



An
Bord
Pleanála

Inspector's Report ABP-303204-18

Development	PROTECTED STRUCTURE: Construction of 43 bedroom aparthotel
Location	Charlemont Place, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3764/18
Applicant(s)	Strandmount Limited
Type of Application	Third Party
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	James and Kathleen Nolan John Kiefal
Observer(s)	Transport Infrastructure Ireland Declan Ryan Viasat Ireland Ltd.
Date of Site Inspection	19 th March 2019 & 27 th March 2019
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The site is located close to Charlemont Luas Station and consists of a site that is bounded by the Luas Line to the west, houses and rear gardens of Peter Place to the north, the rear gardens of Hilton Mews and 8 Harcourt Terrace to the north-east and east. The site also includes an access lane that is bounded by a newly completed office building (21 Charlemont Place) to the west and Charlemont House (Glennon) to the east. The access lane also allows access to the car park serving the Charlemont House office building and to the car park serving 21 Charlemont Place.
 - 1.1.1. A historic well lies on the site which is a Protected Structure (RPS No. 3536 - Rear of 8 Harcourt Terrace – Spring Well). This is not visible on the site and the area is currently sealed off with fencing.
- 1.2. The Grand Canal is located to the south-east, opposite the site access. The surrounding area is a mix of commercial and residential uses.

2.0 Proposed Development

- 2.1. Construction of 43 bedroom aparthotel. The development will consist of:
 - 43 no. bed part-two storey to part seven storey double basement (over a part double basement) aparthotel (2,743 sq. m.);
 - 10 no. ancillary basement car parking spaces;
 - Vehicular access to the basement car park via the existing ramp to the west; pedestrian access via the existing laneway at the south-east of the site;
 - A screened roof terrace (facing north, east and west) at third floor level;
 - Bicycle parking;
 - Hard and soft landscaping; loading bay; boundary treatments; plant; and all associated site development works above and below ground.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Grant permission. Conditions of note include:

- Condition 6 – Aparthotel units shall only be occupied for short-term letting periods of no more than 2 months/permission required for permanent residential units.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority.

Points of note are as follows:

- Hotel use is permissible under the Z4 zoning. The proposed use is considered to be consistent with Development Plan policies relating to tourism.
- Mass of building broken up by stepping down towards Peter Place.
- Some loss of daylight and sunlight/some impact on neighbouring gardens.
- Plot ratio and site coverage within standards.
- Complies with standards for aparthotels.
- Glazing reduces the bulk of the building.
- Horizontal fins reduce overlooking/significant set-backs to neighbouring dwellings to the north and eastern boundaries.
- Limited palette of material is proposed/heritage brick similar in colour and texture to neighbouring buildings/render to the north gable in order to lighten the appearance.

3.2.2. Further Information was requested in relation to the applicant's legal interest in the existing access ramp that allows access to the proposed basement car park.

Following receipt of Further Information on 01/11/2018, the planning authority was satisfied this legal interest had been demonstrated.

3.2.3. The recommendation was to grant permission.

3.2.4. Other Technical Reports

Drainage – No objection subject to conditions.

Roads and Traffic Planning – Further information requested.

Archaeology - No objection subject to condition.

Conservation – Recommend conditions.

3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland – recommend conditions.

3.4. Third Party Observations

3.4.1. 8 No. third party submissions were received at application stage. Most of the issues raised are covered within the Ground of Appeal and the observations on the appeal. Issues not raised in the Grounds of Appeal and observations on the appeal include:

- Impact on the River Steyne which flows under the site.
- Overlooking of the surrounding commercial properties.
- Loss of on-street parking.
- Impact on services including electricity, water and data.
- Access to courtyard including potential vehicular access.
- Signage.

4.0 Planning History

Appeal Site

Hilton Hotel and McConnell House, Charlemont Place, Dublin 2 (which included the appeal site)

231603 (4087/08) **Grant** – Mixed use development including offices, café, hotel extension and conference facility.

McConnell House and adjoining lands at Charlemont Place, Dublin 2 (which included the appeal site)

218778 (2191/06) **Refused** by ABP following a grant by DCC – Mixed use development including office, retail and residential. Reasons for refusal related to (i) massing and height (ii) overshadowing and obtrusiveness/impact on residential amenity.

Site bounded by rear of Peter Place, The Luas Reservation/Hilton Hotel, McConnell House, and the rear of Hilton Mews, Dublin 2 (which included the appeal site)

2278/01 – **Grant** – 16 apartments.

Adjacent Sites

18-21, Charlemont Place, Dublin 2 (to south of appeal site)

2279/16 - **Grant** - modifications to the development permitted under Register Reference 2502/12, ABP Reference PL29S. 240817) comprising the extension of the site area to include adjoining lands to the west to accommodate revised western boundary proposals including the provision of a new western boundary wall, gate, ancillary landscaping and site development works and the erection of 1 no. back lit stainless steel sign with low energy lighting mounted on the revised western boundary wall.

Appeal Ref 240817 (2502/12) – **Grant** - The development will consist of the demolition of the existing office building, Charlemont House, with a gross floor area of 1,598 sq.m and the construction of a part four and part six storey over basement office building.

Hilton Hotel Charlemont Place

2661/18 – **Grant** - The development will consist of modifications to permission DCC Reg. Ref. 2209/16/ ABP PL29S.246976 and to the existing hotel.

246976 (2209/16) – **Grant** - Construction of seven- storey hotel extension, additional extension of 7th storey to existing hotel and reconfiguration and alterations to existing hotel.

The Mews, 1 Charlemont Place

Appeal Ref 248260 (2019/17) – **Grant Retention Permission** - Change of use from residential to office

5.0 Policy and Context

5.1. National Policy

5.1.1. Project Ireland 2040: National Planning Framework

5.1.2. From 16th February 2018, the National Planning Framework has replaced the National Spatial Strategy (NSS) and now represents the overarching national planning policy document. The National Planning Framework sets a new course for planning and development in Ireland, to achieve a shared set of goals for every community across the country, focused on ten National Strategic Outcomes. Chapters of particular relevance to this appeal include chapters 1, 2, 4, 6, 9, 10 and 11.

5.1.3. The following is a list of Section 28 Ministerial Guidelines considered of relevance to the proposed development.

- ‘Urban Development and Building Heights Guidelines for Planning Authorities’ (December 2018)
- ‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’) (2009)
- ‘Architectural Heritage Protection Guidelines for Planning Authorities’ (2011)

5.2. Development Plan

5.2.1. The subject site is zoned objective Z4 – ‘To provide for and improve mixed services facilities’ under the Dublin City Development Plan 2016-2022.

5.2.2. A historic well lies on the site which is a Protected Structure (RPS No. 3536– Rear of 8 Harcourt Terrace – Spring Well).

5.2.3. The site is located within SDRA 18 ‘National Concert Hall Quarter’.

5.2.4. The site lies partly within a Conservation Area which encompasses an eastern and south-eastern portion of the site.

5.2.5. Relevant provisions of the Development Plan include:

- Policy SC25: promotes high quality design
- Policy CEE12 (i): seeks to promote & facilitate tourism as one of the key economic pillars of the city's economy & a major generator of employment & to support the provision of necessary significant increase in facilities (hotels).
- Policy CEE13 (iii): seeks to promote and support the development of additional tourism accommodation at appropriate locations.
- Policy CEE18: new growth sectors.
- Policy CHC1: seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- Policy CHC2/4 seeks to ensure the protection of the special interest of Protected Structures, and the special interest and character of all Conservation Areas is protected.
- Section 16.2: Design, Principles and Standards.
- Section 16.4/5/6: Density Standards/Plot Ratio/Site Coverage/Building Height.
- Appendix 16 Aparthotels.
- Appendix 24 Protected Structures and Buildings in Conservation Areas.

5.3. **Natural Heritage Designations**

5.3.1. None. The site is 10m north of the Grand Canal Dock pNHA.

5.4. **EIA Screening**

5.4.1. Having regard to the nature and scale of the proposed development, an aparthotel development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact

assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Two no. Third Party Appeals have been received from: (1) James and Kathleen Nolan and (2) John Kiefel. The Grounds of Appeal are as follows:

Amenity

- Impact on amenity including loss of light/ overshadowing of Peter Place and Hilton Mews/Impact is unacceptable/ Impact on garden spaces.
- Impact on Peter Place, Harcourt Terrace and Hilton Mews including overlooking/ loss of privacy.
- Impact of construction including noise, dust, dirt and vermin/Noise impacts/security concerns.
- No balance between needs of the business community and local homes.
- Noise impacts from the hotel from guests/deliveries/waste disposal/coach and taxi pickups/plant.
- Anti-social behaviour from hen and stag parties.
- Cumulative impact of planning permission 3858/17/Appeal Ref 301207 (Construction of a Primary School at No's.11A & 12-16 Harcourt Terrace) and other developments leading to increased traffic/congestion/car parking will add to the problem.

Design/Conservation

- Overdevelopment of site.
- Mass of building/Scale of the building is out of place with the surrounding buildings to the east and north.
- Impact on Protected Structures on Harcourt Terrace.

Traffic

- Legal interest in gaining access to the basement car park.

Protected Structure

- Impact on the Protected Well/proposed treatment does not reflect its importance to Irish Heritage.

Other

- 2 month letting of the units will lead to unauthorised use of the units/condition should be stricter.
- Impact of foundations on structural stability of houses.

6.2. Applicant Response

6.2.1. The First Party Response to the Third Party Appeals can be summarised as follows:

Amenity

- 7th storey element will be setback c12.24m from the boundary of No. 24 Peter Place.
- Appellant has exaggerated the extent of development to be provided directly adjacent to their home.
- Providing a low building on the subject site would not result in the efficient use of infrastructure and services.
- Low-rise dwellings should not dictate the future form of the area/similar issue was considered under planning application 3629/17 and Appeal Ref 300987 for a 7 storey aparthotel development on site in Dublin 1/Board granted permission and therefore concurred that part 7 storey height is appropriate adjacent to low-rise buildings.
- Application has comprehensively demonstrated that the amenity of the adjacent dwellings will not be materially impacted by the proposed development.
- Complies with National Planning Framework and Urban Development and Building Height Guidelines (December 2018).
- Design seeks to reduce impacts.

- Permitted development at 21 Charlemont Place to the south of the site has a maximum height of 24.55m – the subject development proposes a maximum height of 21.95m (23.3m including plant)- below the Development Plan standard of 28m (which have now been superseded by the Building Height Guidelines).
- Some degree of overshadowing in an urban context is unavoidable – this principle has previously been accepted by An Bord Pleanala. i.e. APB ref 248844 – hotel development at 9-17 Andrews Lane.
- Daylight assessment concludes that very little overshadowing will occur throughout the year/impacts of the proposed development will not materially impact the residential amenity of neighbouring dwellings.
- Impacts on the appellant’s properties are negligible/No loss of sunlight to gardens can be expected during the peak summer months/Screening will ensure that no overlooking will occur.
- Permitted development to the south has multiple unobscured windows facing east.
- In relation to noise impacts, it is noted that it is not proposed to provide food and refreshment facilities on site.
- Construction impacts are short term/Construction Management Plan will mitigate impacts/will be no structural impact on adjacent properties.

Impact on Protected Structures

- The Protected well will be retained and will become publically accessible/Proposed works will have very little impact on the actual well structure and could be reversed if required/Conservation Officer did not raise any issues with the works proposed.

Other

- Modifications to the definition and control of aparthotels is a reserved function and would have to be made via a variation of the Development Plan or part of a future Development Plan.

- Sufficient legal entitlement to the basement access ramp has been demonstrated.
- Aparthotel will give rise to very low traffic flows.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. Observations have been received from (i) Transport Infrastructure Ireland (ii) Declan Ryan, 9 Harcourt Terrace, Dublin 2 (iii) Viasat Limited, 21 Charlemont Place, Dublin 2.

Transport Infrastructure Ireland

- Recommend conditions/May be subject to Section 49 Levy (St. Stephen's Green to Broombridge)

Declan Ryan, 9 Harcourt Terrace, Dublin 2

- Fully supports the grounds and principle of these appeals/requests that the Board overturn the decision of the Council and refuse permission.
- Properties at Peter Place are served by extremely restricted rear gardens that are only 5.5m in length.
- No. 9 Harcourt Terrace is a Protected Structure/Harcourt Terrace is the only formally composed Regency Terrace in the city.
- Appeal site is partially within a Conservation Area/is adjacent to Z8 zoned lands.
- Development is only set back 3m from the rear garden boundary of properties on Peter Place.
- Impacts of 2 month occupancy – request that a far shorter time be conditioned.
- Overdevelopment of site – site is restricted/impact on Protected Structures.
- Proposal is overscaled/set back is insufficient to address the impact on Peter Place/Board will need to address the scale and massing by reducing the height of the proposal by at least 2 storeys.

- Proposal is 16m wide and up to seven stores in height/properties to the north are small two-storey properties.
- Already impacted by the construction of the Luas line to their immediate west.
- In relation to sunlight/daylight, the submitted analysis showed that the impact would be profound and negative.
- These rear gardens are at a lower level than the finished floor level of the aparthotel/already impacted by the Luas Line to the west and the height of the commercial building to the immediate south.
- Overlooking from the units/large roof terrace immediately adjacent to these properties/impacts of noise/Opaque glazing not proposed for the eastern facing units/overlooking of mews property and rear garden space.
- Legal interest in access ramp/inaccurate drawings/safety issues/traffic hazard and potential conflict.

Viasat Limited, 21 Charlemont Place, Dublin 2.

- Does not object to the proposed development in principle.
- Serious concerns regarding the use of the access laneway/traffic management issues.
- Currently accesses 10 car parking spaces by way of the laneway.
- Public health and safety issues have not been addressed by DCC.
- Objections at application stage raised this issue.
- Use of the laneway for car park access is not addressed or referenced in the Road's report or the planner's report.
- Permitting the use of the laneway in its current state and given its limited size will be detrimental to the continued use of the laneway to access the car park/traffic safety/reduce value of interest in the property.

6.5. Further Responses

- 6.5.1. A Further Response has been received from James and Kathleen Nolan (Third Party Appellant) responding to the First Party Response. This is summarised as follows:

- Have drawn outline of the two velux windows on kitchen roof and kitchen double doors to show impact on property.
- Proposed roof terrace will be approx. 4m from boundary wall.
- Impact on privacy, construction impacts.
- Impacts on property value.
- Fumes from the extractor fan serving the underground car park will blow into garden.
- The single storey structure could overshadow/overhang wall by as much as 6ft.
- Does not protect provide property rights.
- Site would be ideal as a small flower garden.

6.5.2. A Further Response has been received from the First Party responding to the Observation from Viasat Limited. This is summarised as follows:

- Laneway referred to is lightly trafficked by low-speed cars.
- Peak time traffic flow between 8am and 9am on Wed 6th March was 2 cars in and 1 car out.
- Pedestrian flow to the aparthotel is likely to be small when spread over the day.
- Width is sufficient to accommodate a car and single file pedestrians/a line marked footway is proposed/drawing submitted.

6.5.3. A Further Submission was made by Transport Infrastructure Ireland – Observation remains as set out in earlier submission.

6.5.4. A Further Response from James and Kathleen Nolan (Third Party Appellant) responding to the observation from Viasat Limited has been received. This is summarised as follows:

- Laneway is being used by 3 companies – Viasat Limited, Frank Glennon and BKD Architects.
- Each company has vehicular access to car parks/only 21 Charlemont has yellow markings.

- There are four more floors at 21 Charlemont that may require more car parking in future.
- No reference is made as to the use of the laneway in the applicant's response to the Third Party Appeal.
- Photos submitted

6.5.5. A Further Response from Declan Ryan (Observer) responding to the observation from Viasat Limited has been received. This is summarised as follows:

- Clear conflict between the decision of the Planning Authority that the laneway be pedestrian access only and its current use as a vehicular access to the car park.
- Client leases two of the car parking spaces and would be disadvantaged by the decision of the planning authority.
- Raises legitimate health and safety grounds.

7.0 **Assessment**

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of Development
- Residential Amenity
- Design and Conservation/Impact on Protected Structures
- Access and Parking
- Other Issues
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. The site is in an area zoned Z4 (District Centres) 'To provide for and improve mixed services facilities'. The district centre can provide a focal point for the delivery of integrated services and the designated key district centres have, or will have in the

future, the capacity to deliver on a range of requirements, the most important of which are:

- An increased density of development.
- A viable retail and commercial core.
- A comprehensive range of high-quality community and social services.
- A distinctive spatial identity with a high quality physical environment.

7.2.2. A hotel use is 'permissible use' within this zoning designation. An aparthotel is within the definition of a hotel, as defined within Appendix 21 of the Dublin City Development Plan.

7.2.3. The site lies within SDRA 18 'National Concert Hall Quarter' which seek to *inter alia* promote the development of buildings of up to 9-storeys commercial to ensure critical mass is achieved to support public transport services, to create a critical mass of employment generating land uses to utilise the investment in public transport in the area and to facilitate the delivery of additional planned public transport services, and to promote the development of vacant and under-utilised sites.

7.2.4. The use is a permissible use that is in line with the overall objectives for Z4 areas, and is in line with the Objectives for the SDRA 18 'National Concert Hall Quarter'. As such, I have no objection to the principle of the proposed development subject to complying with other planning requirements as addressed in the following sections.

7.3. Residential Amenity

7.3.1. The site is bounded by the houses and rear gardens of Peter Place to the north, and the houses and rear gardens of Hilton Mews and 8 Harcourt Terrace to the north-east and east.

7.3.2. The Third Party Appellants, and an observer on the appeal, have raised the issue of residential amenity, including the impact of the proposed development on daylight/sunlight levels and overshadowing as a result of the proposal. The issue of loss of privacy/overlooking has also been raised, as well as the issue of noise and disturbance both from the construction stage and from the operational stage of the aparthotel.

- 7.3.3. The applicants state that the proposal has been designed to minimise amenity impacts and any impacts that do occur will not materially impact the amenity of neighbouring houses.

Daylight/Sunlight/Overshadowing of Rear Gardens

- 7.3.4. A Daylight Assessment (dated 27th July 2018) has been submitted at application stage. This considers the impact on sunlight and skylight available to neighbouring residences, and also considers the impact on sunlight available to neighbouring gardens.
- 7.3.5. In relation to sunlight and skylight to windows, a total of 19 points were considered and of these 19 windows, 6 windows fall below the BRE Standards, with the development in place, with the impacts ranging from Minor Adverse to Moderate Adverse. One of the windows falls below the BRE Standards for Sunlight with the impact being considered Minor Adverse.
- 7.3.6. In relation to loss of sunlight to neighbouring gardens, of the 11 gardens considered, 6 of these fall below BRE Standards for sunlight levels received on 21st March, with the development in place with impacts ranging from Minor Adverse in 3 cases to Major Adverse in 3 cases.
- 7.3.7. In relation to the impact on neighbouring windows, the ground floor kitchen window (Point B1) of 27 Peter Place experiences a moderate adverse impact, with VSC (Skylight) levels falling from 26 to 17, a 34% reduction. The ground floor kitchen window of No. 38 Peter Place experiences a moderate adverse impact with VSC levels falling from 27 to 18, a 33% reduction. Both of these reductions are greater than the BRE Guidelines, which state that a 20% reduction in VSC levels is likely to be noticed. There are 4 other windows which experience reductions of greater than 20% but the impact is considered to be minor.
- 7.3.8. In relation to the impact on neighbouring gardens, the Daylight Assessment cites Major Adverse impacts on 3 of the 11 gardens considered (at No's 26, 25 and 24 Peter Place) with the % area capable of receiving more than 2hrs of direct sunshine on 21st March reduced to 0%. The Daylight Assessment has considered the year round impact on these three gardens and it is notable that during the summer months, the gardens will still receive adequate sunlight. Winter sunlight levels (Oct to Feb) are poor both with, and without, the proposal in place.

- 7.3.9. Having regard to the above, it is my view that reasonable balance needs to be achieved between making the most efficient use of a development site in an inner-urban location, in very close proximity to a high frequency public transport service, as required under the National Planning Framework, and as set out in the Building Height Guidelines (2018), and preserving as much as possible the amenity of neighbouring residents. I consider that the proposal under consideration here has achieved this balance and has sought to minimise this impact by stepping down significantly towards Peters Place.
- 7.3.10. I note also that the standards set out in the BRE Guidance document (Site Layout Planning for Daylight and Sunlight, 2011) are not mandatory, and should be interpreted flexibly. The document notes that in areas with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings. It is also of note that the site is currently cleared, and as such daylight and sunlight levels that are received by neighbouring residential properties are higher than what would be the case, with any development of scale in place.
- 7.3.11. In relation to the previous refusal on the site, which included both the appeal site and No. 18-21 Charlemont Place (Appeal Ref 218778), this was for a development that was larger in scale overall, most notably that part of the development fronting onto Charlemont Place, which was 8 storeys (31m) in height, although the proposal did reduce in height to four and single storey towards Peter Place. The Board had concerns in relation to both visual obtrusiveness and overshadowing of neighbouring properties. No. 18-21 Charlemont has now been built out with a part-six, part-four storey development. This proposal is similar in height to the completed development at No. 18-21 but has a significant step down to three and two storeys to the north towards Peter Place. As such it is my view that previous concerns in relation to amenity have been overcome with this current proposal.

Overbearing/Visual Amenity

- 7.3.12. While the proposal will be clearly visible from surrounding residential properties, the height of the proposal steps down significantly towards those properties on Peter Place, reducing the overall visual impact significantly. I consider that the higher elements of the proposal, the seven storey element in particular, is set back

sufficiently from surrounding properties so as to ensure that the proposal will not be overbearing in appearance nor will there be a loss of visual amenity.

Overlooking/Noise

- 7.3.13. The appellants, and the observer on the appeal, have raised concerns in relation to overlooking, both from the windows of the aparthotel and from the proposed terrace. It is my view that there will be no material overlooking from the windows of the hotel. Subject to the 1.8m high screening in place, I do not consider that the proposed terrace will overlook the properties on Peter Place or Hilton Mews. However the use of the terrace has potential to result in significant noise impacts on Peter Place, from occupiers utilising the terrace. As such I consider that the terrace should be omitted from the proposal.
- 7.3.14. Notwithstanding the impact of the terrace, I do not consider that the operation of the aparthotel will result in significant noise impacts over and above what would be expected in an inner-urban location.
- 7.3.15. In relation to construction impacts, these are temporary in nature and can be controlled by way of a Construction Management Plan.

7.4. Design

- 7.4.1. The proposal does not have the benefit of a street frontage given its location to rear of the newly completed office block at 21 Charlemont. However, it will be visible from a number of viewpoints, including from Peters Place to the north, to the west from the Luas Line and beyond, and from the east from the properties at Harcourt Terrace and Hilton Mews.
- 7.4.2. The scale, bulk and mass of the proposal is in keeping with recently completed office development at No. 21 Charlemont to the South, and the stepping down of the proposal from 7 storeys adjacent to No. 21 to 3 storeys then to 2 storeys seeks to provide a transition from the lower scale properties to the north and east. The glazing serves to lighten the appearance of the structure.
- 7.4.3. The use of heritage brick on the two primary facades on the east and west is in keeping with the context of the area. Overall the design and appearance of the proposed aparthotel is considered to be appropriate.

7.5. Impact on Protected Structures

- 7.5.1. On the appeal site is a historic well which is a Protected Structure (RPS No. 3536). The well is currently sealed and is not visible and is located in an overgrown part of the site. The well is of historical interest and is likely to be the well that Lord Edward FitzGerald hid in while on the run during the rebellion of 1798.
- 7.5.2. The top of the well lies approximately 0.4m below ground level. It is proposed to rebuild the upper portions of the well to 400mm and to form an above ground stone well to a similar design. The original lid and pump remain in the well under water. It is proposed to retain these *in situ* as removing these items is likely to result in rapid deterioration.
- 7.5.3. Basement works are proposed relatively close to the well and mitigation measures are outlined in the application documents. Remedial works to the well are also proposed.
- 7.5.4. The Desk Study and Impact Statement (dated 24th October 2017) submitted with the application concludes that the works should have little impact on the actual well structure and could be reversed in future if required.
- 7.5.5. I concur with the conclusions contained within the Impact Statement and I consider that the works proposed are positive and allow a feature of significant historical interest to be accessible to the public and facilitates its display within an appropriate setting. Overall the impact on this particular Protected Structure is largely positive in my view, given the alternative for the well to remain below ground level and with no possibility of displaying it in a meaningful manner.
- 7.5.6. The proposal will also be visible within the setting of the Protected Structures on Harcourt Terrace. However the overall impact will be neutral in my view, given the existing built form of relatively significant scale that is currently visible from vantage points on Harcourt Terrace.

7.6. Access and Parking

- 7.6.1. Third Party Appellants have raised concern in relation to the impact on the surrounding road network as a result of the development. However I do not consider that the proposal would have a material impact on traffic volumes in the area, given the limited number of bedrooms proposed, the limited number of car parking spaces and the highly accessible nature of the appeal site, in very close proximity to the Charlemont Luas stop.

- 7.6.2. 10 no. car parking spaces are proposed at basement car park level which is access via the existing car parking ramp serving the Hilton Hotel Car Park, to the immediate west of the access lane serving the appeal site.
- 7.6.3. The car parking provision is in line with Development Plan standards.
- 7.6.4. In relation to access to the car park and traffic safety, I do not consider that the arrangement will give rise to safety concerns. Cars entering and exiting the ramp would do so at slow speed and sufficient signage is adequate to ensure drivers are aware of merging access routes.
- 7.6.5. In relation to the pedestrian access route into the aparthotel, an observer on the appeal has raised concerns in relation to traffic and pedestrian safety, given that this road is utilised by vehicles parking in the Charlemont House Car Park and utilised to access the car parking at No. 21 Charlemont. A number of further responses have been received in relation to same. The applicants have submitted a drawing (received by ABP 7th March 2019) showing a line-marked pedestrian route to the hotel. I do not consider that safety issues are likely given the slow speeds at which cars travel down this route, and given the likely small numbers of vehicle movements associated with the car parking spaces.
- 7.6.6. An issue raised at application stage is the potential of vehicular traffic to access the courtyard of the hotel, raising concerns in relation to volumes of traffic utilising the lane. I do not consider that vehicular access to the forecourt should be facilitated, having regard to those concerns raised above. Should the Board be minded to grant permission, I consider that details of how vehicular access to the laneway/courtyard is proposed to be controlled are required by way of condition.

7.7. Other Issues

- 7.7.1. Flood Risk – A Civil Engineering Infrastructure Report was submitted at application stage and this considers the issue of Flood Risk. It is concluded that there is a very low risk of flooding from tidal, fluvial or pluvial flooding.
- 7.7.2. Foul Water – Foul water will be to the existing 150mm diameter foul drainage pipe on the access lane which has sufficient capacity.

- 7.7.3. Surface Water – Surface water run-off from the development will be collected in an attenuation tank below the basement, before being pumped to the combined sewer network on Charlemont Place.
- 7.7.4. Impact on River Steyne – A submission at application stage noted a possible impact on the River Steyne running under the site. However no further evidence was provided to support this, and there is no other evidence on file in relation to this issue.
- 7.7.5. Loss of on-street parking – There does not appear to be any loss of on-street parking as a result of the proposal.

7.8. **Appropriate Assessment**

- 7.8.1. Legal protection is provided for habitats and species of European importance under the Habitats Directive 92/43/EEC, which established a network of designated conservation areas known as Natura 2000 or European sites, which include Special Areas of Conservation (SAC) under the Habitats Directive and Special Protection Areas (SPA) under the Birds Directive (Directive 2009/147/EC). Article 6(3) of the Habitats Directive requires Appropriate Assessment to be carried out for any plan or project not directly connected with or necessary to the management of a European site (or sites) concerned, but that it is likely to have a significant effect thereon, on its own or in combination with other plans or projects, in view of its conservation objectives.
- 7.8.2. The proposed development is not directly connected with or necessary to the management of any European site.

Stage 1 Screening

- 7.8.3. Stage 1 is concerned with determining whether a described development, not being a development directly connected with or necessary to the management of a European site, in itself or in-combination with other described projects or plans, has the potential to have significant effects on any European site.
- 7.8.4. An Appropriate Assessment Screening report was submitted at application stage and this concludes that the proposed development will not have a significant effect on the Natura 2000 network and a Stage 2 Appropriate Assessment is not required

- 7.8.5. The site is neither in nor near to a Natura 2000 site. The closest SPA to the site is South Dublin Bay and River Tolka SPA which is 3.1km to the east of the site. The closest SAC is the South Dublin Bay SAC which is 3km to the east of the site. There is no obvious direct pathway from the appeal site to the above sites, nor to any other Natura 2000 sites beyond.
- 7.8.6. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, a serviced inner-urban location, and the proximity to the nearest European Sites and the lack of an apparent pathway to same, it is reasonable to conclude on the basis of the information available on the file, which I consider adequate in order to issue a screening determination, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European sites, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. Grant Permission.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016 -2022, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, nor would the proposal give rise to a traffic hazard. The proposal would preserve the setting of the Protected Structure on the site, and the setting of nearby Protected Structures. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the

further plans and particulars received by An Bord Pleanála on the 7th Day of March 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposal shall be amended as follows:

The roof terrace at Third Floor Level shall be omitted from the proposal. Prior to the commencement of development, revised plans detailing the omission of the roof terrace shall be submitted to, and approved in writing by, the planning authority.

Reason: In the interest of residential amenity.

3. An information board detailing the historical significance of the Protected Well shall be erected in an appropriate location adjacent to the reconstructed well structure. Prior to commencement of development, details of this information board shall be submitted to, and approved in writing by, the planning authority.

Reason: In the interest of enhancing the amenity of the area and in the interest of ensuring that the historical significance of the Protected well is conveyed in an appropriate manner.

4. All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

Reason: To secure the authentic preservation of this [protected] structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

5. The developer shall facilitate the archaeological appraisal of the site and

shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

6. Prior to commencement of development, proposals to restrict vehicular movements into and out of the proposed courtyard area (save for emergency vehicle access), via the shared access lane, shall be submitted to, and approved in writing by, the planning authority.

Reason: In the interest of pedestrian and road safety and in the interest of the amenity of the proposed development.

7. Prior to the commencement of development, details of the materials,

colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing, by the planning authority.

Reason: In the interest of visual amenity.

8. The apart-hotel units shall only be occupied for short-term letting periods of no more than two months and shall operate within the definition of aparthotel as set out in Appendix 16 of the Dublin City Development Plan, 2016-2022. The aparthotel shall be managed by a reception facility on the ground floor with 24hr reception and security facilities. The aparthotel units shall not be used as independent self-contained permanent residential units or student accommodation.

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

9. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

10. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of

development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

12. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

13. The developer shall liaise with Transport Infrastructure Ireland (TII) to ensure the structural stability and safety of the adjacent rail infrastructure and to agree construction and maintenance methodologies which avoid disruption to tram services.

Reason: In the interests of orderly development and to protect the operation of the adjacent Luas service.

14. Notwithstanding the provisions of the Planning & Development Regulations 2001 (As Amended), no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting element, shall be displayed or erected on the building or within the curtilage, or attached to the glazing, without the prior grant of planning permission.

Reason: In the interests of visual amenity.

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision satisfactory completion and maintenance until taken in charge by the local authority of services required

in connection with the proposed development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion and maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement shall be referred to an Bord Pleanála for agreement.

Reason: To ensure the satisfactory completion of the development.

16. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City (St. Stephen's Green to Broombridge) Contribution Scheme, in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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

application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Rónán O'Connor
Planning Inspector

28th March 2019