storage and waste/refuse storage areas, 9no. parking spaces and 35no. bicycle parking spaces at basement level, to be accessed via a ramp from Little Green Street;
- Ancillary staff and guest facilities, ancillary reception, kitchen and coffee shop at ground floor level accessed from Little Mary Street;
- Retail unit (214-sq.m) at ground floor level to Little Mary and Little Green streets; 2no. artist studios (103-sq.m in total), electricity switch-room and electricity substation to north along Little Green Street;
- Hard and soft landscaping to all frontages;
- SuDS measures including green roofs;
- Rooftop plant at 4<sup>th</sup> and 6<sup>th</sup> floor levels.

#### 2.1.1. Supporting documentation

- *Cover letter*, Declan Brassil & Co. Ltd
- *Planning Report* prepared by Declan Brassil & Co. Ltd
- *Architectural and Urban Design Statement* prepared by Duignan Dooley Architects
- *Architectural Heritage Assessment* prepared by Molloy and Associates
- *Archaeological Assessment* prepared by IAC Archaeology Ltd
- *Verified Photomontages and Visual Impact Assessment Report* prepared by James Horan Architectural Illustration

- *Daylight Assessment* prepared by Malcom Hollis
- *Landscaping Report*
- *Mechanical & Electrical Services Strategy Overview* prepared by Ethos Engineering
- *Staycity Aparthotels Servicing Demands and Waste Management Strategy*
- *Transportation Statement* prepared by Lohan & Donnelly Consulting Engineers
- *Flood Risk Assessment* prepared by Lohan & Donnelly Consulting Engineers
- *Preliminary Construction Management Plan* prepared by Lohan & Donnelly Consulting Engineers
- *Letter concerning Engineering Services (Main Drainage – Foul & Surface Water and Water Supply)* prepared by Lohan & Donnelly Consulting Engineers
- *Staycity Little Mary Street Sustainability & Energy Statement* prepared by Ethos Engineering
- *Screening Report for Appropriate Assessment* prepared by Openfield
- *Letter of support* from The Complex
- *Letter of consent* from Keelings Retail UC, site owners

## 2.2. Further information

Received 23/11/17

- Revised drawings setting back 2no. projecting bays at third floor level on eastern elevation by 1.575m. The elevation drawings also show the slight projection (c.200mm – 250mm) of the 2no. bays at 1<sup>st</sup> and 2<sup>nd</sup> floor levels extended to ground floor street level, but this is not shown on the ground floor plan.

### 2.2.1. Further supporting documentation

- *Cover letter* responding to FI request prepared by Declan Brassil & Co. Ltd



- *Additional Archaeological Assessment Report* prepared by IAC Archaeology Ltd

### 2.3. Clarification of further information

Received 20/12/17

#### 2.3.1. Further supporting documentation

- *Cover letter* responding to Clarification of FI request prepared by Declan Brassil & Co. Ltd
- *The Investigation of a Commercial Yard, Little Green Street, off Little Mary Street, Dublin – Archaeological Geophysical Survey* undertaken on behalf of IAC Archaeology Ltd

## 3.0 Planning Authority Decision

### 3.1. Decision

To **GRANT** permission subject to 23no. conditions. Conditions of note:

No.3 – Section 49 contribution condition to sum of €419,257.80 in respect of the LUAS Cross City project.

No.4 – Basement omitted and revised foundation design strategy to be agreed, in the interest of preserving archaeological material.

No.5 – Limits occupation period for short-term letting of apart-hotel units to no more than two months, to operate as per Appendix 16 of CDP, with 24-hour reception and security facilities, and not to be used as independent and self-contained permanent residential units.

No.6 – Prohibits use for student accommodation and clarifies that change of use to residential will require planning permission.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The **first report of the planning officer (03/10/17)** is consistent with the decision of the planning authority to seek further information and the details thereof. The planning officer considered the proposed mix of uses to be acceptable under the Plan, but raised concern about the delineation of space allocated between the proposed café and reception area, whether the café would be publicly accessible and the location of the proposed gym below ground floor level; and considered the design approach including density, height, scale and massing to be acceptable except for the proposed two projecting bays onto Anglesea Row; raised no concern regarding potential overshadowing or overlooking within the site context and having regard to the previously permitted development on the site (reg.ref.0672/03) and the nature of the proposed short stay tourist use which *“is considered less sensitive in terms of overlooking having regard to the predominant use of bedrooms at night time”*; considered the proposed material finishes to be acceptable; considered the proposed development would accord with the CDP objective to enhance the public realms in close proximity to the Victorian Market; the proposed active ground floor uses to be welcomed, but considered the ground floor aparthotel use to Anglesea Street to be acceptable within its context as a narrow street with opposing residential use which would provide difficulties in providing high quality, inviting commercial environment, but not ideal; the setback and provision of public footpath would represent a planning gain; the open space proposals are acceptable within the inner city context; had no concerns about traffic, transport, parking or servicing issues; noted the historical significance and archaeological potential of the area and the recommendations of the city archaeologist that archaeological testing be undertaken prior to any decision to grant permission to enable an informed archaeological recommendation be formulated by the Council. The planning officer recommended that further information be sought on four points concerning archaeological testing, café use, gym / exercise use location and the eastern elevation.

The **second report of the planning officer (15/12/18, subsequent to receipt of FI)** was satisfied with the proposed revisions to the eastern elevation to Anglesea Street, with the confirmation concerning the proposed café and with the applicant’s

position regarding the location of the gym at basement level, but recommended that clarification be sought in respect of archaeological testing as per the city archaeologist's report.

The **final report of the planning officer (23/01/18, subsequent to receipt of CFI)** noted the concerns of the city archaeologist over the applicant's CFI response, including the failure to conduct archaeological testing onsite, and recommended that permission be granted subject to 23no. conditions, including a condition relating to the requirements of the city archaeologist.

### 3.2.2. **Other Technical Reports**

**Waste Management Division (14/09/17)** – No objection subject to standard conditions relating to management of development and construction waste and management of operational waste for commercial development and apartments.

**Drainage Division (14/09/17)** – No objection subject to standard conditions.

**Conservation Officer (19/09/17)** – Raised concern that, inter alia: (i) the monolithic form of the proposed development may undermine the character and coherence of the urban form and the historic River Liffey context, and its impact on the city skyline needs to be fully considered within the wider city context; (ii) the poor transition in scale between new and old, discernible in the contextual south elevation will result in overwhelming of protected structures; (iii) the materials, setbacks and voids within the scheme are not complementary to the 19<sup>th</sup> C character of the area (brick palette, architectural language and verticality) and 3D information describing the proposed development within this context is required to inform the overall roof design and height, as viewed from St. Mary's Church, from the top of Capel Street / Bolton Street and from the quays viewing across the river towards Ormond Quay; (iv) ground floor shopfronts not fully considered / developed in design terms – the opportunity to activate the pedestrian route is not achieved where this is not fully considered; (v) the proposed setbacks in the building line distort and remove the character of the former historic route along Little Mary Street, which is visible from all approaches along this historic route and is a dominant view along Little Mary Street; (vi) the overall monolithic nature of the development appears to have no regard to the urban form or character of the area.

**Environmental Health (not dated)** – No objection subject to standard type conditions.

**City archaeologist (26/09/17)** – There are 17no. Recorded Monuments and Places within 150m of the site, 5no. of which are associated with the medieval St Mary's Abbey; skeletal remains have been found within the vicinity on a number of occasions; the site is within the Zone of Archaeological Constraint for RMP DU018-020 (Dublin City) and the Zone of Archaeological Interest in the CDP. Recommends that archaeological testing (as specified) be requested as Further Information.

**City archaeologist (12/12/17, subsequent to receipt of FI)** – Refers to onsite meeting between the CA and the archaeological consultant which took place on 18/11/17. The CA is of the opinion that it is feasible to test the northwest portion of the site in advance of the planning decision, having no standing buildings on it (being a busy service yard). The report notes the applicant's FIR that "excavation of test trenches is prohibited by required ongoing operations" as it is a distribution depot for Keelings Ltd, operating 24/7 throughout the year. It notes the content of the Archaeological Report submitted as FIR which builds a case on historical and cartographic grounds to say that the development site lay outside the main precinct of the Abbey, and the proposal to use GPR instead of archaeological testing. The CA considered the FI response to be inadequate and that the proposed GPR would be assistive in deciding the location of archaeological test trenches and determining the location of cellars and depth of non-archaeological overburden, but that having regard to the scale of development proposed and the proximity to the discovery of human remains, archaeological testing in advance of a decision is recommended as clarification of FI.

**City archaeologist (19/01/18, subsequent to receipt of CFI)** - Having had regard to the National Monuments Service Best Practice Guidelines (1999) concerning the purpose of test excavations (not to be confused with archaeological assessment) and to the failure of the applicant to carry out same on foot of the FI and CFI requests, and given the lack of clarity concerning potential subsurface archaeological remains at the site, the CA recommended the basement be omitted and, subject to the results of archaeological testing, the foundation design for the approved development and the archaeological mitigation strategy be agreed with the planning authority in advance of commencement of development works.

**Roads & Traffic Planning Division (28/09/17)** – No objection subject to standard conditions and to conditions requiring the agreement of cycle parking to standard, agreement of project transport management plan for all stages of construction.

### 3.3. Prescribed Bodies

**TII (07/09/17)** – S.49 Levy Luas Cross City (St Stephen's Green to Broombridge Line) Contribution Scheme applies to this site (condition no.3 of the decision refers).

### 3.4. Third Party Observations

17no. letters of observation were submitted to the application (on 04/09/17) from Ellen B. McCarthy and others of no.29 Capel Court (east side of Anglesea Row), Andrea Pitt of 117/118 Capel Street; (on 08/09/17) from David O'Donovan of no.13 Capel Court, Dermot Harman of Carrigwood, Firhouse (but refers to their homes in Capel Court); (on 09/09/18) from Andrea Walsh of 39 Capel Court; (on 11/09/17) from Andrew Lum of no.28 Mary Street Little; (on 12/09/17) from Monica Campardo of Capel Court, Helen Dolan of Seafield Road, Killiney (with property at Capel Court), Gerry Smith of no.2 Capel Court; (on 13/09/17) from occupants of no.121/122 Capel Street c/o Christopher O'Keefe of MCO, Seamus Duignan of The Market Hacienda Bar on Little Mary Street, Richard Lawless of no.31 Capel Court, Olivia McCarthy of no.112 Capel Street, Seán Harrington Architects property owner of 121/122 Capel Street; (on 14/09/17) Pat Coyne of no.7 Arran Street East, Ray Kenny on behalf of the Board of Capel Court Management GLC, and Janine Kloos of no.11 Capel Court. Whilst the redevelopment of the area was broadly welcomed by a number of observers, the following concerns were raised (in addition to those repeated in the third-party appeal and summarised below):

- Excessive height, scale, mass and excessive plot ratio contrary to Development Plan standards and out of character
- Design ignores the fine medieval grain of the streetscape in the Fruit Market area.
- Impact on historic, unique and protected structures in historic part of city (including potential physical damage during construction – pre-development surveys required).

- Visual impact shown in view 12 should be lessened.
- Impact on amenities of neighbouring residential property – overbearing, overlooking, overshadowing / loss of light, noise (from use of Anglesea Row for deliveries).
- Impact on water pressure.
- No significant activity at ground floor level to enhance public realm.
- Inappropriate mix of use for a development of this scale.
- Transient population with no vested interest in the local community.
- Does not address housing shortage. Does it reflect the planned ratio for residents : students : tourists in the short term for the north city area?
- Potential for widened section of Little Mary Street to be enclosed as a screened terrace, negating improvements for pedestrians.
- Concern about impact of construction taking place outside limited hours imposed by condition – importance of enforcement.
- Anglesea Row should be widened to 9m, with development to Anglesea Row limited to 3½ storeys, with 3<sup>rd</sup> floor stepped by 2m and elevation clad in light coloured material to maximise light on the street, and bedroom windows angled or louvred to reduce overlooking.
- The board omitted the block to Anglesea Row under PL29.204975.
- Traffic impact.
- Effectively converts this section of Little Mary as a dedicated driveway for the hotel for loading and unloading guests.
- Traffic impact reports don't take into account the traffic increase that the Victorian markets redevelopment will be in place by the time the development commences, and will bring increase in taxis, private vehicles and foot traffic to Little Mary Street and aggravate existing congestion in the area.
- Contradictions on drawings relating to roof gardens require revised advertisement.

## 4.0 Planning History

### On site

**Reg.Ref.2384/15:** Permission **GRANTED** by the planning authority (final grant date 11/06/15) for change of use of part ground floor (40.7-sq.m) and part first floor (536.2-sq.m) areas from light industrial use to a new arts studio, exhibition space (place of assembly), and ancillary spaces (southwest section of current site). New glazed entrance and shop front signage, remodelling and lighting of existing external signage to the south elevation, new finishes to the external of the building to the south and west elevations, widening of an existing pedestrian door to the west elevation and all associated site works

**PL29N.204975 / Reg.Ref.0672/03:** Permission **GRANTED** by the board (16/03/04), upholding the decision of the planning authority to grant permission for demolition of the existing warehouse at the junction of Little Mary Street and Little Green Street and to the south Anglesea Row, Dublin 1 and the erection of a mixed use development consisting of creche, retail units, office units, apartments and live/work in three blocks up to 7 storeys over basement car park and storage. Block C was omitted by condition for the reason, inter alia, to protect the amenity and development potential of property in the vicinity.

### In the vicinity

#### **Opposite south of appeal site, including no.23 Little Mary Street.**

**Reg.Ref.3572/18:** Current application to develop a 98no. bedroom hotel with ancillary facilities, at a 0.212ha site at Nos.133 and 133A Capel Street, Nos. 136A and 136B Capel Street, Nos. 7 and 7A Meetinghouse Lane and No. 23 Little Mary Street, Dublin 1 (all Protected Structures with the exception of No.7A); including change of use (1,703-sq.m) from commercial (offices, storage and workshop), ancillary car parking and residential to use as a hotel; and the provision of an additional 4,154-sq.m to provide 5,857-sq.m GFA; to range in height up to part 8-storeys and to be accessed via No. 133 Capel Street, No. 7 Meetinghouse Lane and No. 23 Little Mary Street.

The planning authority has sought **FURTHER INFORMATION** (issued 20/09/18) concerning (i) additional archaeological test excavations and related archaeological

issues; (ii) reduction in height, scale and massing to reduce impact on adjoining and adjacent Protected Structures on Little Mary Street and Capel Street and justification for removal of historic fabric; (iii) concerning works and construction access through lands outside the redline boundary; (iv) how the development potential of adjoining sites (in particular site adjacent to west), including the need to avoid excessive overlooking and overshadowing; and (iv) clarity on rights of way on which the proposed development is dependent.

**Opposite south of appeal site at no.22 Little Mary Street.**

PL29N.245593 / Reg.Ref.3285/15: Permission **GRANTED** by the board (01/02/16) for modifications to the permission Reg.Ref.2785/13 to provide an additional floor (to existing 3-storey building) with 1-bed penthouse apartment (c.56-sq.m GFA) with east-facing balcony, plus associated removal of / modifications to existing roof and internal modifications to permitted 1st and 2nd floors at no.22 Little Mary Street. This overturned the split decision of the planning authority which had refused the 3<sup>rd</sup> floor apartment and balcony.

**Opposite SW of appeal site at junction of Little Green Street and Mary's Lane.**

**Reg.Ref.2894/18:** Permission **GRANTED** by the planning authority (FGD 01/08/18) for the construction of an additional floor (to existing 3-storey building) with metal-framed windows set into zinc cladding, an external door to allow access to the roof of the existing two storey rear return and installation of a perimeter guard rail and decking to this external space. The works also include the provision of a new steel-framed window at ground floor level in the Little Green Street elevation, as well as the provision of new contemporary chimney flues extending 725 mm above new roof level to replace the existing chimney.

**Reg.ref.3880/17:** Permission **REFUSED** by the planning authority (10/11/17) for removal of the existing chimney above roof level and construction of a new third floor with mansard windows set into ceramic tile cladding, provision of new contemporary chimney flues extending 725 mm above roof level, an external door to allow access to the roof of the existing two-storey rear return and installation of a perimeter guard rail and decking to this external space. The single reason for refusal related to impact on character of existing terrace and serious injury to the visual amenities of



the area contrary to s.16.2.2.3 and policy CHC1 (preservation of built heritage) of the CDP 2016-2022.

**Site at NW end Little Green Street and bound by Halston and Little Britain Streets.**

**Reg.ref.2859/07:** Permission **GRANTED** by the board (26/11/07), upholding the decision of the planning authority to permit a mixed-use development comprising 23no. apartments (reduced by condition from 33no.) and 2no. retail units in a 6-storey building (reduced by condition from 8no. storeys) at Little Britain Street, Halston Street and Green Street. Permission was extended until 10/01/18 under reg.ref.2859/07x1.

**4.1. Pre-Planning Consultation**

Two pre-planning meetings took place with the planning authority (on 13/09/16 and 03/07/17) concerning the development on this site of a c.350-bed aparthotel of up to 7-storeys, with 4m/5m widened footpath (and “*landing*”) to Little Mary Street and new footpath to Anglesea Row.

In the initial meeting the PA raised concern with height and visual impact, especially having regard to the ACA and Protected Structures; proposed ground floor uses, with specific reference to active uses to Little Green Street; external materials to create lively frontage; footpaths to be widened to Little Mary Street and Anglesea Row; and details required for parking, access and servicing.

In the subsequent meeting the issues raised by the PA related to letter of support and financing for the relation of ‘The Complex’ [theatrical group] from the site; omit bedrooms from Little Green Street; integrate tables and chairs to Little Mary Street into the design; consult with Roads Division re access / servicing off Little Green Street; notes the proposed heights (particular concerns indicated regarding height and roof massing to Little Mary Street / Little Green Street); noted sunlight / daylight survey carried out; notes the attempts to break up monolithic nature of building and stepped parapets; wide angled views required [for visual assessment / photomontages]; safer to remove a floor from the development or explore alternatives.

A third pre-planning record (14/10/16) relates to the potential redevelopment of the city block adjacent the west of Little Green Street, bound by Halston Street and Mary's Lane concerning a proposed creative technology college.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. Dublin City Development Plan 2016-2022

Land use zoning objective Z5 City Centre *'to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity'*.

Aparthotel use is not specifically included as a use permitted in principle or open for consideration within the Z5 land-use zone (or any other land-use zone), but may be regarded effectively as an hotel use, which is permitted in principle within the Z5 zone.

Other objectives: Zone of Archaeological Interest for Dublin City (RMP DU018-020); Architectural Conservation Area (to east of Anglesea Row); Conservation Area (at northmost end Little Green Street); Protected Structures (opposite site at Little Mary Street, at Anglesea Row and at Mary's Lane).

**Chapter 4 Shape and Structure of the City** – SC13 (concerning promotion of sustainable densities); S.4.5.4.1 Approach to Taller Buildings; Policy SC16 (building heights); Policy SC19 (safe streets and encourage walking); Policy SC20 (high quality streets); Policy SC21 (safe streets and public space); Policy SC29 (promotion of development of vacant and brownfield lands).

S.4.5.5 Public Realm - *'Proposals to ... [inter alia] renovate and create a new food hall and café/restaurant destination at the Victorian wholesale fruit and vegetable market at Mary's Lane, will significantly expand the public's perception of the city core, and will create new destination points in the city.'*

Fig.4 Key Views and Prospects.

**Chapter 6 Enterprise** – Policy CEE12 (i) *'To promote and facilitate tourism as one of the key economic pillars of the city's economy ... and to support the provision of*

*necessary increase in facilities such as ... aparthotels ...' CEE18(v) 'To recognise that markets, indoor and outdoor, food and other products, have major economic potential, including as key tourist attractions and supports for start-up enterprises.'*

Objective CEE05 *'To carry out a study on how to enhance the environs of the fruit and vegetable market and its linkages with the vibrant hubs of Henry St and Capel St and on to Smithfield and Heuston in order to enhance the economic development, employment generation, and tourism potential of the area'*.

**Chapter 7 Retailing** – Policy RD24 *'To promote and facilitate the ongoing implementation of the City Markets Project, centred around the Victorian Fruit and Vegetable Market on Mary's Lane, an important aspect in city centre regeneration ([www.dublincity.ie](http://www.dublincity.ie)).'* Fig.8 City Centre retail Core – Principle Shopping Streets (neither category 1 nor category 2 street, but within core area).

**Chapter 10 Green Infrastructure, Open Space and Recreation** – Objective GIO35 (investigate possibility of promotion of activities on laneways and backstreets in the city centre).

**Chapter 11 Built Heritage and Culture** – Policy CHC1 (preservation of built heritage);

S.11.1.3 Challenges – *'...A challenge for this development plan is to further realise the substantial tourism potential of the medieval city, its northern suburb of Oxmantown (the Markets area, St Mary's Abbey, Smithfield and Collins Barracks)...'*

S.11.1.5.4 – 11.1.5.6 Architectural Conservation Areas and Conservations Areas. Policy CHC4 (to protect Dublin's Conservation Areas).

S.11.1.5.14 Monument Protection. Policy CHC9 *'To protect and preserve National Monuments (1-8). 1. To protect archaeological material in situ by ensuring that only minimal impact on archaeological layers is allowed, by way of the re-use of buildings, light buildings, foundation design or the omission of basements in Zones of Archaeological Interest.'*

CHC4 *'To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and*

*enhance the character and appearance of the area and its setting, wherever possible. [...]*

*Development will not: 1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area; 2. Involve the loss of traditional, historic or important building forms, features, and detailing including roofscapes, shop-fronts, doors, windows and other decorative detail; [...] 4. Harm the setting of a Conservation Area; 5. Constitute a visually obtrusive or dominant form. [...].’*

*11.1.5.6 Conservation Area – Policy Application: [...] Development outside Conservation Areas can also have an impact on their setting. Where development affects the setting of a Conservation Area, an assessment of its impact on the character and appearance of the area will be required. It should be recognised that this setting can be expansive and development located some distance away can have an impact. Any development which adversely affects the setting of a Conservation Area will be refused planning permission and the City Council will encourage change which enhances the setting of Conservation Areas.*

*CHC12 ‘To promote tourism in the medieval city and suburbs’.*

CHC15 (concerning preservation of historic elements of public realm, including historic kerbing and sets). The site is within the medieval city area (15. Four Courts) as defined in Fig.17 Dublin City: Historic Core.

**Chapter 16 Development Standards:** Design, Layout, Mix of Uses and Sustainable Design - s.16.2.1 Design Principles; s.16.2.1.2 Sustainable Design; s.16.3.4 concerning open space; s.16.5 Plot Ratio (Z5 2.5-3.0, but higher may be permitted in certain circumstances); s.16.5 Site Coverage; s.16.7.2 Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development; s

Appendix 7 Stone Setts to be Retained, Restored or Introduced – No.5 North City Anglesea Row (whole).

Appendix 16 Guidance on Aparthotels

Appendix 21 Land-use Definitions – Aparthotel; Hotel.

## 5.2. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.9km at the nearest distance (to NE).

North Bull Island SPA Site 004006 c.5.8km at nearest distance (to E-NE).

North Dublin Bay SAC Site 000206 c.5.8km at nearest distance (to E-NE).

South Dublin Bay SAC Site 000210 c.4km at the nearest distance (to SE).

## 6.0 The Appeal

### 6.1. Grounds of 3<sup>rd</sup> party appeal

The grounds of the **third-party appeal by Mr Harrington, M.CO and Capel Court Management (20/02/18)**, c/o HRA Planning Consultants, may be summarised as follow:

- Impact on light, being essential requirement to third floor architectural office facing west onto Anglesea Row, by reason of scale and height.
- The appellant, prior to deciding to occupy the premises, undertook considerable research to determine the likelihood of effects to existing light consequent of any development on the subject application site, and noted the board's decision on PL29N.204975 which recognise an inherent sensitivity with overdevelopment on that site and potential impacts on amenities of neighbouring properties, that was address through omission of the proposed block facing onto Anglesea Row.
- Impact on the outlook from three floors of apartments within Capel Court, nos.110-113 Capel Street, managed by Capel Court Management.
- Welcomes the redevelopment of the subject site where such proposals are consistent with the proper planning and sustainable development of the area and demonstrate compliance with policy provisions and design standards under the Development Plan.
- The board's approach in assessment PL29N.204975 is a proper and balanced approach, including the omission of the proposed development

facing onto Anglesea Row to ensure effective development of a city centre site and respectfully cognisant of the setting and established amenities of surrounding properties. The circumstances have not materially changed since that decision that would allow the principles to be reconsidered.

- The footprint of block C, omitted from PL29N.204975, corresponds with that of the current proposal, along this narrow lane.
- Contrary to the following policy objectives (synopsised) under the CDP: SC19 to promote attractive and safe streets; SC20 to promote high quality streets and public spaces which are accessible and inclusive, vibrant, attractive, accessible and safe; and SC21 to promote public space that is designed to deter crime and anti-social behaviour, promotes safety and accords with principle of universal design, and the provisions of S.16.6 of the Plan.
- The existing lane of 112m, with a solid high wall and surrounding buildings presenting a sense of enclosure for pedestrians, compounded by its narrow width, lack of footpaths and absence of escape routes for pedestrians from vehicles using the lane, is a poor quality, uninviting and 'unsafe' urban environment.
- There is no proposal to include functional or active street frontage or access onto Anglesea Row that would provide increased use and natural surveillance through increased footfall and is unlikely to alter the existing situation, which should have been a material consideration in the design approach to be applied under the Plan.
- The development appears to dismiss Anglesea Row to a utilitarian function, as road space instead of creating attractive, innovative back streets consistent with best international and local urban design practice.
- The historic function of the lane, as a service route, should not dictate the future function of the laneway in the context of contemporary urban design and city centre spatial objectives.
- Best practice approach is one of 'activation', whereby a laneway can contribute positively to the urban quality of the city, pedestrian activity and interaction in the public realm and enhanced, attractive and safer connections

between land-use activities and city nodes, which has wider economic and social benefits, whereas the retrospective policing of isolated streets is resource intensive and difficult.

- DCC has commissioned design consultants to prepare a 'laneway strategy' which (from public tendering information) recognises the opportunity of laneway enhancement in the city centre as a means of improving the public realm and creating attractive and safer streets. The 'Dublin One Lanes Strategy' currently being pursued by DCC seeks to establish a hierarchy of lanes' network through a category system, which is likely to place emphasis on the important role of new land-uses and development fronting onto lanes.
- The proposed use fronting onto the land (aparthotel bedrooms) is unlikely to be occupied during the day. There is no functional interaction with Anglesea Row, with no added vibrancy or safety.
- Plot ratio of 4.5, exceeds the 2.5-3.0 range under the plan for this zone, and is overdevelopment.
- Proposed arrangement of floors at different (higher) finished levels than existing opposing properties (121/122 Capel Street) creates overlooking / invasion of privacy, compounded by the narrow separation distance.
- Impact on sunlight and daylight to existing properties.
- Inconsistencies with further information drawings. Drawing Section 'B-B', 'D-D' and 'E-E' show different separation distances between proposed and existing building lines on Anglesea Row of between 7.0m and 7.7m.

## 6.2. Grounds of 1<sup>st</sup> party appeal

The grounds of the **first party appeal against the attachment of 2no. conditions** relating to archaeology nos.4 and 22(a), submitted by LMS Investments Designated Activity Company (20/02/18), c/o Declan Brassil Company Ltd Planning Consultants, may be summarised as follow:

**Condition no.4** - *'The development shall be revised as follows: (a) The basement level shall be omitted and a revised foundation design strategy shall be agreed with the planning authority following archaeological testing. Reason: In the interest of*

*preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development.'*

**Condition no.22** – *'The following requirements of the city archaeologist shall be complied within in the development [inter alia]: (a) The basement shall be omitted and a revised foundation design agreed with the planning authority following archaeological testing. ... Reason: In the interests of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development.'*

- The requirement to omit the basement is premature pending the carrying out of site investigations prior to the commencement of development.
- The condition is unnecessary, unreasonable and onerous and is not consistent with a previous decision for redevelopment of the site or decisions or other similar developments in the area or wider city.
- The approach proposed by the applicant would not prejudice the protection or preservation of archaeological material on site but would merely defer the point in the development process where the necessary assessment would be carried out.
- Would set onerous precedent such as would create a disincentive to the rejuvenation of this inner-city area.
- As acknowledged in the city archaeologist's Report on the further information response, there are no features of archaeological importance in the existing upstanding or above ground structures, but the CA was *'of the view that it is feasible to test this part of the site in advance of the planning decision'*.
- It is not feasible to conduct intrusive investigations on site due to ongoing business operations, as was submitted in the further information response.
- Omit condition no.4 and provide the opportunity for carrying out of archaeological testing prior to commencement of development. A revised basement level layout and design can be agreed should the testing determine that this is required. This would not prejudice the protection and preservation of archaeological material



- Under PL29N.204975 for the redevelopment of this subject site, the board attached condition no.15 which required the developer to facilitate the planning authority in the archaeological appraisal of the site and in preserving and recording or otherwise protecting archaeological materials or features which may exist within the site, setting out the detailed requirements.
- It was clear from the city archaeologist report that the CA required ground investigation works prior to DCC making its decision, but the request for further information and clarification appropriately included a level of flexibility (i.e. it required '*where appropriate / feasible, trial trenches excavated on the site by the archaeologist and / or remote sensing*').
- The applicant confirmed directly to the CA and in its written submission that intrusive investigations were not possible due to the current and ongoing operational requirements of the site.
- The CA report (appended to appeal) to Reg.ref.0672/03 accepted that the existence of the warehouse buildings did not allow adequate accessibility for comprehensive testing, and the CA report of 12/12/17 acknowledged the busy service yard on Little Green Street.
- Condition no.15 of the board's decision under PL29N.204975 (Reg.ref.0672/03) addressed archaeology, requiring archaeological appraisal of the site and agreement with the planning authority details regarding any further archaeological requirements (including excavation, if necessary), prior to the commencement of construction.
- It is not feasible to conduct testing in the current circumstances and the applicant does not have sufficient control of the site until satisfactory permission is received at which point it will be purchased from Keeling's.
- The archaeological condition should provide that appropriate modifications to the extent and layout of the basement and foundations can be agreed, if necessary. The omission of the entire basement level is unjustified and unreasonable.

**Suggested condition:**

*'No construction or site preparation works shall be carried out on the site until all archaeological requirements of the planning authority have been complied with and the developer shall retain a licensed archaeologist to carry out the archaeological requirements of the planning authority. The developer shall comply with the following requirements of the city archaeologist:*

- (a) A scheme for the test trenching, including methodologies to be used shall be submitted to and agreed, in writing with the planning authority. The report containing the assessment shall include adequate ground-plan and cross-sectional drawings of the site, and of the proposed development, with the location and levels (corrected to Ordnance Datum) of all trial trenches and/or bore holes clearly indicated.*
- (b) Where archaeological material is shown to be present, a detailed impact statement shall be prepared by the archaeologist which will include specific information on the location, form, size and level (corrected to Ordnance Datum) of all foundation structures, ground beams, floor slabs, trenches for services, drains, etc. A comprehensive mitigation strategy shall be prepared by the consultant archaeologist and included in the archaeological assessment report.*
- (c) Based on findings of the archaeological testing, a revised basement layout and design shall be agreed with the planning authority.*
- (d) The archaeologist shall forward their Method Statement in advance of commencement to the Planning Authority.*
- (e) No subsurface work shall be undertaken in the absence of the archaeologist within his/her express consent. The archaeologist retained by the project to carry out the assessment shall consult with the planning authority in advance regarding the procedure to be adopted in the assessment.*
- (f) Two copies of a written report and a digital report (on compact disc) containing the results of the archaeological assessment shall be forwarded on completion to the planning authority. The planning authority (in consultation with the city archaeologist and the National Monuments Service, Department of Culture, Heritage and the Gaeltacht) shall determine the further archaeological resolution of the site.*

- (g) *The developer shall comply in full with any further archaeological requirement, including archaeological monitoring, and if necessary archaeological excavation and / or the preservation in situ of archaeological remains.*
- (h) *The developer shall make provision for archaeological excavation in the project budget and timetable.*
- (i) *Following submission of the final report to the planning authority, where archaeological material is shown to be present, the archaeological paper shall be complied with in accordance with the procedures detailed in the Dublin City Archaeological Archive Guidelines (2008 Dublin City Council), and lodged with the Dublin City Library and Archive, 138-144 Pearse Street, Dublin 2. Reason: In the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development. In default of agreement on any of these requirements, the matter shall be determined by An Bord Pleanála.'*

### 6.3. Planning Authority Response

The **response of the planning authority to the first party appeal** (received 29/03/18) may be summarised as follow:

- The city archaeologist reiterates the concern that the archaeological potential of the site has not been satisfactorily quantified in the documentation.
- In report of 07/04/03, the city archaeologist requested testing as further information in relation to reg.ref.0672/03, consistent with the report on this current case.
- As the upstanding warehouse on site prohibited archaeological testing prior to granting of permission [on the previous case], it was agreed with the planner that a pre-development archaeological testing and impact assessment be carried out in the event that permission was to be granted.
- The planning authority requests the board to uphold its decision, including the attachment of conditions nos.4 and 22(a)
- In the event that the board considers amending conditions nos.4 and 22(a), it is requested that the board consider an excavation requirement as follows:

1. *The developer shall retain a licensed archaeologist to carry out the archaeological requirements of the planning authority.*
2. *No construction or site preparation work may be carried out on the site until all archaeological requirements of the planning authority area complied with.*
3. *The project shall have an archaeological assessment (and impact assessment) of the proposed development, including all temporary and enabling works, geotechnical investigations, e.g. boreholes, engineering test pits, etc., carried out for this site as soon as possible and before any site clearance /construction work commences.*
4. *An archaeological method statement for impact mitigation including temporary and enabling works shall be agreed in advance with the planning authority.*
5. *Where impact is unavoidable, all in-situ features, including post medieval, must be fully recorded prior to removal by hand excavation (unless methodology otherwise agreed).*
6. *Once archaeological layers have been exposed, the ground shall be reduced as an archaeological exercise using archaeological hand excavation techniques. In the event of in situ articulated human remains or other significant archaeological deposits being located during the course of this work, the archaeologist retained by the developer shall immediately notify the planning authority and The National Monuments Service. Should such archaeological features be of great significance their preservation in situ shall be required. This may negate, or curtail, aspects of the development.*
7. *The ground shall be reduced to the base of the archaeological deposits.*
8. *A finds-retrieval strategy shall be developed by the licensed archaeologist and submitted for agreement with The National Monuments Service and the planning authority.*
9. *The developer shall fund the post-excavation work and sufficient resources allocated to ensure that correct archaeological procedures are adhered to.*
10. *The developer shall fund the public dissemination of the findings of archaeological investigations and excavations.*

11. *A written and digital report (on compact disc) containing the results of the archaeological excavation and post-excavation shall be submitted on completion to this office and to The National Monuments Service.*

12. *Following submission of the Final Report to the planning authority, the archaeological paper archive shall be compiled in accordance with the procedures detailed in the Dublin city archaeological Archive Guidelines (2008 Dublin City Council) and lodged with the Dublin City Library and Archive, Pearse Street, Dublin or with another appropriate repository to be otherwise agreed with the planning authority within 2 years of excavation completion.*

Although the third-party appeal is acknowledged by the planning authority in its response, it made comment regarding same.

#### 6.4. Responses to appeal

6.4.1. The main points of the **first-party response to the third-party appeal** (c/o Declan Brassil & Co. (09/04/18)) may be summarised as follow:

- There is a material difference in the nature of use between the previously proposed and permitted development and the current proposal, including relevant space standards and ancillary space provision.
- Previous proposed block C was part 5/ part 6 storeys compared to part 3 / part 4 storeys currently (Fig 4.2 of submission refers)
- The board's omission of block C related to the residential nature of the block and associated lack of amenity space together with design guidance in the former Draft Markets Area Framework Plan, which plan was subsequently amended to include three blocks onto Anglesea Row (Fig. 4.1 of submission refers).
- There have been significant changes in national and city policy relating to brownfield site development and regeneration and performance-based outcomes, requiring increased densification and urbanisation of such centrally located and highly accessible lands (National Planning Framework p.67 concerning brownfield development, National Policy Objective 13; also the Regional Planning Guidelines for the GDA 2010-2022).

- Existing proposal is entirely commercial compared to predominantly residential scheme previously.
- The Inspector to PL29N.204975 did not raise any issues in respect of potential adverse amenity impacts arising from daylight / sunlight or overlooking in respect of the siting and proposed height of block C, which was sited in a similar position to that proposed in the current application, but 2-storeys higher.
- The reason for the omission of block C by condition no.2 of the board's decision to PL29N.204975 was the need for the layout to accord with the open space layout of the draft Framework Plan for the Markets Area, which was subsequently amended to allow for frontage to Anglesea Row, and in the interest of amenity of future residents. The protection of the amenity of property in the vicinity is noted and was carefully considered at the design stage.
- The Markets Area Draft Framework Plan (2006), to which the board attached significant weight in its decision, was not adopted and was not referenced in any subsequent City Development Plan.
- The Inspector to PL29N.204975 did not raise any issue in respect of potential impact of the scheme on the adjacent amenities or the relationship of the constituent blocks with the surrounding streetscape and / or buildings.
- DCC did not raise an issue with accuracy of architectural drawings submitted concerning separation distance from east side Anglesea Row, but it was an issue on the previous case PL29N.204975, but was explained by the fact that the buildings on the east side of the lane are not parallel to the appellant's boundary line (p.7 Inspector's report).
- S.4.2.3 of the Architectural Design Report submitted on file explains and fully justifies the proposed raised floor level of 0.9m, being a direct response to the form transition from a publicly accessible space along Little Mary Street to a privately accessible part of the development for guests, providing privacy for occupiers of rooms at ground floor level where no access is necessary directly onto Anglesea Row, but also providing passive surveillance of the street.

- The DCC Planner considered the proposed development to be less sensitive in terms of overlooking, having regard to the predominant use of the bedrooms at night time when blinds and curtains would normally be drawn, and considered the predicted impacts to be acceptable having regard to the inner city context.
- Redevelopment proposals in highly urbanised and historic parts of the city without the benefit of generous separation distance must be considered in the round of urban design benefits in terms of activating dead street frontage, significant planning and economic gains of urban regeneration.

### **Overlooking -**

- DCC and ABP raised no concerns with the previously proposed significant number of windows in a similar position, serving residential apartments along Anglesea Row.
- Significant overlooking and consequential adverse impacts on residential amenities would not occur. However, should the board have reservations in its regard, an appropriate condition could be attached requiring revised elevational details to be submitted and agreed with the planning authority to include mitigation measures to the eastern elevation to reduce potential for direct overlooking.

### **Daylight / sunlight -**

- A daylight / sunlight assessment was prepared by Malcolm Hollis Consultants and submitted with the application, based on BRE's good practice guide (2011), with regard to the flexibility provided for historic urban locations under appendix F of BRE.
- Permitted development PL29N/204975 / Reg.ref.0672/03 formed the baseline, with 'mirror image' baseline condition set for assessment purposes along Anglesea Row.
- Assessed potential daylight impacts of proposed development on all nearby and adjoining properties. Appendix C indicates the location of all 130no. window positions (measuring points) concerned for the daylight assessment and Appendix D tabulates the baseline and resultant (Vertical Sky

Component) values which all comfortably meet the relevant standard, with most points to the east experiencing a marked improvement.

- The proposals are similar in height or lower than the existing buildings at Capel Court and Anglesea Mills to the east, and due to the proposed setback from the street and at top floor level, the degree of daylight obstruction caused to the Capel Court and Anglesea Mills buildings is less than the effect on the existing buildings currently on site.
- Dramatic reduction in height across the site from west to east in order to allow daylight and sunlight penetration into Anglesea Row (Fig.4.3 and Fig.4.4 refer), and the daylight impacts on the appellant's third floor offices would be minimal due to the height above ground level and proposed setback.
- The DCC Planner's assessment concluded that the proposal would meet BRE daylight and sunlight standards when compared to the baseline of 0672/03 permitted development (and 'mirror image' elevation in the case of Anglesea Row), and the applicant submits that it can be concluded that the massing and height has been sensitively considered in terms of availability of light penetration / availability to nearby buildings.

#### **Qualitative Design Considerations –**

- Appeal Response, prepared by Project Architects (contained in appendix C to appeal response), comprising a focus on the design rationale (urban design principles) underlying the proposed development and includes a rebuttal response to the associated design issues raised by the third appellant.
- The area has not benefitted from large scale urban regeneration and the proposed development would act as a catalyst and set precedent for urban regeneration of the Markets Area, on an important route linking O'Connell Street to Smithfield.
- Allows for street widening and street planting along Little Mary Street, with new frontages along Little Green Street and Anglesea Row, with setback to provide pedestrian footpath, with a contemporary design solution.
- Delivers much needed tourist accommodation, augmented by active commercial / retail uses at ground floor.



- Seeks to reinforce the existing road hierarchy and street pattern through a gradual reduction in scale from the main east-west street (Little Mary Street) to the side street (Little Green Street) and back street (Anglesea Row).
- The proposed height and massing appropriately emphasises Little Mary Street as a focal point.
- Anglesea Row is considered a tertiary road frontage due to its functional / utilitarian appearance that is characterised by a low pedestrian footfall which does not allow for opportunities for activation of the road frontage at the pedestrian level, as it does not form a nature desire line nor does it lead to a particular destination that would draw pedestrians and activity off the main east-west desire line provided by Little Mary Street.
- The public areas of the building are arranged predominantly to Little Mary Street, which is proposed to be widened to +/- 10m from c.7m, with 1.2m projection above first floor level and a footpath of 4.4m to 5.4m width, and designed as a “spill out” area and to act as an incidental urban space on route to the Market area to the west and the city centre to the east. This section of Little Mary Street is proposed as a raised pedestrian priority shared surface with tree planting, street furniture and finished in granite paving, and enhanced by allowing views through the reception areas of the aparthotel.
- Little Green Street, a side street, with double height focal point proposed at the junction with Little Mary Street, with opportunity to open a corner shop at this location. Active street frontage proposed, with artist’s studios with individual street entrances to generate street activity and interaction. The necessary back up services and ramp entrance are located as far as possible from the focal point with Little Mary Street. Increased width to between 11m /11.6m and footpath width from 1.2m / 1.4m to 2.2m / 2.4m.
- Anglesea Row, a back street, will be provided with a predominantly 3-storey block, setback at 4<sup>th</sup> floor, articulated by 7 bays and enlivened by a variety of finishes, replacing an existing 9.6m high wall. The junction with Mary Street is identified as an urban focal point, with scale increased to 5-stories. The widened street (to between 6.5m /7.7m from 4.8m / 5.4m), with new footpath of between 1.575m and 1.8m, improved passive surveillance from

fenestration and increased footfall, will improve safety and usability and be a significant improvement over the existing situation. The street is envisaged as acting as a backstreet to provide north-south public access to Little Mary Street.

- Heights – designed to provide appropriate massing solution and enclosure to respond positively to the varying character and street conditions and refined by setbacks and change of materials at uppermost floor level.
- Active and passive supervision – Through design, active frontage replacing current utilitarian, negative / neutral frontage, mix of different uses, including complimentary uses that will attract west-east and north-south footfall.
- Design, as amended in further information submission, provides a sensitive design treatment to Anglesea Row that avoids monolithic appearance, being broken up in 6 vertical bays, within upper floor setback (11.6m height to 3<sup>rd</sup> floor level, with 1.6m setback), with potential for terrace planting to further soften the visual impact of same. Extensive glazing from Stay City reception would provide passive surveillance and active uses will enhance the current blank street frontage, aided by 24/7 CCTV surveillance of Anglesea Row by the operator. High quality design and treatment to Anglesea Row. The benefits of the revised proposals were accepted in the planner's report.
- The proposed stepped building line, coupled with the not perfectly parallel building line opposite on Anglesea Row results in varying street width, ranging from c.6.57m to north, c.7.11m at centre and 7.63m at south.
- Regarding plot ratio, the DCC planner's report considered that the exceptional circumstances listed in the Development Plan justified plot ratio in excess of the indicative range promoted in the Plan, concerning the underutilised nature of the lands in need of renewal.
- The DCC planner considered no significant adverse impacts on amenity likely to arise.

6.4.2. The main points of the **third-party response** (08/06/18) to the submission of Dublin City Council (29/03/18) may be summarised as follow:

- The planning authority's response relates only to the matter of archaeology.

- The response does not contest or refute the grounds of the third-party appeal.
- The appellant maintains its position as set out in its original submission.

6.4.3. The mains points of the **first-party response** (14/06/18) to the submission of Dublin City Council (29/03/18) may be summarised as follow:

- The appellant maintains its position that the requirements of conditions nos.4 and 22(a) are unnecessary, unreasonable and onerous and wholly inconsistent with the previous decision for the redevelopment of the site.
- It is satisfied with the suggested condition requirements under points 1-12 of the DCC submission and intends to fully comply with same in the event that the board is mindful to omit and / or amend conditions nos.4 and 22(a).

## 7.0 **Assessment**

This case relates to a first-party appeal against conditions (no.4 and no.22(a)) and a third-party appeal against the decision. The main issues arising in this appeal may be assessed under the following headings:

- 7.1 Policy / principle
- 7.2 Archaeological heritage
- 7.3 Architectural heritage and streetscape
- 7.4 Impact on amenities
- 7.5 Other issues
- 7.6 Environmental Impact Assessment
- 7.7 Appropriate Assessment

### 7.1. **Policy / principle**

7.1.1. The appeal site is zoned Z5 City Centre where it is the objective '*to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity*' under the Dublin City Development Plan 2016-2022. The principle use of the proposed development is as an aparthotel (343no. units), with and ancillary / integral coffee shop, a separate retail unit (214-

sq.m stated GFA) and two self-contained artists' studios (41-sq.m and 63.5-sq.m stage GFA).

- 7.1.2. Although aparthotel use is defined separately from hotel under the Development Plan (Appendix 21 Land-use Definitions), the use may be considered effectively the same as hotel use, but is based on self-service (self-catering), short-term accommodation units sharing a reception area and managed in the same manner as a hotel, within a fully serviced building. Therefore, whilst aparthotel is not stated as a use permitted in principle or open for consideration within the Z5 zone (or any other land use zone), it may be considered permitted in principle as hotel use and is supported by Council policy CEE12(i) to support provision of aparthotels as a tourist facility in the promotion of tourism as a key pillar of the city's economy. The retail and artist studio (cultural, creative buildings) uses are permitted in principle within the Z5 zone.
- 7.1.3. For large-scale development (s.16.2.2), the Council seeks to provide an appropriate mix of uses, with particular emphasis given to new and complementary uses and facilities that expand and improve the existing range of uses and facilities in the area, but no minimum standard is set in this regard. The proposed retail and artist studio floor area total 317-sq.m and account for only 2% of the floor area of the proposed development. The planning authority raised no issue with the nature and mix of uses and this may be regarded as a **NEW ISSUE**.
- 7.1.4. The first party refers to the Markets Area Draft Framework Plan (January, 2006) in the appeal, the appeal response and in the application (*Planning Report*, p.15), which was intended to provide urban design guidelines for the development of the city quarter in which the application site is located and submits that it is of some limited relevance. However, the draft plan was never adopted and is not referenced in the current Development Plan and it would therefore be inappropriate for the board to have regard to same. The proposed development should be considered on its own merits, within the policy context of the statutory Development Plan and its physical site context.
- 7.1.5. The application site forms approximately two-thirds of a city block to the east of Capel Street in the Markets area of the city, within that are defined as the medieval city area of Dublin's historic core in the Development Plan (Fig.17). The heritage

significance of the Markets area is alluded to, if somewhat obliquely, in the Development Plan (under chapter 11 *Built Heritage and Culture*), referring to the challenge of addressing the substantial tourism potential of the medieval city, including its northern suburb of Oxmantown encompassing, inter alia, the Markets area and St Mary's Abbey under s.11.1.3 *Challenges*. Other sections of the Plan refer to the tourism potential of the area, including objective CEE05, which seeks to carry out a study on how to enhance the environs of the fruit and vegetable market and its linkages to Henry and Capel Streets to the east and Smithfield and Heuston the west in order to enhance its tourist potential and (s.4.5.5 Public Realm) make it a new destination point in the city; and it is Council policy (CHC12) to promote tourism in the medieval city and suburbs. In this context the site can be seen to have some strategic value.

- 7.1.6. The redevelopment of low-intensity use, brownfield city centre sites is consistent with Council policy SC29 and the first party's assertion that a development of the scale proposed could act as a catalyst for the further redevelopment of the wider Markets area, which has extensive low-intensity-use brownfield lands, is valid. However, having regard to the foregoing policy overview, in addition to the reports on the application, heritage issues can be seen to be a significant issue of concern in the redevelopment of this part of the city.

## 7.2. **Archaeological heritage**

- 7.2.1. The first party has appealed conditions no.4 and no.22(a) requiring the omission of the proposed basement level and revisions to the foundation design in order to protect the archaeological heritage of the site.
- 7.2.2. The site is located wholly within the Zone of Archaeological Interest for Dublin City (RMP DU018-020) and there are many Recorded Monuments and Places within the vicinity. Under S.11.1.5.4 of the CDP, *Monuments Protection*, the preservation of archaeology in-situ is the preferred option of the Council. It is policy (CHC9) that such material is protected "*in situ by ensuring minimal impact by way of re-use of buildings, light buildings, foundation design or omission of basements within Zones of Archaeological Interest*". The policy does, however allow that where preservation in-situ is not feasible, sites of archaeological interest shall be subject to preservation by record according to best practice in advance of re-development.

- 7.2.3. There is no report from the Department's Development Applications' Unit, but three reports issued from the city archaeologist (summarised above) over the course of the application, which noted the potential archaeological significance of the site, including its location within the Zone of Archaeological Constraint, its proximity to 17no. RMPs (within 150m), including 5no. associated with the medieval St Mary's Abbey (one of the largest most important medieval monasteries in Ireland)<sup>1</sup> and the discovery of skeletal remains in the vicinity on a number of occasions. It has been the consistent position of the CA that test excavations be carried out on site prior to any decision being made by the planning authority and further information and clarification of FI was sought in that regard.
- 7.2.4. The CA reviewed the archaeological assessment reports submitted with the application (August 2017) and as further information (November 2017), in addition to the Archaeological Geophysical Survey report submitted as clarification of further information (December 2017). In the final report (19/01/18), having had regard to the *National Monuments Service Best Practice Guidelines* (1999) concerning the purpose of test excavations, to the failure of the applicant to carry out same as requested, and given the lack of clarity concerning potential subsurface archaeological remains at the site, the CA recommended the basement be omitted and, subject to the results of archaeological testing, the foundation design and archaeological mitigation strategy be agreed with the planning authority in advance of commencement of development works, which are reflected in conditions nos.4 and 22 attached to the decision.
- 7.2.5. The first party submits that the omission of the basement is premature pending the carrying out of site investigations and that the said conditions are unnecessary, unreasonable and onerous, as well as being inconsistent with the board's approach in its decision to permit the redevelopment of the site under PL29N.204975 (Reg.Ref.0672/03). Condition no.15 to the said decision required the developer to facilitate the planning authority in the archaeological appraisal of the site and in preserving and recording or otherwise protecting archaeological materials or features which may exist within the site and set out the detailed requirements concerning same. The first party reiterates the point made over the course of the application,

---

<sup>1</sup> According to data on the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs' Historic Environment Viewer.

that the excavation of test trenches has not been and is not currently possible as the site is not under the applicant's control (it will be purchased subject to receipt of appropriate planning permission) and the entirety of the site, including the open yard area (northwest section of site), is used on 24/7 basis, throughout the year, for Keelings Ltd distribution depot operations.

7.2.6. The first-party appellant suggests a single, revised archaeological condition be attached in lieu of condition no.22, which would prohibit any construction or site preparation works on site pending compliance with all archaeological requirements of the planning authority (as fully detailed in the condition), carried out by a licensed archaeologist retained by the developer. I have set out the condition suggested by the appellant, above, under section 6.2. The condition proposed by the applicant is not dissimilar to the condition recommended by the city archaeologist and attached by the planning authority. In response to the appeal the planning authority provided for a revised archaeological assessment condition (set out under section 6.3, above) in the event the board agrees to omit the offending conditions.

7.2.7. In general, I consider it reasonable not to omit the basement level by condition in advance of onsite archaeological test trenching (and potential archaeological excavations) and therefore conditions no.4 and 22(a) should be omitted. However, it is appropriate to allow that the basement level be omitted from the development and the final design of the foundations be agreed with the planning authority subject to the findings of the onsite archaeological assessment in the interest of protecting archaeological heritage. The amended condition proposed by the planning authority in response to the appeal appropriately addresses same, although the board may consider amending point 6 of the revised condition to specifically refer to "*including the omission of the basement level and the layout and arrangement of the foundations of the proposed structure*" in the interest of clarity.

### 7.3. **Architectural heritage and streetscape**

7.3.1. The existing buildings, on an extensive site, are of modern construction, dating probably from the 1980's and are purely functional in design. They are of no architectural merit and make little positive contribution to the local streetscape, other than enclosing the streets in an urban manner and no party has suggested that they warrant retention.

- 7.3.2. The character of this area is quite varied with widespread large-grain, low-density, warehouse type structures from different periods, including the decoratively-fronted Victorian Fruit and Vegetable Market, 4/5-storey stone warehouses, a mix of formal 19<sup>th</sup>C narrow-grain terraces (e.g. Little Mary Street), later Victorian urban redbrick buildings, more modern mid-grain commercial development and large-scale modern apartment development to the north. The area currently reads largely as a utilitarian part of the city, reflective of it being the focus of the city's food distribution network for several hundred years, and it is visually dominated by the low-level warehousing and the bustle of the associated wholesale and delivery activity.
- 7.3.3. As noted under the policy section, above, the area is recognised as having heritage significance, both in terms of its being within the medieval city area of Dublin's historic core and as part of the Markets area of the city. However, the site is not covered by any architectural heritage designations, being located outside of, but adjacent to the Capel Street Architectural Conservation Area (18<sup>th</sup> C streetscape) encompassing the east side of Anglesea Row. *S.11.1.5.6 Conservation Area – Policy Application* acknowledges that development located outside and at a distance from an ACA can have an impact and provides that permission will be refused where such development adversely affects the setting of same. Council policy CHC4 provides that development within or affecting a conservation area must contribute positively to its character and distinctiveness and protect and enhances its character and setting and must not harm original street patterns or other features which contribute positively to the special interest of the Conservation Area.
- 7.3.4. The site contains no Protected Structures and no such structures directly abuts the application site. There are a number of Protected Structures in the vicinity, opposite the site along Little Mary Street (5no. dwellings and 1no. public house) and another (a stone warehouse) to the east on Anglesea Row, and significant civic or cultural Protected Structures in the near vicinity, chief among them being the Victorian Fruit and Vegetable Market on Mary's Lane, the Green Street Courthouse, St Michan's Church on Halston Street, in addition to St Mary's Abbey off Abbey Street.
- 7.3.5. The potential of the proposed redevelopment of this site to positively contribute to, or to adversely affect the adjacent Conservation Area, the setting of Protected Structures in the vicinity and the historic elements of the public realm, particularly in view of the policy of the Council to promoting the tourism potential of the medieval



city area and in realising the tourism potential of the Markets area is an issue of for consideration.

- 7.3.6. **Height, scale and massing** - The Council's Conservation Officer raised concern that the scale and height of the proposed development would overwhelm the Protected Structures to the south due to the poor relationship between new and old scale (referring to the contextual south elevation) and the impact on the overall distinctive character and scale of the area (predominantly 19<sup>th</sup> C building stock, but reflecting the scale and grain of the earlier 18<sup>th</sup> C stock), which she considered to be a unique urban morphology layered and remade over time, forming the contextual setting for the civic and/or cultural Protected Structures in the vicinity. Key issues of concern included the monolithic nature of the design and poor transition in scale between new and old, proposed materials, setbacks and voids (openings) not being complementary to the 19<sup>th</sup> century character of the area; the view of the roof design from St. Mary's Church, the top of Capel Street / Bolton Street and the quays.
- 7.3.7. The Council's planning officer had no issue with the proposed height, massing or scale of development (the applicant declined to omit a storey as suggested by the planning authority at pre-planning consultation stage) other than the proposed line of the parapet of the 2no. projecting bays to the eastern elevation which the applicant reduced to align with the proposed second floor parapet on foot of item no.3 of the further information request.
- 7.3.8. The third-party did not object to the height of the proposed development, per se, in its grounds of appeal, but rather to the consequences of the proposed height in terms of loss of light to an architect's office and residential units on the east side of Anglesea Row. The issue of potential adverse architectural heritage impact was not raised in the grounds of the third-party appeal, but was raised by observations to the application, in addition with reference to the height, scale and grain of the proposed development.
- 7.3.9. The Council's policy on building heights is set out under S.4.5.4.1 *Approach to Taller Buildings* and Policy SC16 (concerning building height) under which it is the policy to protect the intrinsic quality associated with Dublin's fundamentally low-rise character but to recognise the potential and need for taller buildings in a limited number of locations subject to the provisions of a relevant LAP, SDZ or within the designated

strategic development regeneration area (SDRA). To that effect, the Plan defines low, medium and high-rise development and identifies areas where increased heights may be appropriate under s.16.7.2. The subject site is located within the inner-city area where only low-rise development is permissible, which '*relates to the prevailing local height context*' but allows for a maximum of 24m for residential and 28m commercial. Whilst the development does not exceed the maximum 24m height limit for residential development in this area the proposed development height (7-storeys and 6-7-storeys, respectively) would be significantly at odds with the prevailing 3-storey height context along Little Mary Street (c.15m higher<sup>2</sup>) and the 2-storey height along Little Green Street. However, the board has previously granted permission for a replacement building of 7-storeys on this site fronting onto Little Mary Street (PL29N.204975), and a building of similar height to the northwest fronting onto Little Britain Street.

7.3.10. The opposing street elevation is relatively well preserved within an area where the retention of older buildings (especially those not of a civic nature) would appear to be the exception, and the street includes a number of Protected Structures in-terrace and leads to, abuts and is partly within Capel Street ACA to the east. Little Mary Street is therefore of some architectural sensitivity, but this sensitivity has been lessened somewhat by the replacement of the north side of the street with modern development, including the insensitive development existing on the application site. Whilst the proposed design of the development may not be the optimum design solution for Little Mary Street, it would be a significant improvement over the existing situation.

7.3.11. It is Council policy (CHC12) to promote tourism within the medieval city area and (under policy CEE05) to investigate the enhancement of linkages between the Victorian Fruit and Vegetable Market "*with the vibrant hubs of Henry St and Capel St and on to Smithfield*" as part of the economic development, employment generation and tourism potential of the area. Little Mary Street, as a principle east-west linkage to Capel Street and Henry Street, may therefore be regarded of some strategic

---

<sup>2</sup> The Board should note that the spot heights on the survey drawings and for the heights of existing buildings on the elevational drawings are to a different baseline (OS Datum) to that of the proposed building (to street level) and are not directly comparable but add some c.5.2m to the existing building height.

significance in this regard. The proposed design would not conflict with the strategic value of the link.

- 7.3.12. The applicant's Planning Report submits that the proposed design approach to streetscape, massing, height, roofscape and public realm is fully cognisant of the architectural heritage designations and the requirement to contribute positively to the character, setting and context of the area, is informed by the Architectural Heritage Assessment and is based on a detailed design rationale set out in a Design Report attaching to the application. The design includes a number of architectural elements to break up the perceived massing of the block and the southern elevation to Little Mary Street, including horizontal and vertical recesses (including setback upper storeys) and projections emphasized by to use of different coloured materials and a stepped parapet line. The design of the Little Mary Street elevation would contrast with the simple form and rhythm of the surviving historic terrace to the south, but it is not an unreasonable design approach in the context. Ultimately, the impact of the structure will be largely dictated by the quality of materials employed in the construction which can be agreed with the planning authority by condition (condition no.12 of the Council's decision addresses this issue).
- 7.3.13. The building will generally present six storeys (20.475m) to Little Green Street but will rise to seven storeys (23.325m) at the southern (c.16m out of c.64m total length) close to the junction with Little Mary Street. Although this would be out of character with the existing, mainly 2-storey opposing streetscape, I do not consider Little Green Street to be sensitive. The southernmost section would be very much exposed to the west from Mary's Lane and the Victorian Market and will visually dominate same by reason of its height and design, but I do not regard Mary's Lane as sensitive, comprising and inconsistent mix of poor quality building, including a number of poor quality modern buildings.
- 7.3.14. The building will generally present 4-storeys (14.175m) to Anglesea Row (3<sup>rd</sup> floor parapet height of 11.575m), except for the 7-storey element at the southern end (for a length of c.19m). In principle the four-storey height is acceptable and is not out of context with the development along the east side of the lane. The submitted photomontages would suggest that the southernmost 7-storey element would not be visually overbearing on the narrow lane (as viewed from street level) due to the proposed setback (c.3.8m) of the upper two floor levels.

- 7.3.15. I am satisfied that the visual impact on the immediately adjacent streetscape would be reasonable and a positive impact on the locality. As noted above, the Conservation Officer raised concern with the more distant views, however based on the submitted photomontages and an inspection of the wider area, I would not share these concerns. Regarding the potential adverse visual impact on St Mary's (on Mary St, c.160m to the east), I do not consider there will be a material adverse impact on its setting. However, View 16 (adjacent the former church) indicates that the proposed development will obtrude over the existing Capel Street buildings terminating the view along Henry Street and Mary Street. The position from which View 16 is taken does not convey the visual impact likely to be experienced by the large number of pedestrians walking west along the thoroughfare. Currently the view behind the Capel Street buildings is terminated by the tower of St Michan's Church (Church St, c.330m to the west of the site), which would appear likely to be wholly obscured by the proposed development. Whilst I consider this to be negative impact on environment of Henry Street, the view west along Henry Street to the church tower is not identified as one of the key views and prospects under the Development Plan.
- 7.3.16. **Building lines and street width** - The submitted drawings<sup>3</sup> indicate that Little Mary Street will increase from between c.7.5m/c.7.05m (W/E) to between c.11m / c.11.8m (W/E) at ground floor level, however there are anomalies between various drawings on file, with the proposed street width measuring as narrow as 9.2m (excluding projecting upper levels) on the east elevation drawing (no.14-006-PL-2.010), a difference of 2.6m. In response to the appeal the first party refers to the widened width as +/- 10m, which would appear to confirm that the submitted plans are incorrect.
- 7.3.17. The building along Little Green Street would be setback on average by 1m, but by as much as 1.5m at the southern end and the elevation to Anglesea Road would be set back by almost 1.5m but increasing to c.2.5m at the southernmost end (at ground floor level, excluding overhang at upper levels).
- 7.3.18. The Conservation Officer considered the proposed setbacks in the building line to distort and remove the character of the former historic route along Little Mary Street,

---

<sup>3</sup> Site survey drawing no.14-006-PL-004; ground floor plan drawing no.17-009-FI-2-001 A; site layout plan drawing no.17-009-PL-1-002.

which is visible from all approaches along this historic route and is a dominant view along Little Mary Street. Given the location of the site within the medieval area of the city's historic core, as identified under the Development Plan, and the provisions of the Plan concerning the tourist potential of the subject medieval area, this would seem a reasonable concern of the Conservation Officer. There would appear to be almost no upstanding medieval remains within the Markets area and the Conservation Officer and the applicant refers to the historic character elements of the area as being 18<sup>th</sup> and 19<sup>th</sup> century in origin, but the existing development on the site would appear to follow the building line of the earlier structures evident on the historic maps for the area and align with the building of neighbouring structures on the northern side of the city block and with the building line to the adjacent city block within the ACA to the east. According to the *Architectural Heritage Protection Guidelines* (s.3.3.2 Architectural Interest), the line of earlier medieval buildings of the area may be preserved in the line of later re-building on medieval streets above earlier structures, may relate to the communal history of settlement in a town and can therefore form part of the heritage of an urban area. I also note that DMURS allows for greater flexibility in design standards (including setbacks) exercised in areas defined by an existing pattern of building lines, especially within historic contexts (s.4.2.8) which may be highly sensitive to interventions

- 7.3.19. The Development Plan does not ascribe any official designation to the application site and the area associated with Mary's Abbey and the markets in heritage terms or contain relevant specific policies concerning the retention or protection of particular streetscape elements within this area. The Development Plan's provisions concerning the development of this area, based on it being the 'Markets' area and part of the medieval core is, at best, non-prescriptive. The only policy of some relevance is the policy (CHC15) to retain stone setts to streets, such as Anglesea Row, which are listed in Appendix 7 - it is not proposed to remove the existing stone setts surface but to provide a new pedestrian pavement along part of the western boundary of Anglesea Row. Therefore, in view of the pre-planning consultations and the previously granted planning permission on the site which allowed for similar setbacks, it would be unreasonable not to accept proposed building line setbacks to be acceptable within the site context.

#### 7.4. Transport and roads design:

- 7.4.1. Whilst I regard the overall approach to street design in this application, including piecemeal road widening and piecemeal insertion of shared-surface area to Little Mary street, without reference to any overall strategy for the local and wider street network, to be sub-optimal from an operational (as well as visual) perspective, the Council's Roads Division raised no concern. The site is well placed to take advantage of passive and active transport modes and both car parking and cycle parking standards are compliant with the provision of the Development Plan.
- 7.4.2. The proposed development will locally improve pedestrian facilities, although anomalies on the drawings cast some doubt on the significance of same. In particular, the proposed street widening to Little Mary Street is dramatically inconsistent between drawings, with implications for the provision of a pedestrian footway to minimum standard (1.8m), in addition to the proposed shared-surface carriageway, tree planting and external terrace<sup>4</sup>. The minimum standard for pedestrian footway is not demonstrably achieved to Little Mary Street and would not be achieved on Anglesea Row, however a balance has to be achieved between competing objectives and, as noted above, the standards may be applied with some flexibility in historic areas. The road layout of the relevant section of Little Mary Street can be agreed with the planning authority, in addition to the treatment of the footpath crossover at the basement entrance to Little Green Street to ensure appropriate pedestrian priority and safety.
- 7.4.3. Although I would agree with third parties that provision of active access onto Anglesea would be of much greater benefit in terms of the safety and security of and activity on this lane (in accordance with policies SC20 and SC21) than windows to the proposed aparthotel, and would disagree with the planning assessment that providing a high quality inviting commercial environment in would present any particular difficulties on this characterful, historic laneway (there an example of such a positive commercial entrance on the lane), the proposed development, whilst not the optimum solution, will improve passive surveillance would along Anglesea Row.

---

<sup>4</sup> The north-south distance between the northern boundary on Anglesea Row and the opposing building line on Little Mary Street measures c.81.3m on the site survey drawing and c.82m on the ground floor plan (no.17-009-FI-2-001 A), so the error cannot be attributed to significant error in scale.

## 7.5. Impact on amenities

- 7.5.1. The adjacent land to the north contains a warehouse (presumable for commercial distribution / wholesale) and the lands to the west of Little Green Street contain low-intensity commercial (wholesale distribution) and they are not particularly sensitive to the proposed redevelopment.
- 7.5.2. The buildings opposite the south of the site are primarily in commercial use, although some of the upper floors are in use as residences, are being developed for residential use, or have the potential to be have their original residential units reinstated. Having regard Council policy SC30 to promote residential use on upper floors of existing and new buildings and to support the Government's Living City Initiative (s.5.5.8 Demolition and Re-use of Housing), an urban regeneration incentive focusing on the historic centres of several cities, including Dublin, and similar policy QH25, inter alia other policies promoting intensification of resident uses in the city centre, it is reasonable to protect the residential amenities of existing inner-city residential properties from excessive impact.
- 7.5.3. I am satisfied that the proposed development would not unduly adversely impact on the residential amenities of property to the south and that those properties will experience improved residential amenity through improved outlook, notwithstanding increased scale of the replacement building on site. There are no existing residential properties on the west side of Little Green Street facing towards the site.
- 7.5.4. The properties to the east of Anglesea Row include residential apartments and commercial office premises, including the architectural practice of the 3<sup>rd</sup> party appellant. The residential properties are more sensitive than the commercial premises, although I acknowledge the third-party appellant's concern about the potential impact on his practice. From south to north, the existing premises facing west towards the application site are as follow: the rear of AIB, modern 3-storey back-of-house commercial premises, with inactive ground floor, extending for c.16m; modern, 2no. 4-storey residential apartment blocks (nos.123 and 124/125 Capel St), with inactive ground floor extending for c.17m; renovated, extended historic warehouse (nos. 121/122 Capel Street) in use apparently as a commercial office with c.17m frontage with inactive ground floor use; a renovated and extended historic warehouse of 4 to 5-storeys in use apparently as a commercial offices extending to

c.13.5m frontage within inactive ground floor use; and a modern 4-storey apartment block (assumed to be nos. 110-113 Capel Street) with inactive ground floor use facing the northernmost 10m of the site. Approximately 28m of the directly opposing streetscape, above ground floor level, is particularly sensitive to overlooking, visual intrusion and overshadowing. The balance of the facing elevation (c.46.5m), including the full length of the opposing street level, is not particularly sensitive.

- 7.5.5. **Overlooking** - The proposed development provides extensive fenestration to the eastern elevation directly overlooking Anglesea Row. The proposed eastern façade is to be setback to between 6.5m / 7.7m from the opposing side of Anglesea Row, but some of the existing apartments include balconies projecting over the street. The planning authority raised no concern regarding overlooking within the site context, having regard to, inter alia, the need to ensure a sustainable level of development on scarce urban lands and to re-instate an active streetscape. The applicant submits that neither the planning authority nor the board raised concern with overlooking of the east of Anglesea Row under the said previously permitted development and that significant overlooking would not occur. This is incorrect. The board previously omitted that part of the development proposed along Anglesea Row (i.e. Block C) for reasons including the protection of the amenity and development potential of property in the vicinity.
- 7.5.6. The planning authority considered the proposed use (tourist accommodation) to be less sensitive to overlooking, but did not explicitly consider the impact of overlooking from the aparthotel rooms onto the existing residential apartments which are sensitive to overlooking. The nature of the self-catering hotel rooms is not the same as for standard hotel bedrooms and may be more intensely occupied than a hotel bedroom, or indeed a residential bedroom, as they contain kitchen / living facilities. I therefore consider the level of perceived overlooking likely to be higher for aparthotels than for standard hotel bedrooms and possibly higher than for standard residential bedrooms (all east facing windows in block C, under PL29.204975, were to residential bedrooms). The proposed development will seriously injure the amenities of residential property to the east of Anglesea Row by way of excessive overlooking of fenestration and private balconies within 6.5m – 7.7m (or less in the case balconies).



- 7.5.7. It is in the interest of the proper planning and sustainable development of the inner-city area that a reasonable level of amenity is maintained for existing and proposed residences in order to ensure that Dublin can achieve a permanent resident population in line with its core strategy and the policies and objectives of the Plan. Within this inner city area, it is neither feasible nor necessarily desirable to mitigate excessive overlooking / invasion of privacy of existing residences through provision of large separation distances between buildings. Other design measures may be employed to mitigate excessive overlooking impacts such as the arrangement of fenestration within specific elevations to avoid direct overlooking of opposing fenestration to sensitive properties. Given the length of elevation and quantity of fenestration concerned, it is not feasible to resolve this issue by condition requiring the arrangement of fenestration to be agreed by condition, nor is it feasible to omit the eastern wing from the proposed development given the integrated layout of the building and the nature of its use.
- 7.5.8. **Overshadowing** – The planning authority was satisfied with the findings of the applicant’s Daylight and Sunlight Report submitted with the application, which indicated that all windows examined on Anglesea Row, etc., will meet BRE target values when assessed against the baseline conditions set by the permitted development Reg.Reg.0672/03, or in the case of Anglesea Row (where Block C was omitted), a ‘mirror image’. The applicant highlights that the BRE Guidance advises that different target values may be appropriate in historic centres (appendix F of the Guidance applies) and s.3.2.3 of the report indicates that its technical assessment found that all of the windows tested meet target BRE values.
- 7.5.9. It is apparent, however that the proposed development, which will entail an increase in building height to Anglesea Row from c.9.75m to 14.44m, generally and up to 23.325m (southernmost section c.19m length) would entail a loss of daylight and direct sunlight to the existing residences and other property along the east side of Anglesea Row, at and above ground floor level, against the existing situation. Whilst this would be offset somewhat by the proposed building setback, the loss of direct sunlight and access to daylight is likely to be significant and adverse for residential apartments at nos.123-125 Capel Street due to their proximity to the highest part of the proposed development to the southwest. It is difficult to determine the magnitude of same in the absence of shadow diagrams.

- 7.5.10. I do not consider it likely that there will be a significant impact on the office accommodating the appellant's architectural practice due to its location at third floor level and its greater distance from the highest part of the proposed development, in addition to the nature of the use as commercial office.
- 7.5.11. Given the historic inner-city location a certain level of increase in overshadowing may need to be acceptable to facilitate the redevelopment of sites to appropriate higher-order, intensive uses, but a balance must be achieved to ensure that such locations can maintain permanent residential communities. I consider it likely that the proposed 7-storey element at the southern end of the development will result in excessive overshadowing, loss of sunlight and daylight to existing residences to the east of Anglesea Row, such as would seriously injure the amenities of those residences. I note, however that the board has previously permitted development of a similar scale on Little Mary Street under PL29N.204975 (now expired).
- 7.5.12. **Overbearing / visual intrusion** – The grounds of the third-party appeal included impact on the outlook of apartments nos.110-113 Capel Street. The planning authority considered there to be no significant adverse impact in this regard. The proposed development would change the outlook of properties, including residences, to the south and east, but I do not consider the impact to significant within the inner-city context of the site exclusive of any related overshadowing or overlooking affects.
- 7.5.13. **Conclusion** – The proposed development, by reason of the location and arrangement of windows to habitable rooms in the proposed aparthotel bedroom units relative to the location of directly opposing fenestration to existing residential apartment units within 6.5-7.7m, would seriously injure the amenities through overlooking and loss of privacy to those residences. I am not satisfied that the applicant has demonstrated that the proposed 7-storey block would not further injure the amenities of the existing residential apartments to the south by way of excessive overshadowing.

## 7.6. Other issues

- 7.6.1. Plot ratio & site coverage – The site coverage of the proposed development is stated at 70%, which is below the maximum 90% under the Development Plan (s.16.5). The plot ratio works out at 4.5, which exceeds the permissible range of 2.5-3.0 under

the Plan (s.16.5), however the planning authority considered a higher plot ratio was justified on this site having regard to the underutilised nature of the lands in need of renewal, as allowed for under the Plan.

## **7.7. Environmental Impact Assessment Screening**

- 7.7.1. The proposed development is development of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 10. Infrastructure projects, (b)(iv) Urban Development. However, at 0.3ha site area, it is significantly subthreshold the 2ha limit provided under that part and EIA is not required.

## **7.8. Appropriate Assessment**

- 7.8.1. The applicant submitted an Appropriate Assessment Screening Report with the application, prepared by Pádraic Fogarty, MSC MIEMA, of Openfield Ecological Services. I note the detailed contents of same. The site is not located within a European site. Within 10km there are four European sites:

- South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.9km at the nearest distance (to NE);
- South Dublin Bay SAC Site 000210 c.4.0km at the nearest distance (to SE);
- North Bull Island SPA Site 004006 c.5.8km at nearest distance (to E-NE);
- and North Dublin Bay SAC Site 000206 c.5.8km at nearest distance (to E-NE);

However, the Screening Report excludes examination of potential impacts on the latter two sites on grounds of no pathway to same from the site. The Screening Report includes consideration of an additional site outside the 10km radius on the basis that the water supply is take from there:

- Poulaphouca Reservoir SPA site code 004063 c.23km (to SE).

- 7.8.2. The Features of Interest / Qualifying Interests for the three European sites, the status of same, and the Conservation Objectives applicable to each site are set out in pages 7 to 12 of the Screening Report.

- 7.8.3. The Screening Report provides relevant data for the carrying out of the assessment on pages 12 to 14 of the report and an assessment of significance of effects, including in combination effects, on pages 14 to 16. There is no potential for direct impacts as the proposed development is not located within or directly adjacent to the said European sites and would not entail the removal of resources therefrom. The River Liffey forms the main pathway to convey effects between the proposed development (source) and the said European sites (receptors), potentially through surface water runoff (during construction and operation) and, indirectly, through foul water disposal via Ringsend wastewater treatment plant. In this regard I would not agree with the statement in the applicant's Screening Report that there is no pathway for effects to occur to the North Bull Island SPA or the North Dublin Bay SAC, but I would concur that, given the nature, design and the scale of the proposed development, there would be no potential for significant effects on any of the said European sites.
- 7.8.4. Stage 1 screening conclusion – It is reasonable to conclude that on the basis of information on the file, which I consider to be adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European sites - South Dublin Bay and River Tolka Estuary SPA Site 004024 c.2.9km at the nearest distance (to NE); North Bull Island SPA Site 004006 c.5.8km at nearest distance (to E-NE); South Dublin Bay SAC Site 000210 c.4.0km at the nearest distance (to SE); North Dublin Bay SAC Site 000206 c.5.8km at nearest distance (to E-NE); and Poulaphouca Reservoir SPA site code 004063 c.23km (to SE) - and a Stage 2 Appropriate Assessment (and submission of a NIS) is not required.

## 8.0 Recommendation

- 8.1. I recommend that permission be **REFUSED** for the reasons set out under section 9.0, below.

## 9.0 Reasons and Considerations

The proposed development, by reason of the arrangement and proximity of extensive fenestrations to aparthotel bedrooms directly opposite windows and

balconies to multiple residential properties on the opposing side of Anglesea Row, would seriously injure the residential amenities of residential property in the vicinity by way of excessive overlooking and invasion of privacy; the board is not satisfied that the proposed development would not seriously injure the amenities of residential property in the vicinity resulting from excessive overshadowing of and loss of daylight to existing residential property to the northeast on Anglesea Row due to the height of the development fronting onto Little Mary Street to the south. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

---

John Desmond  
Senior Planning Inspector

24<sup>th</sup> October 2018