



An
Bord
Pleanála

Inspector's Report ABP-303526-19

Development	Demolition of buildings & construction of 8-storey office building.
Location	Setanta Centre, 6-15, Nassau Street, Dublin 2 and including a building at No.44 Kildare Street (known as Transport House - at the junction of Setanta Place and Kildare Street).
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	2407/18
Applicant(s)	Ternary Ltd
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	(1) Clydaville Investments Limited (2) Ciaran McGrath (3) Trinity Real Estate (4) IPUT plc
Observer(s)	(1) Transport Infrastructure Ireland

(2) An Taisce

Date of Site Inspection

29th April 2019/01st May 2019

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.587 hectares, is located in Dublin City Centre on the southern side of Nassau Street. The site is occupied by the Setanta Centre, which is H shaped block varying in height from 5 to 8 storeys with two basement levels underneath. The site also includes no. 44 Kildare Street (Transport House), a 4 storey office block located at the corner of Kildare Street and Setanta Place. The site has significant frontage along Setanta Place with a vehicular entrance on the northern side of Setanta Place providing access to the basement car park. The existing block is an H shaped block with a section running along Nassau Street (northern side of the site) and a section running along Setanta Place (southern side of the site) with a section connecting the two blocks on the north and southern side of the site. The existing structure on site is five-storeys where it runs along Nassau Street, six-storeys where it runs along Setanta Place and rises to eight-storeys on the central section. There are two basement levels, which are car parking levels, the first basement level was private parking associated with the existing office block and has not been in use in recent years with the level below a public car park operated by Q Park and accessed from Setanta Place. A section of the car park underneath no. 10/11 Molesworth Street to the south links into the public car park.
- 1.2. The existing structure is mainly in office use with most of the office space currently vacant. There are two existing retail units at ground floor level, The Kilkenny Shop fronting onto Nassau Street and Reads which is split into two parts, one part fronting Nassau Street and another part to the south of the site adjoining Setanta Place. There is an open space area with through access from Nassau Street to Setanta Place on the western side of the existing office block with an existing mosaic artwork on the wall along the western boundary of the site (An Tain). There is also a surface car parking/open yard adjoining the eastern boundary of the site currently used for parking and services/deliveries.
- 1.3. There are a number of adjoining properties on all sides of the appeal site. Immediately adjoining the site to the east along the Nassau Street frontage is no.s 4 and 5 Nassau Street. Such are 2 no. four-storey structures fronting Nassau Street with 3 no. commercial units at ground floor level (O'Briens, The Runner Bean and

Heraldic Artists) with The Pigs Ear Restaurant located on the upper floors of no.s 4 and 5 Nassau Street. Immediately adjoining the site to the west along Nassau Street is no. 15 Nassau Street which is a four-storey building with a shop unit at ground floor level and office use on the upper floors.

- 1.4. A number of properties fronting Kildare Street back onto the eastern boundary of the appeal site and such are four-storey over basement structures including the Kildare Street Hotel and office development. As noted above the appeal site includes the four-storey office building known as Transport House at the corner of Kildare Street and Setanta Place.
- 1.5. A number of properties fronting Frederick Street South back onto the western boundary of the appeal site. These include no.s 23-30, which are four-storey over basement structures and include a number of uses mainly office use, art galleries and a café. On the opposite side of Nassau Street is the Trinity College Campus with the playing fields associated with the campus located immediately opposite the appeal site. On the opposite side of Setanta Place is office development including 10/11 Molesworth Street a six-storey over basement office development. Further east along Setanta Place opposite the site is Setanta House (no. 1 Setanta Place) which is a five-storey office building further east of it is Kildare House, a five storey office development at the corner of Kildare Street and Setanta Place.

2.0 Proposed Development

- 2.1. The proposed development site extends to 5,857 square metres in area and will have a gross floor area of 37,722 square metres, including basement areas of 14,970 square metres. The application site is bounded by Nassau Street to the north and the rear of buildings fronting Nassau Street, Setanta Place to the south (including existing basement levels beneath Setanta Place street level), to the east by Kildare Street and the rear of the buildings fronting Kildare Street, and to the west by the rear of buildings fronting Frederick Street South. The planning applications relates to development which adjoins the rear of protected structures fronting 22 - 30 Frederick Street South, the rear of No. 5 and 16 - 19 Nassau Street and the rear of 45- 46 Kildare Street. The number of storeys on the existing buildings on the site varies up to a maximum of 8 storeys with roof-top plant and equipment over 2

basement levels. The development will consist of the demolition, excavation and clearance of all existing buildings and structures on the site including basements other than the existing Kilkenny Design Store and annex 1,455 square metres and associated basement areas of 1,432 square metres (notated on the planning application drawings as 'SG1' and 'SG2' at B-1) which do not form part of the demolition/construction proposals. The western boundary walls to the rear of the protected structures fronting Frederick Street South and rear of 5 and 16-19 Nassau Street will be demolished and new boundary walls constructed. In addition to the demolition of the buildings, the development also provides for the demolition of the two existing basements (excluding the basement levels beneath Setanta Place which are retained and remodelled internally), and car park ramps from Setanta Place. Following the above demolitions, excavations and site clearance the development provides for the construction a new office building extending to 8 storeys in height including setbacks at 6th, 7th and 8th storey over 4 basement levels (the two basement levels beneath Setanta Place which are retained and remodelled and are notated on the planning application drawings as 'SG1' and 'SG2' at basement level B-1) and new car park access/egress ramps off Setanta Place. The existing vehicular connection beneath Setanta Place between the application site and public car parking spaces in the building known as 10-11 Molesworth Street will be reinstated. The proposed basement levels will contain 211 car parking spaces (of which 141 will be for public use with the balance i.e. 70 for private use). The number of onsite car parking spaces on the overall site will be reduced from the existing 319 spaces to 211 spaces. The basement areas will also contain 300 bicycle parking spaces along with associated drying areas, bicycle repair facilities, showers and locker/changing/storage areas, accessed via a dedicated cycle access/egress ramp off Setanta Place, circulation, waste receptacle areas, plant and equipment and tenant facilities. Service and deliveries will be from Nassau Street and Setanta Place and via basement areas. A swimming pool and gymnasium are proposed at ground and B-1 levels. The development incorporates sustainable development measures including roof mounted photovoltaic cells (500sq.m), green roof areas, rain water harvesting, air-sourced heat-pumps and attenuation tank. The pedestrian link between Nassau Street and Setanta Place will be repositioned and upgraded. It is also proposed to relocate the existing mosaic mural known as the An Tain Wall for the western boundary wall forward towards Nassau Street. The proposal includes

roof terraces at 5th floor level to the northern, eastern and western elevations facing towards Nassau Street, South Frederick Street and Kildare Street respectively. The main entrance to the proposed development will be off Nassau Street, with secondary entrances off the pedestrian link and Setanta Place. A pedestrian entrance is also provided off Kildare Street. The proposed development provides for 1 no. double ESB substation fronting Setanta Place along with all associated site development works including landscaping and boundary treatments and air intake and outlet fans and ducts/vents including screened roof top mounted plant and equipment including zone for communications equipment (satellite dishes/aerials) at seventh and eight storeys.

- 2.2. The proposal was revised in scale in response to further information with the main changes being a reduction in overall ridge height by 2.16m and a reduction in the floor area of proposed development by 655sqm. There was also a change to the level of projection of the colonnade at ground floor level with such setback further by 560mm. At the clarification of further information stage a further change was proposed on the Nassau Street frontage with two alternative facade options in relation to the area above the Kilkenny Shop retail unit.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 23 conditions. Of note are the following conditions...

Condition no. 5: Conservation architect to be appointed to oversee works.

Condition no. 6: The mosaic mural to be removed, stored refurbished and reinstated.

Condition no. 7: Details of external finishes to be agreed.

Condition no. 9: Details of glazing treatment or finishes to minimise overlooking to adjoining properties to be agreed.

Condition no. 14: Archaeologist to be appointed and to be carried out monitoring.

Condition no. 18: A window display is to be maintained at all times.

Condition no. 22: No additional development permitted above roof level.

Condition no. 23: Submission of a construction traffic management plan for existing LUAS infrastructure to be agreed with TII and the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (18/04/18): Further information required including proposal to deal with concerns regarding height, bulk and scale of the development and its impact on visual amenities and the amenities of adjoining properties. Additional details regarding the manner in which the construction is to be managed in the context of retention of the Kilkenny Shop on site. The information requested by the Conservation Officer, Drainage Division and the Roads and Traffic Planning Division were also requested.

Planning Report (17/09/18): Clarification of further information including measures to deal with concerns regarding the scale and massing of the gable ends relative to adjoining properties and the external finishes used in these areas. The applicant was also requested to reassess the design of streetscape along Nassau Street and lack of front entrance to the Kilkenny Shop. The applicant is requested to submit proposal to better reflect and respect the character of the area in the context of Development Plan policy, reconsideration of the height and materials on the Nassau Street elevation and reassess the height in the context of adjoining protected structures.

Planning Report (23/11/18): The revised proposal was considered to be acceptable in the context of overall design and visual amenity, the character and setting of adjoining protected structures and conservation areas, in the context of the established streetscape. The proposal also considered acceptable in the context of adjoining amenities, traffic safety and to be in accordance with the proper planning and sustainable development of the area. A grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Drainage Division (27/03/18): Further information required including a revised flood risk impact assessment.

City Archaeologist (05/04/18): Condition recommended including appointing an archaeologist to carry out monitoring.

Conservation Officer (16/04/18): Further information including survey drawings of existing boundaries, 3D aerial views of the proposal, explanation of methodology for removal and reinstatement of the mural, reconsideration of elevation treatment and materials and reconsideration of height and massing of the proposed structure.

Roads and Traffic Planning (16/04/18): Further information including clarification of floor areas to determine parking requirement, details of reason for retaining the public car park, a preliminary construction management plan, clarify servicing arrangements for the Kilkenny shop during construction, revision of overhang on Nassau Street, details of temporary access ramp of Setatnta Place, detail of cycle access to basement, provision of shower/changing facilities for cyclists and details of management of the pedestrian link between Nassau Street and Setatnta Place.

Drainage Division (28/08/18): No objection subject to condition.

Roads and Traffic Planning (10/09/18): No objection subject to conditions.

Conservation Officer (11/09/18): Clarification of further information including proposal to revise in the context of the existing streetscape and adjoining protected structures.

Conservation Officer (17/12/18) Refusal recommended on the basis excessive, scale, massing and articulation with an adverse impact setting and character of adjoining protected structures, historic streetscape and the Trinity Conservation Area.

3.3. Prescribed Bodies

TII (27/03/18): A construction traffic management plan in relation mitigation measures for the existing LUAS operation to be agreed. The development is subject to a Section 49 contribution (LUAS).

An Taisce (03/04/18): It is more sustainable to re-use the existing building. The scale of the development in the context of the Trinity conservation area and adjoining

protected structures is a concern. The photomontages submitted are inadequate to assess impact.

TII (12/09/18): The TII's position remains the same as previously indicated.

3.4. Third Party Observations

Kinney Design

Michael O'Reilly

Ciaran McGrath, 27 South Frederick Street

Clydaville Investments Limited (Kilkenny Group)

IPUT plc

Trinity Real Estates

IPUT plc (2nd)

Clydaville Investments Limited (Kilkenny Group) (2nd)

The issues raised in the submissions can be summarised as follows...

- Excessive bulk and scale relative to adjoining property, overdevelopment of site, overbearing impact, reduced sunlight/daylight, impact on development potential.
- Adverse impact on character and setting of Protected Structures and adjoining ACA, impact on structural stability of existing protected structures.
- Contrary Development Plan zoning objective.
- Inadequate visual impact assessment and adverse impact on visual amenities and streetscape.
- Construction impact and post development changes detrimental to existing Kilkenny Shop. Inadequate information on how existing shop unit is to be retained and remain operational during construction works without adverse effects on its viability.

- Existing mural on site is of significant artistic importance and proposals are essential for its preservation on site.
- Existing car parking under an adjoining structure would be denied access as a result of the proposal with temporary access required during construction.

4.0 Planning History

No recent planning history.

Relevant application site nearby...

PL29S.248181 (3847/16): Permission granted for demolition of office blocks and construction of retail and office development at 60-65 Dawson St, 3 Duke Lane, 34-39 and 40-43 Nassau St, Dublin 2.

PL29S.242784: Demolition of existing buildings and replacement with a new office block. 10/11 Molesworth Street.

5.0 Policy and Context

5.1. Development Plan

The relevant Development Plan is the Dublin City Development Plan 2016-2022.

The appeal site is zoned Z5 with a stated objective “to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”.

The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which

sustain the vitality of the inner city both by day and night (Section 14.8.5).

Permissible uses include office, hotel, and restaurants.

The Z5 zoned area is identified as the key employment location within the city (Section 2.2.4).

Core Strategy - It is an overarching aim 'to consolidate and enhance the inner city in order to strengthen its crucial role at the heart of the capital city and the city region'.

Shape and Structure of the City -In terms of the Shape and Structure of the City the plan (4.5.1.1.) sets out a number of policies;

SC7: – To protect and enhance important views and view corridors into, out of and within the city and to protect existing landmarks and their prominence.

Fig 4 outlines Key Views and Prospects (Indicative).

SC16: - To recognise that Dublin City is fundamentally a low-rise city and that the intrinsic quality associated with this feature is protected whilst also recognising 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).

SC17: - To protect and enhance the skyline of the inner city, and to ensure that all proposals for mid-rise and taller buildings make a positive contribution to the urban character of the city, having regard to the criteria and principles set out in Chapter 15 (Guiding Principles) and Chapter 16 (development standards). In particular, all new proposals must demonstrate sensitivity to the historic city centre, the River Liffey and quays, Trinity College, the cathedrals, Dublin Castle, the historic squares and the city canals, and to established residential areas, open recreation areas and civic spaces of local and citywide importance.

Section 4.5.41 sets out Dublin City Council's approach to taller buildings. It is policy to provide for taller buildings in limited locations identified in the Building Height in

Dublin map. Georges Quay is identified as allocation where a tall building could be located (above 50m).

City Economy and Enterprise – recognises that Dublin must develop with sufficient critical mass in order to compete at an international level and fulfil its role as the key economic driver of growth for the Greater Dublin region and the country as a whole. Relevant policies include CEE5 and CEE11, which recognise the need for high quality and dense development to drive productivity and innovation; the supply of commercial space as a means of increasing choice and competitiveness and the redevelopment of obsolete office stock in the city to consolidate employment.

Development Standards - Section 16.7.2 of the plan sets out Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development. It also sets out the Assessment Criteria for Higher Buildings.

The requirements for Infill Development are set out in Section 16.2.2.2, where it is noted that it is particularly important that proposed development respect and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.

Built Heritage and Culture - The policies in relation to Protected Structures are set out in Section 11.1.5.1. The policies in relation to Conservation Areas are set out in Section 11.1.5.4. These policies seek to protect the structures of special interest which are included in the Record of Protected Structures (Volume 4 of the Plan) and the special character of Conservation Areas.

Relevant policies include the following;

CHC1 - Preservation of the built heritage of the city.

CHC2 – Protection of the special interest of protected structures.

CHC4 – Protection of special interest and character of Conservation Areas.

Table 16.1 and Table 16.2 set out the car and cycle parking standards for various uses.

5.2 National Policy

The Urban Development and Building Height - Guidelines for Planning Authorities (December 2018) build on the wider national policy objective to provide more compact forms of urban development as outlined in the National Planning Framework. It is acknowledged that increasing building heights has a critical role to play in addressing the delivery of more compact growth in urban areas, particularly cities and large towns.

5.3 Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Future Analytics on behalf of Clydaville Investments Limited. The grounds of appeal can be summarised as follows...

- The proposed use being primarily office use is inconsistent with the zoning objective (Z5). This is on the basis of over dominance of office use proposed and the potential adverse impact of the proposal on existing retail uses in the area including the appellants' shop and adjoining retail uses.
- The scale of scaffolding and hoarding required during construction would impact adversely on the visibility of the Kilkenny Shop and restaurant and undermine its visual presence and deter people from entering the shop. Such would also impact on light levels to the store and the description of the development is inaccurate with the proposal requiring significant works that would require the consent of the appellant. The appellant also notes that the

impact of the proposal on the streetscape along Nassau Street and the reduction in the width of the footpath.

- There is a lack of details in terms of construction management with the demolition and construction proposed having an adverse impact on the operation of the existing store and subsequently the viability of the Kilkenny Group. The appellant notes that the works proposed would entail significant alteration of the front facade and entrance of existing shop and necessitate its closure for a period time despite the claims that the shop is to be retained and operate during construction. The appellant notes that consent would be needed from them and such has not been obtained (notes the terms of their lease agreement).
- The construction would have significant impact on the viability and operation of the shop and the restaurant. It is noted that the restaurant is significant part of the existing operation and itself attracts a significant level of custom itself and that the construction proposed surrounding such would have a severe impact on its ongoing operation. The construction works including noise, dust and vibration would have serious health and safety implications for the staff and customer of the Kilkenny Shop.
- The need for hoardings, scaffolding around the existing shop would cause significant physical obstruction as well as the need for re-direction of traffic. No measures are provided to facilitate appropriate access in relation to deliveries, customer and staff. Such would have a significant adverse impact on the operation and viability of the shop. It is noted that the condition (11(a) regarding construction hours does not take in account the operation of the existing shop in its terms.
- The proposal would impact servicing arrangements (deliveries, refuse storage and collection) for the existing shop with loss of access for the delivery of goods and services, which take place in space to rear and such will not be accessible during construction. The proposal would also entail removal of fire exit with safety implications. Conditions requiring agreement of construction management prior to the commencement of development (Condition 12(a) are

inadequate. The proposal inadequate without specific measure to protect the existing shop from the disruption of the construction period.

- The proposed development would have an adverse impact on the character and setting of a Conservation Area and would have an adverse impact on the character of adjoining protected structures due to its excessive bulk and scale, and overbearing impact at this location. The proposal also would potential impact the structural integrity of adjoining structures due to the nature of the works proposed including significant sub-surface excavation.
- The proposal involves encroachment onto the public footpath and would interfere with an established public right of way and would entail significant reduction in the width of the footpath at a location with significant footfall.
- The appeal submission includes a report from SJG Temporary Works Ltd outlining the difficulties with carrying out demolition around an existing premises as well as noting such is an unusual proposal. It notes the proposal would have a significant impact through noise, dust and vibration, health and safety implications and chances of an un-controlled collapse.

6.1.2 A third party appeal has been lodged by Thornton O'Connor Town Planning on behalf of Ciaran McGrath. The grounds of appeal can be summarised as follows...

- The appellant is the owner of no. 27 Frederick Street, Dublin 2 which backs onto the appeal site (western boundary). The appellant has concerns regarding the impact of the proposal on value of their property and its future development potential.
- The appellants are the owner of no.s 4 and 5 Nassau Street that immediately adjoin the appeal site. The two structures are on the record of protected structure and are two amongst a number of protected structures adjoining the appeal site.
- It is noted that any redevelopment of the appeal site should protect adjacent historic fabric with it noted that the scale of the development granted disregards the context of structures in the vicinity which are on the record of protected structure. The scale and massing of development represent

overdevelopment of the site and would have a material adverse impact on adjacent properties.

- The Council's assessment of the proposal indicated concerns regarding the scale of the development in the context of existing streetscape and adjoining protected structures and the Council's Conservation Officer recommended refusal after expressing dissatisfaction with the proposal in a number reports.
- The appellants have include a report from a Conservation Architect (John Patrick Conclough) that note the proposal would overshadow and overpower the appellant's property and impact adversely on the setting of all protected structures on both sides of Frederick Street. The report also highlights concerns regarding the level excavation in close proximity to the appellant's property and the potential for impact on structural integrity.
- The height of the proposal is excessive in the context of the appellant's property and would impact on light levels and have an overbearing impact as well have having inadequate regard to its location adjacent protected structures.
- The proximity and orientation of the proposed development relative to the rear of the appellant's property would cause significant overlooking with inadequate separation between opposing windows. Such would also impact on the future development of the appellant's property (in event of a change of use to residential use).
- The proximity and scale development relative to the appellant property would impact significant on light levels to windows on the rear elevation of the appellant's property. Such would also impact on future use for residential purposes. A report consultant regarding light levels (Chris Shackleton) note that the Visual Sky Component (VSC) levels for the windows to the rear of the appellant's' property would be below recommended standard (BRE guidelines). Light levels to the garden area (used by an existing Art Gallery) would also be below recommended standards (BRE guidelines).
- The bulk, scale and massing is inappropriate and encroaches onto current open space areas. The proposal would have an overbearing impact and in relation to adjoining properties.

- The plot ratio of the proposed development (4.7) exceeds that allowable under the City Development Plan with the Z5 zoning (2.5-3).
- The proposal for additional basement level would have an adverse impact on the structural integrity of the adjoining structures most of which are protected structures.

6.1.3 A third party appeal has been lodged by Thornton O'Connor Town Planning on behalf of Trinity Real Estates. The grounds of appeal can be summarised as follows...

- The appellants are the owner of no.s 4 and 5 Nassau Street that immediately adjoin the appeal site. The two structures are on the record of protected structure and are two amongst a number of protected structures adjoin the appeal site.
- It is noted that any redevelopment of the appeal site should protect adjacent historic fabric with it noted that the scale of the development granted disregards the context of structures in the vicinity which are on the record of protected structure. The scale and massing of development represent overdevelopment of the site and have a material adverse impact on adjacent properties.
- The Council's assessment of the proposal indicated concerns regarding the scale of the development in the context of existing streetscape and adjoining protected structures and the Council's Conservation Officer recommended refusal after expressing dissatisfaction with the proposal in a number reports.
- The appellants have include a report from a Conservation Architect (John Patrick Conclough) that note the design and scale of the proposal has inadequate regard to the historic character of the area, adjoining protected structures and the adjoining conservation area (Trinity). The report also notes the proposal is at odds with Development Plan policy.
- The height of the proposal is excessive in the context of the streetscape and character of the area with and has not had regard to its potential impact on adjoining properties.

- The bulk, scale and massing is inappropriate and encroaches onto current open space areas. The proposal would have an overbearing impact and reduce infiltration of light in relation to adjoining properties. The extended eastern elevation in close proximity to the appellant's property has a significant overbearing impact. There is inadequate separation distance provided between the proposed development and the appellant's property.
- The plot ratio of the proposed development (4.7) exceeds that allowable under the City Development Plan with the Z5 zoning (2.5-3).
- The proposal would have an adverse impact on light levels to windows on the rear elevations of no.s 4 and 5 Nassau Street and subsequently an adverse impact on the amenities of the owner and occupants of these structures. It is noted that impact on light levels was raised as an issue by the Planning Authority in assessment of the application. The appellant notes that the amendments made (approved development) are not significant enough to address such concerns.
- The proposal for additional basement level would have an adverse impact on the structural integrity of the adjoining structures most of which are protected structures.
- The approved development has thick columns on the façade (ground and first) and such would hamper visibility of the adjoining business premises with the appellant property and effect trade to this premises.

6.1.4 A third party appeal has been lodged by Tom Phillips & Associates on behalf of IPUT plc. The grounds of appeal can be summarised as follows...

- The appellant is the owner of no.s 10/11 Molesworth Street which has been recently redeveloped to provide for a new five storey office development over two basement car parking levels. The existing car parking associated with no.s 10/11 Molesworth Street is accessed through connections at basement level -2 from Setanta Place (serves 58 public spaces and 32 private spaces. This removal of the access ramp off Setanta Place would render the

appellant's development unviable and no alternative access arrangement has been proposed by the applicant.

- It is noted there is a legal agreement to provide access to the appellant's property in the event redevelopment of the appeal site and that provision of appropriate access is a planning matter. The City Council deemed such not to be planning matter, however the appellant is of the view such has a material impact and should be material planning consideration.
- It is noted that the issue of access to the appellant's property was referred to in the further information request and by the Council's Transportation Department.
- The appellant is of the view that the proposed development should be required to provide a means of access in the event of the redevelopment of the appeal site and an alternative access should be provided. The lack of such has material impact on the operation and viability of the appellant's property. It is noted that the proposal has a clear impact on the appellant's property and that such should be addressed through the planning system. The appellant request a condition requiring appropriate temporary access during the construction phase and a permanent means of access once the construction phase is completed.

6.2. Applicant Response

A response has been submitted by Stephen Ward Town Planning & Development Consultants Ltd on behalf of the applicants Ternary Limited.

- The response outlines the rationale for redeveloping the site focusing on the need for improved standard of office accommodation over the existing structure on site and that such is in keeping with Development Plan policy.
- It is noted the proposal is keeping with Development Plan policy regarding land use, office development in the city centre and retail policies.
- In response to the issue of height it is noted that the proposal is consistent with development plan policy in regards pre-existing heights and is 8-storeys

as is the existing structure and the approved structure is marginally higher than the existing structure (30mm). It is noted that the increase in floor area over the existing structure is appropriate having regard to its city centre location and there is precedent for such increases in floor area permitted in the city centre (examples listed). It is noted that Development Plan policy does allow flexibility in terms of plot ratio and such should apply to office use. It is noted that the approved development has a similar site coverage as the existing structure. The approved development entailed increased setbacks. It is considered that overlooking is not an issue with the adjoining uses commercial in nature.

- In relation to conservation the proposal was subject to a conservation assessment by a Conservation Architect with it deemed to have an acceptable impact in regards to adjoining protected structures and the adjoining Architectural Conservation Area (ACA). It is noted that scale, mass and design of the approved development is appropriate at this location and is acceptable in regards to setting of adjoining protected structures and ACA.
- The applicant question the planning status of a number of elements of the existing Kilkenny Shop including the mezzanine floor and question whether the Board should proceed in relation to the Clydaville appeal due to planning status of the unit in question.
- The applicant notes that the works proposed would impact conditions in relation to the existing shop unit and will work with the occupants of such to minimise impact. The applicant notes the lease associated with this unit gives the applicant the right to deliver the redevelopment of the site.
- The applicants note in relation to the Clydaville appeal that the issues relate to demolition and construction issues and are linked to landlord/tenant issues. It is noted that such is outside of the consideration in terms of planning and development and that this appeal submission should not be considered further.
- The applicant notes that significant detail has been provided regarding the construction period, scaffolding, hoarding, piling and temporary cross-bracing, noise, dust and vibration impact, structural stability, deliveries, emergency

access and weather-proofing, health and safety that is normally outside the remit of the planning system but has been provided to deal with concerns raised by Clydaville in their submission to the application and subsequent appeal.

- In relation to the IPUT plc appeal it is noted that it is intended to provide permanent access to the section of car park in question post development but not to provide temporary access during construction as it is not feasible. It is noted that the City Council deemed such to be a civil matter. The applicant notes that it has no obligation to provide a temporary access and only a permanent access post development, which is the case in the proposal. It is noted that the matter is not a planning consideration and should not merit further consideration in assessment of the proposal. The applicant notes that only the 58 public spaces are accessed through the Setanta Centre and that the 32 private spaces are accessible off Setanta Place and not impacted by the proposal.
- The proposal would have an acceptable impact relative to no. 27 Frederick Street with the applicant referring to the conclusions of the ARC report regarding daylight/sunlight. The applicant notes condition no. 7 regarding structural stability.
- The applicant questions the validity of the Trinity Real Estates appeal.
- It is noted that the restaurant located at number 4 and 5 has its back of house operations located to the rear and that proposal would have no adverse impact in terms of loss of outlook or light infiltration.
- It is noted that the proposal would not impact on future development of no. 4 and 5 as the footprint of the existing structures is restricted with no opportunity for physical extension.
- In relation impact of structural stability of adjoining structures it noted that there is considerable information in the application regarding construction period and methodology. Notwithstanding such it is considered that such is not a planning consideration.

6.3. **Planning Authority Response**

No response.

6.4. **Observations**

6.4.1 Observation from Transport Infrastructure Ireland.

- A construction traffic management plan in relation mitigation measures for the existing LUAS operation to be agreed. The development is subject to a Section 49 contribution (LUAS).

6.4.2 Observation from An Taisce.

- It is more sustainable to re-use the existing building. The scale of the development in the context of the Trinity Conservation Area and adjoining protected structures is a concern. The photomontages submitted are inadequate to assess impact.

6.4.3 Further observation by An Taisce

- The existing structure should be reused with it noted that the current practice of demolition structurally sound office developments being unsustainable.
- The height of the proposal is too high especially at such a sensitive location
- The scale and visibility of the proposed structure from such a site of such architectural heritage significance as Trinity College is inappropriate.
- In the event of grant of permission it is recommended the proposal be reduced in scale by at least one floor.

6.4.4 Further observation by the TTII

- The TII note their previous correspondence regarding this application and appeal and note that their position remains the same as outlined in such.

6.4.5 Further observation by the TTII

- The TII note their previous correspondence regarding this application and appeal and note that their position remains the same as outlined in such.

6.5. Further Responses

6.5.1 Response by Thornton O’Conner Town Planning on behalf of the third party appellant, Ciaran McGrath.

- The appellant reiterates concerns about the impact of proposed development in relation light levels to the rear of his property.
- The appellants reiterate concerns about impact on historic fabric and protected structures due to the level of excavation proposed in close proximity to the existing adjoining structures.
- The massing and scale of the proposed development is inappropriate in the context of adjoining structures and streetscape and has an excessive plot ratio.
- A report is submitted in response to applicants’ daylight/sunlight assessment refuting the claims of such and noting that the proposal would have an unacceptable impact on light levels to the appellant’s property.

6.5.2 Response by Thornton O’Conner Town Planning on behalf of the third party appellants, Trinity Real Estates.

- The appellants reiterate concerns about the impact of reduced light levels to their property and note that the applicants view that such reduced light level are acceptable is inappropriate. The proposal would have an overbearing impact.

- The appellants note the adverse impact on the future development potential of their property and state that such is material planning consideration. The appellants refer to a Board decision under PL29S.246433 where such was the reason for refusal as a relevant case.
- The appellants reiterate concerns about impact on historic fabric and protected structures due to the level of excavation proposed in close proximity to the existing adjoining structures.

6.5.3 Response by Tom Phillips and Associates on behalf of the third party appellant, IPUT plc.

- The appellants reiterate their concerns about access to the section of car park underneath their property and note that the applicants response to the appeal does not address those concerns, which relate to preserving access during the construction phase,

6.5.4 Response by Future Analytics on behalf of the appellants Clydaville Investments Limited.

- The appellants reiterate concerns that the proposal would encroach on an established right of way due to its extended building line along the footpath on Nassau Street.
- In response to the suggestion of unauthorised use on the appellant property it is noted that the retail unit is long-established and there is a considerable planning history for such. The appellants refute the claims of unauthorised development and note that their appeal is valid and that they also operated within the terms of their lease.
- The appellants reiterate the fact that the proposal to construct around the existing unit would have a significant and adverse environmental impact on

the continued operation and a health and safety risk. It is considered that the applicants have failed to demonstrate that such would not be the case.

- The appellants do not accept the applicants' contention that scaffolding would not be required along the front of the shop during the construction phase.
- The impact of vibration on the day to day operation including display of goods would be significant.
- The proposal would compromise delivery arrangement and fire escape routes. The alternative loading bay proposal is not practical.
- The proposal entails a loss of light where there is an existing window (western gable of the existing retail unit).
- The proposal would have an adverse economic impact with possible loss of jobs with it also noted that the shop contributes significantly to the city centre.
- The response is accompanied by a letter from a Real Estate company supporting the issues raised in the submission, a report from an Environmental Consulting company noting that the information submitted by the applicant does not demonstrate that the proposal development can be carried out without an adverse impact to operation of the existing retail unit.

6.5.5 Further response by Stephen Ward Town Planning & Development Consultants Ltd on behalf of the applicants Ternary Limited

- It is noted that the proposal does not entail extinguishment of a right of way.
- The applicants refer to unauthorised use within the existing Kilkenny Shop unit.
- The applicants' response to issues concerning construction impact and note an example of a similar circumstance where construction was carried out while retaining an existing commercial operation on site.
- The applicants refute the appellants' claims regarding impact of construction including installation of columns that would impact operation and obstruction of fire escape routes.

- A technical note is submitted detailing construction impact and confirming no scaffolding is proposed along the front elevation as well as detailing that any hoarding will not obstruct movement and footfall significantly.
- The applicants note that the proposal would contribute significant to the retail core and have a positive economic impact.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Principle of the proposed development/development plan policy

Design, height, scale and mass of buildings

Visual impact

Adjoining amenity

Retention of existing shop unit on site

Car park access

Encroachment onto the footpath/building line

Appropriate assessment

7.2 Principle of the proposed development/development plan policy:

7.2.1 The proposal seeks to demolish the existing office development/retail development on site and construct a new office development while retaining a retail element on site. The appeal site is zoned Z5 under the City Development Plan with a stated objective “to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity”. The proposed uses on site are compatible within this zoning and do not deviate from the established uses on site or in the surrounding area. The existing structure on site is an existing office block with retail units at ground floor level. The applicants note that the existing structure does not meet modern standards for office development. The

existing structure is not on the record protected structures. The proposal seeks to increased level of floor space at a city centre location well serviced by public transport infrastructure. The proposed development accords with national policy/guidance, which seeks to secure compact growth in urban areas and deliver higher densities in suitable locations. The proposal will deliver a high density development in a strategic location close to major transport infrastructure enabling the city 'to accommodate a greater proportion of its growth within its metropolitan boundaries through regeneration and redevelopment projects' (National Strategic Outcome 1) and 'encourage more people and generate more jobs and activity within the city' (National Policy Objective 11). In delivering a building of significant height, it acknowledges the role that height has to play in the delivery of more compact growth consistent with the recently published 'Urban Development and Building Height-Guidelines for Planning Authorities'.

7.2.2 The existing office block is largely vacant and according to the applicants not suitable for modern office needs. The proposal would be compliant with Development Plan policy in relation to City Economy and Enterprise which recognises that Dublin must develop with sufficient critical mass in order to compete at an international level and fulfil its role as the key economic driver of growth for the Greater Dublin region and the country as a whole. Relevant policies include CEE5 and CEE11, which recognise the need for high quality and dense development to drive productivity and innovation; the supply of commercial space as a means of increasing choice and competitiveness and the redevelopment of obsolete office stock in the city to consolidate employment.

7.3 Design, height, scale and mass of buildings:

7.3.1 The proposal is for an eight-storey office/retail development over four basement levels to replace an existing office development that has a maximum height of eighth-storeys over two basement levels. The existing block is an H shaped block whereas the new development has a larger footprint above ground level and less open space providing for an increased floor area as well as an increased ridge height over the existing structure on site. The initial proposal had a ridge height of

32.080m above ground level and provided for 37,722sqm of floor space (includes 14,970sqm of basement areas). The proposal was altered by way of further information to reduce the maximum ridge height to 29.920m which the applicant notes is not significantly higher than the maximum ridge height of the existing structure on site at 29.890m above ground level. There was a reduction in floor area by 655sqm also. The reduction in height and alteration to the design were prompted by concerns regarding the relationship between the development and adjoining buildings and streetscape, in particular the visual impact of the gable ends of the proposed development relative to adjoining properties either side along Nassau Street.

7.3.2 The overall plot ratio of the proposed development is noted in the appeal submissions, with the plot ratio of 4.7 noted as being in excess of the indicative plot ratio for the area (Z5 zoning) is 2.5-3.0 (Section 16.5). It is noted that a higher plot ratio may be permitted in certain circumstances such including “adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed”. There is scope under Development Plan policy for higher plot ratio and the location of the site in a city centre location well serviced by public transport would justify such subject to the overall design and scale being satisfactory in the context of the visual amenities of the area and the amenities of adjoining properties. Such aspects of the proposal are to be examined in the following section of this report, however the mere fact of plot ratio being over the indicative level is not a reason to preclude the proposal.

7.3.3 The applicants emphasise that the approved development is marginally higher than the existing structure on site, which is the case, however the massing and bulk of the proposed/approved structure is larger than the existing structure on site. The proposed/approved structure provides increased ridge height along the entire Nassau Street frontage with a set back of the fifth, six and seventh floors. The structure adjoining the appeal site fronting Nassau Street are four storey structures and as it stands the existing structure on the appeal site has a higher ridge height than adjoining development. The scale of the proposed/approved development up to the fourth floor is similar to the extent of existing development (parapet level of the

fourth floor is marginally higher than that of the existing fourth floor) with the three-storeys above being set back from the front building line. This setback reduces the visual impact of the structure when viewed from Nassau Street particularly from ground level.

7.3.4 One of the main issues raised in application and the appeal submission is the transition between existing structures along Nassau Street and the scale/visibility of the gable ends relative to adjoining structures. This issue was raised during processing of the application and resulted in an alteration to the ridge height of the proposal by reducing the thickness of the floors. In addition the gable walls to the east and west have been altered with reduced level of solid facade and the introduction of a glass balustrade serving the fifth floor level terraced areas. The impact of such an alteration has reduced the bulk of the gables ends in particular the amount of solid blank gable visible. The visibility of the eastern gable is much less prominent due to the fact there is five-storey building at the junction of Nassau Street and Kildare Street and I would consider that the revised proposal is satisfactory in the context of its visual impact and its relationship with adjoining development at this side of the development. On the western side the gable of the proposed/approved development is more visible as it adjoins a four-storey building and such affords a view of more of the upper levels of the development from Nassau Street. Despite being more visible the reduced level of the solid blank façade visible in conjunction with the reduced ridge height and the use of a significant level of glazing on the upper levels that are setback, would ensure that the proposed development is satisfactory in the context of visual impact and its relationship with adjoining development along Nassau Street.

7.3.5 The appeal site has significant road frontage along Setanta Place. The existing structure on site is six-storeys along Setanta Place. The scale of the proposed/approved development up to the fifth floor is similar to the extent of existing development (similar parapet level) with the two storeys above being set back from the front building line. Where the proposed/approved development adjoins Kildare Street a five-storey block is provided to replace Transport House (44 Kildare

Street) with a design that distinguishes it from the rest of the development on site. With the parapet level matching the existing structures along Kildare Street and a more structural design featuring a brick external finish and less glazing than the majority of the proposed/approved structure. The fifth floor on this corner element is setback from the building line along Setanta Place and Kildare Street. I would consider that the overall scale and visual impact of the proposed development along Setanta Place is satisfactory and in keeping with the character of the streetscape at this location. The proposed/approved development would not be visible along Frederick Street South or have any visible impact on the streetscape along such as it has no frontage along the street and the upper levels of the proposed/approved development would not be visible from street level due to their location behind the existing structures fronting the street.

7.3.6 In the case of Setanta Place the entire length of the street is defined by a more modern construction with the only period/protected structure being the gable of no. 30 Frederick Street South. This structure has a more modern brick gable wall that was erected as part of the existing Setanta Centre development and is not being altered as part of the proposal. I am satisfied that overall scale and visual impact of the proposed/approved development along Setanta Place would be satisfactory and that such has adequate regard to the character of the streetscape and scale of existing adjoining development. Where the proposed/approved development adjoins Kildare Street at the junction of it and Setanta Place, the applicant has provided for a design that takes into account the scale and character of the existing streetscape. The provision of a structure with an external finish of brick with a more traditional approach to the ratio of solid wall and glazed sections as well respecting the parapet level of adjoining structures along Kildare Street provides for a well-integrated design. The set back of the upper levels although likely to be partially visible is satisfactory. I would note in the case of the upper levels the use of significant glazing makes such more lightweight and transparent than the existing structure on site whose upper levels above Transport House are currently visible from Kildare Street.

7.3.7 The proposed/approved development was altered a number of times in design with the Nassau Street elevation subject to a few change, in particular the fascia above the Kilkenny Shop. I would consider that the best option is the last option received in response to clarification of further information with the fascia zone over the Kilkenny shop reduced by 1m in height. In the event of a grant of permission a condition should be attached noting that this façade treatment should be applied.

7.4 Visual impact:

7.4.1 A visual impact assessment was submitted as part of the further information response and included photomontages showing the view of the proposed/approved development from 23 locations in the immediate vicinity and from the wider area. I would consider that the visual impact of the proposal in the immediate area surrounding the site including along Nassau Street, Kildare Street, Frederick Street South and Setanta Place has been dealt with in the previous section of this report and such was noted as being acceptable in context of the visual amenities of the area and the proper planning and sustainable development of the area. Having regard to such this section relates to wider views of the proposed/approved development.

7.4.2 The view locations include from St. Stephens Green, Trinity College, Merrion Square, Grafton Street and College Green as well as further east and west along Nassau Street, and further south along Kildare Street. I would note that the previous section indicated that the visual impact along the streets in the immediate vicinity of the site are satisfactory and in this regard more distant views of the proposed/approved development from further locations along Nassau Street and Kildare Street are satisfactory. Views from prominent landmarks and locations such as Grafton Street, St. Stephens Green and College Green are not possible due to topography and intervening structures and vegetation. There is a partial view of the proposed/approved development from Merrion Square, however such is as described a partial view and the proposed/approved structure does not appear prominent or dominant relative to the existing cityscape visible from this viewpoint (View location 17).

7.4.3 The Trinity College Campus (Architectural Conservation Area and numerous protected structures) is located on the opposite side of Nassau Street with three view locations provided (View Locations 1, 2 and 3. View location 1 is from the main square of the College, which is located to the north west of the site. From within the square the proposed/approved development is not visible due to the scale and density of existing structures defining such. Two views are provided from the playing pitch (cricket pitch) located north of the site on the opposite side of Nassau Street and such provide good views of the proposed/approved development due to the open nature of this area. I would consider that the visual impact of the proposal from the Trinity Campus is satisfactory. The proposal is not visible from within the square and the historic core of the campus, which is located to the north west. Although there are clear views from the cricket pitch, I do not consider that such would impact adversely on visual amenity and note that existing structure on site is also clearly visible as is the general streetscape of the city.

7.5 Adjoining amenity:

7.5.1 The replacement of the existing H shaped block with a more dense development means that the proposed/approved structure will reduce levels of separation between structures on site and adjoining properties. A number of properties along Frederick Street South back onto the site with the owner of no. 27 appealing the proposal due to the proximity of the western façade to the rear of his property. The western façade of the proposed/approved development is staggered with the glazed section 14.43m from the rear elevations of the structures fronting Frederick Street South. The issue raised by the appellant are the overbearing impact of the proposal due to the proximity and scale of the development as well as loss of light to the appellant's property and rear garden (ground and basement level are an art gallery with an outdoor sculpture garden to the rear.

7.5.2 The owners of no.s 4 and 5 Nassau Street which is located to the east of the site are also appealing the grant of permission. These properties consist of 2 no. four-storey structures fronting Nassau Street with 3 no. commercial units at ground floor level

(O'Briens, The Runner Bean and Heraldic Artists) with The Pigs Ear Restaurant located on the upper floors of no.s 4 and 5 Nassau Street. The proposed/approved development adjoins the side wall of no. 5. It is proposed to construct a solid wall up to five-storeys along the side of the adjoining property with a glazed façade further south facing the rear of the properties fronting Kildare Street. The issues raised by the appellants' relate to an overbearing impact, loss of light, overlooking and an adverse impact on the development potential of these properties.

7.5.3 A Sunlight and Daylight Access Impact Analysis was submitted. The overview of this analysis notes that the proposed development will result in additional overshadowing of the rear of buildings at no.s 23-30 Frederick Street South, no.s 1-5 and 16-19 Nassau Street, and no.s 44-49 Kildare Street. It is noted that the adjoining structures are in commercial use and that the analysis takes into account the possibility that such structures could be returned to residential use. The analysis refers to British Standards, BS 8206:2008: Lighting for Buildings and the BRE Guidelines. The overview notes that the expectation of light level is a factor and the urban context of the appeal site and surrounding structures is a consideration. A detailed analysis is included of probable sun light hours at windows on the rear of a number of properties fronting Frederick Street South, Kildare Street and Setanta Place (southern side). The analysis notes British Standard and BRE Guidelines does not set a level for windows that do not have a reasonable expectation of sunlight (rooms facing 90 degrees of due north) with the analysis focused on room facing 90 degrees of due south. The relevant standards indicate that where a window with a reasonable expectation of sunlight is capable of receiving 25% of annual probable sunlight (including 5% of annual probable sunlight hours during winter months) the window will be adequately sunlit throughout the year. Despite the analysis referring to commercial development the standard applied in analysis takes into account the impact of light on windows serving a dwelling (BRE guidelines). The analysis focuses on 6 no. zones (zones 4-9) with it noted that Zones 4 and 5 currently do not meet the sunlight levels recommended by both the British Standards and the BRE guidelines. Zone 6 and 8 meet the recommended standards and such is to remain the case post development. Zones 7 and 9 currently meet the standards but will not post development. The analysis indicates that Zones 4, 5, 7 and 9 will be below the

recommended standards and that the proposal is consistent with emerging trends for development in the immediate area and that the impacts in this case are 'moderate'. The analysis goes on the note that the standards are based on residential development whereas in the case the proposed and adjoining development are commercial in nature with no recommended standards for commercial development.

7.5.4 The Sunlight and Daylight Access Impact Analysis (ARC Architectural Consultants Limited) also addressed impact of shadows cast and in particular focused on three gardens (1-3) to the rear of the properties fronting Frederick Street South (including no. 27, Garden 02). The analysis is based on the BRE guidelines standard where sunlight is available over at least half of the garden area for at least two hours on the 21st of March). It is noted that the external spaces to the rear of the properties fronting Frederick Street South do not currently meet the standard in question and that the proposed development would lead to additional overshadowing of these spaces, but that such is in keeping with emerging trends for development in the area. An Addendum report was submitted in response to further information. The addendum report clarifies the rationale for the analysis and findings of 'moderate' impact noting recent development permitted in the area with a number of examples cited. The addendum report also includes an analysis in regards to no. 4 and 5 Nassau Street with it noted that the proposal does not have an adverse impact as it does not meet the criteria set down under the BRE guidelines in that it does not result in a greater than 4% reduction annual probable sunlight hours over the whole year.

7.5.5 One of the appellants, Ciaran McGrath included a report from Chris Shackleton Consulting. This report uses the BRE guidelines and refers to the standards regarding VSC (Visual Sky Component). The report notes that of VSC is greater than 27% enough skylight should still be reaching the window of the existing building and if with the new building in place the VSC is both less than 27% and less than 0.8 times its former value the occupants will notice reduced amount of skylight. The report also refers to sunlight (APSH/WPSH, Annual/Winter) (a window with a reasonable expectation of sunlight is capable of receiving 25% of annual probable sunlight

(including 5% of annual probable sunlight hours during winter months)). The report notes that the VSC is an appropriate standard to analyse impact and the applicants did not carry out such an analysis. The appellants report indicates that all windows on the rear elevation of no. 27 fail in the case of VSC as well as noting that the windows on the rear elevation are deficient in terms of APSH/WPSH standards. The report also notes that the level of light available to the garden area to the rear is currently deficient and that the proposed development would have a significant adverse impact on light levels to the windows on the rear elevation and rear amenity space. The report questions the rationale for determining that impact in the case is moderate instead of significant.

7.5.6 The various sunlight and daylight reports are noted and both refer to the BRE guidelines. The appellants suggest that the proposal should be assessed on the basis that future use of adjoining structures could be returned to residential while the applicant has noted that their sunlight and daylight analysis applies standards that refer to residential development. The first thing that I would note that the application of residential standards are not appropriate. The proposed and adjoining development is commercial in nature and the proposal must be assessed on its merits and in terms of impact on adjoining development. It is clear from the various analysis on sunlight and daylight that the proposal would result in additional overshadowing due to fact that the footprint of the proposed/approved development is closer to the boundaries with adjoining development to the east and west. It is notable that in the case of the rear of the properties adjoining the site that currently the standards under the BRE guidelines are not currently met. Having inspected the site and visited the adjoining properties owned by the appellants I would note a number of factors that should be considered. I visited no. 27 Frederick Street South. This is a four-storey over basement structure has an art gallery at ground and basement level with an outdoor exhibition space for sculptures to the rear. The first, second and third floor are in office use. The ground floor is an open plan dual aspect floor with access to daylight from the rear windows as well as the front windows. The basement floor has a window to the rear which does not provide significant light with a reliance on artificial light at this level. The first and second floor are open plan with dual aspect benefiting from light from the front and rear windows. The third floor is

also mainly open plan with a single office at the rear however such is located on uppermost floor. Having inspected this building and its current internal layout I am of the view that the proposed/approved development would not reduce light levels to a significant or unacceptable degree as most of the floors are dual aspect. In relation to the outdoor space and sculpture garden, I would note that despite the reduced proximity between the structure on the appeal site and the boundary with the rear no. 27, this space is still going to get the benefit of external light in a dense city centre context. I would consider that such a context is acceptable and that there are many urban spaces surrounded by significant scale of development that are still useable and attractive spaces. I would consider that overall impact of the proposed/approved development is acceptable in context of amenities of no. 27 Frederick Street South and all of the other structures adjoining it to the north and south along the street.

7.5.7 I also inspected the adjoining structures at no. 4 and 5 Nassau Street. As noted above such consist of 2 no. four-storey structures fronting Nassau Street with 3 no. commercial units at ground floor level (O'Briens, The Runner Bean and Heraldic Artists) with The Pigs Ear Restaurant located on the upper floors of no.s 4 and 5 Nassau Street. The ground floor level of the building takes up the entire area of the site with no external space at no.s 4 and 5 Nassau Street. The upper floors are occupied by the Pigs Ear Restaurant. I visited the building in question and inspected the different levels of the restaurant. All windows on the rear elevation, which are south facing service kitchen/service areas of the restaurant with only one window on this elevation serving the dining area. The dining area of the restaurant is located at front of the buildings with extensive windows overlooking Nassau Street serving it and in the case of dining area, which does have a window to the rear it is dual aspect and is served by windows on the Nassau Street frontage. There is small external terrace to the rear, which appears to be used by staff only. I am satisfied that any increased overshadowing from the proposed/approved development would not be detrimental to the operation and amenities of the appellants' property and that the overall impact of the proposal is acceptable in the context of a city development.

7.5.8 There is a contention by both appellants that the proposal would have an overbearing impact and result in overlooking. I would note that the city centre context of the appeal site and adjoining properties is a consideration. The adjoining properties are all commercial in nature including the appellants' properties. There is a reasonable expectation that development at such locations will be dense in form. I would consider that issue of overlooking is not a significant issue in this case with the proposal being a commercial development and all adjoining development being commercial in nature. I am satisfied that there is adequate separation provided between the elevations of the proposed/approved development and adjoining development to the east and west including the appellants' properties. I would consider that the level of overlooking that would be experienced would not be out of keeping with what is expected in city centre development and is not a significant departure from the existing arrangement on site, which is occupied by a large commercial office block. In relation to development potential the proposed/approved development presents a blank facade (western side boundary of no.s 4 and 5) for the entire depth of the properties at no's 4 and no.s 5 Nassau Street and in my view does not reduce the development potential of such.

7.5.9 I am satisfied that having regard to the design and scale of the proposed/approved development, its city centre context and the scale and nature of uses adjoining the site, that adequate regard is had to the amenities of adjoining properties. The proposed/approved development would, therefore, be in accordance with the proper planning and sustainable development of the area.

7.6 Retention of the existing shop unit on site:

7.6.1 At present there are two existing shop units on site, The Kilkenny Shop and Reads. It is proposed to retain the Kilkenny Shop in-situ and carry out demolition and construction work around the existing unit which is to be integrated in the new development. The existing retail unit is to remain in operation on site during the construction phase. The appellants raise concerns regarding the impact of

construction on the continued operation of the store with disruption, noise, dust, vibration, loss of light, loss of visibility through hoarding and scaffolding, lack of servicing/delivery arrangement and compromising fire safety access. The appellants also note that the proposal entails loss of a glazed elevation as well as noting that the works proposed would require a period of closure and require agreement between the two parties with reference to the terms of the appellants lease with the applicants/landowners.

7.6.2 Based on the submissions received from the relevant parties on this issue, it is the applicants' position that they have right to deliver this development under the terms of the lease in place, while the appellants are of the view that the works involved require agreement to take place between the two parties under the terms of the lease in place. The applicants do acknowledge in the information submitted that they will need the agreement with the appellants to carry out aspects of the works. Given the level of work proposed and the fact that the proposed/approved development does entail alterations to the façade of the existing shop unit I would consider it reasonable to assume that the carrying out of the proposed/approved development would be likely to require agreement between the two parties. I would note that rights and entitlements under a lease agreement is not a planning issue and it is not the Boards function to mediate or determine the terms of such agreements. The applicant is the landowner of the site and is proposing to redevelop the site and is facilitating retention of a retail unit operated by a current leaseholder. The applicant has full entitlement to apply for permission, however the I would note the provisions of Section 34(13) of the Planning and Development Act, 2000 (as amended) relating to Permission for Development, which states that "a person shall not be entitled solely by reason of a permission under this section to carry out any development".

7.6.3 In response to further information the applicant has submitted method statements detailing demolition and construction (Walter Moylan Engineering reports), which provides a significant level of detail regarding the engineering techniques to be used. The applicants noted that it was originally claimed the cross bracing was required within the Kilkenny Shop premises and that this is no longer the case. The applicants

have provided details of a servicing route during construction as well as details of fire escape access. The appellants raise concerns regarding the impact of scaffolding and hoarding during construction. The applicants have noted that scaffolding will not be necessary along the front of the shop unit. The applicants note that there are a number of issues that will require agreement between the two parties and note that such is not a planning consideration for the Board.

7.6.4 The first thing I would note that the construction of the proposed development is likely to be disruptive to the existing operation of the Kilkenny Shop. The applicant is of the view that works can be carried out while retaining the shop unit and its operation, whereas the appellants are of the views that the disruptive nature of works would be detrimental to the operation and viability of the shop unit as well as noting that elements of the works require agreement and a period of closure of the shop. As noted above any agreements required between the applicants and appellants based on their current relationship as property owner and leaseholder are not a planning consideration. I would also refer back to Section 34(13) of the Planning and Development Act (as amended). In relation to construction impact I would note that such a period is a temporary period and although it is likely to be disruptive, I do not consider that it would prevent the continued operation of the existing retail unit. I would consider that appropriate construction management could minimise construction impact and that appropriate hoarding and signage would also deal with issues regarding the continued operation of the retail unit during the construction period.

7.6.5 In relation to post development the Kilkenny Shop will still have the same level of frontage along Nassau Street with the main change being deeper structural pillars projecting from the façade and a deeper overhang at second floor level. The glazed side wall (west), which overlooked the open space to the side will no longer get the benefit of natural light due to the development of floor space to the west at ground floor level and above. The existing mezzanine level has a frosted glass section to the rear, which will also no longer gain natural light due to the level of construction proposed. The appellants suggest that the post development changes are

detrimental to the operation. The post development proposals provide for the same level of frontage along Nassau Street, which will have significant level of glazing to serve the existing double height space. I would note that there may be some reduced level of natural light due to the construction of additional floor space adjoining facade, which previously had natural light, however I would consider that the design and layout of the unit post development is adequate to maintain the retail function at this location.

7.6.6 Notwithstanding the detail of construction management provided I would reiterate that the rights and entitlements to carry out works or not to carry and the agreements that are required between the landowner and leaseholder are not a planning consideration. I would however note that appropriate conditions requiring a construction management plan should be implemented.

7.7: Car park access:

7.7.1 One of the appeals is from IPUT plc who are the owners of no. 10/11 Molesworth Street, which is a recently developed office development located to the south of the site on the opposite side of Setanta Place. Underneath no. 10/11 Molesworth Street is a section of underground parking that is accessed through the existing car park beneath the Setanta Centre and the existing vehicular access on the southern side of Setanta Place. The appellant notes that this portion of parking serves 58 public spaces and 32 private spaces. This section of parking can only be accessed through the Setanta Centre and the vehicular entrance on the southern side of Setanta Place. There is basement parking within no. 10/11 with a separate access on the northern side of Setatnta Place however such does not connect to the parking subject to this appeal, which is at a lower level. The appellants note that the lack of provision a temporary access to this parking is inappropriate. It is noted there is a legal agreement to provide access to the appellant's property in the event redevelopment of the appeal site and that provision of appropriate access is a planning matter. The City Council deemed such not to be planning matter, however the appellant is of the view such has a material impact and should be material planning consideration.

7.7.2 The applicant in their response noted that matters raised in the IPUT plc appeal submission are a legal matter and not a planning consideration and that the applicant proposes to provide permanent access post development as per their legal obligations. The applicant also clarifies that the parking spaces accessed through the Setanta Centre and the existing vehicular access on the southern side of Setanta Place as the 58 spaces in public use (part of the overall Q Park car park beneath the Setanta Centre) and that the 32 private spaces have their own access off Setanta Place into no. 10/11 Molesworth Street. An examination of the plan related to 10/11 Molesworth Street confirms this (PL29S.242784). It would appear that the section of car parking underneath the appellant's property is currently part of the larger Q Park public car park beneath the Setanta Centre and access through the entrance to the south of Setanta Place and such is managed in its entirety by Q Park. It does appear that this section of car park is separate to degree to the public parking as there is gated entry and exit openings and a sign indicating parking for AIB staff. I would agree that the provision of temporary access to such during construction on the appeal site would unlikely to be feasible as well as noting that current use and management of this section of car park appears to be contingent on the continued operation of the existing Q Park car park.

7.7.3 The applicant indicates that they will provide access to this section on completion of the development as per their legal obligations. I would consider that the section of car park subject to the appeal is linked to the car park area on the appeal site and to provide independent access during the construction is not feasible. The applicant is providing access to this section of car parking post development through the new development. I would note that the appellants' property has been subject to redevelopment in recent times under PL29S.242784 and under this redevelopment the opportunity would have presented itself to provide for access to the this parking through a dedicated vehicular entrance under which the appellants had control off. I would also note, whatever legal obligations the applicants and appellants consider to be the case is not a planning consideration.

7.8 Conservation:

7.8.1 The located of the site adjoining a number of existing protected structures and the Trinity College Architectural Conservation Area is noted by the appeal submissions. The overall design and scale of the proposed/approved development is considered excessive in scale relation to adjoining protected structures and the ACA and to have an adverse impact on the character and setting of such. As detailed in the previous sections regarding design, height, scale and mass of buildings, and visual impact, would consider that amended development in response to further information/clarification of further information, provides for design and scale that is acceptable in context of its visual impact in the immediate vicinity and wider context including from the adjoining Trinity College ACA. I would consider that the transition in scale between adjoining protected structure and the approved development to be satisfactory and that the proposal would be satisfactory in the context of the character and setting of adjoining protected structures and the ACA.

7.8.2 The impact of construction of the proposed/approved development is raised in the appeal submission in the context of conservation. It is noted that the level of excavation (four basement levels) in such close proximity to a significant number of protected structures could impact on the structural stability of such. The applicants submitted a Construction Method Statement and a Demolition and Excavation Method Statement detailing the construction methodology including demolition and excavation phases, which will include movement monitoring as well as monitoring of noises, dust and vibration levels. The construction of the proposal and management of such to ensure no damage to structural stability of adjoining properties is an engineering issue. There is no reason to believe that subject to appropriate construction management that such cannot be achieved. I would consider that subject to appropriate conditions regarding construction management that this is a matter that can be dealt with by appropriate engineering solutions and construction management. I would also note that the ensuring the structural stability of adjoining properties are not affected is in the best interests of the applicants and there is no reason to believe that appropriate construction management measures would not be implemented to achieve such.

7.8.3 There is an existing mosaic artwork on the western boundary wall in the opens space are to the west of the site. This artwork, An Tain is to be removed preserved and reinstated on the eastern side of the pedestrian access route providing access from Nassau Street to Setanta Place. A method statement for the carrying out of such was submitted by way of further information. It is clear that this artwork is of significant importance and its preservation is an important factor. I am satisfied adequate provisions are being made for conservation of the existing artwork and its reinstatement on the appeal site. Such work is to be integrated into the pedestrian walkway and is going to be at publicly accessible location (pedestrian walkway between Nassau Street and Setanta Place.

7.9 Encroachment onto the footpath/building line:

7.9.1 The third party appeal by Clydaville Limited raises concerns about encroachment onto the footpath and the impact such would have on the level of footfall as well noting that the encroachment would impact on an existing right of way and would need to be subject to appropriate procedures to extinguish such, which has not been the case. The existing building line of the Setanta Centre is stepped back relative to no. 15 Nassau Street to the west and is level with no. 5 to the east. It is proposed to bring forward the building line to be level with no. 15 Nassau Street. At ground floor level the existing facade is setback and characterised by a concrete pillars along the facade of the Kilkenny Shop. In the case of the Kilkenny Shop it is proposed to connect to the existing concrete pillars along the façade with structural columns that originally projected 1.57m beyond the existing concrete facade piers along the shop front. These new columns also function to allow for the retention of the existing store in situ as part of the proposed development. The depth of the proposed structural columns to front of was reduced by 560cm in response to further information.

7.9.2 The proposed/approved development has a building line that is further forward than the existing on site and note that such is more reflective of the historic building line pre-development of the Setanta Centre. Having inspected the site and assessed the photomontages submitted, I would consider that the overall visual impact of the

alerted building line is acceptable in the context of the streetscape and the assessment of visual impact has been dealt with in previous sections of this report. The change in setback will reduce the width of the footpath area along the Nassau Street road frontage. The proposed/approved development will reduce the footpath width to 3.806m along part of the façade and to 4.632m along the facade of the Kilkenny Shop due to the reduction in the projection of structural columns. The ground floor façade is setback further (glazed wall) with the footpath appearing wider. Despite the reduction in width of the footpath, such will still be adequate in width to deal with footfall at this location, which is a busy city centre location. The footpath along the frontage of the appeal site will still be the one of the widest section of footpath along the southern side of Nassau Street.

7.9.3 There is suggestion that the proposal interferes and encroaches onto a right of way and that the relevant procedures and legal ramifications of such are required to be dealt with (extinguishment of a right of way). I am satisfied that the applicants are proposing development on lands within their ownership. I would note that matters concerning rights of way are not a planning consideration. Notwithstanding such the building line of the proposed/approved development does not prevent the continued use of the existing footpath along Nassau as a pedestrian thoroughfare.

7.10: Appropriate Assessment:

7.10.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to:

- (a) The provision of the Dublin City Council Development Plan 2016-2022,
- (b) The existing pattern of development in this city centre location,
- (c) The design, scale and layout of the proposed development, and
- (d) The submissions and observations on file,

It is considered that, subject to the compliance with the conditions set out below, the proposed development would be in accordance Development Plan policy, would not detract from the visual amenities of the area or the character and setting of the adjoining protected structures or the Trinity Architectural Conservation Area, would be acceptable in the context of the amenities of adjoining properties and existing commercial operations on site. 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, and as amended by the further plans and particulars lodged with the application, and as amended by the further plans and particulars received on the 15th day of August 2018 and on the 23rd day of November 2018, 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 interests of clarity.

2. The façade treatment along Nassau Street shall be as per the elevation submitted as clarification of further information on the 23rd day of November 2018 and feature the fascia cladding above the existing shop unit lowered by 1m.

Reason in the interest of visual amenity.

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

Reason: In the interests of visual amenity.

4. The developer shall comply with the following conservation requirements:

(a) A Conservation Architect shall be employed to devise, manage, monitor and implement the works on site and to ensure adequate protection of the adjacent protected structures and their boundaries during the course of the works.

(b) All works hereby approved shall be carried out in accordance with best Conservation Practice and the Architectural Heritage Protection Guidelines and Advice Series issued by the Department of Arts, Heritage and the Gaeltacht.

Reason: To ensure that the integrity of the adjacent protected structures is maintained and that all works are carried out in accordance with best conservation practice.

5. The removal, storage, refurbishment and reinstatement of An Tain mural shall be carried out as detailed in the methodology statement received as part of the further information submitted on the 15th day of August 2018 and in consultation with the Kinney family.

Reason: To ensure the integrity of the mural is maintained and all works are carried

out in accordance with best practice conservation practice.

6. Site development and building works shall be carried out only between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 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 amenities of property in the vicinity.

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

Reason: In the interest of visual amenity.

8. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological

material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

9. Prior to the occupation of the development the applicant shall submit to and agree with the planning authority a mobility management/ traffic plan for the proposed development.

Reason: In the interest of orderly development and provide for sustainable travel patterns for the users of the site.

10. Prior to the commencement of construction works on the site the applicant shall liaise on construction vehicle traffic management arrangements with the Railway Procurement Agency.

Reason: In order to avoid conflict with works involved in the construction of the Luas Cross City.

11. Drainage requirements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: To ensure adequate servicing of the development and to prevent pollution.

12. 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 traffic management, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of public safety and the amenities of the area.

13. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

14. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

15. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City 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 the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Colin McBride
Planning Inspector

16th May 2019