



An
Bord
Pleanála

Inspector's Report ABP303676-19

Development	Demolition of existing 3-storey office building and construction of new 5-storey office building.
Location	Merrion Building (Morrissett's), Merrion Street Lower.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3725/18.
Applicant	O'Callaghan Collection.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellants	(i) Minoa Limited, (ii) Lisa Underwood.
Observers	None.
Date of Site Inspection	13 th May 2019
Inspector	Paul Caprani.

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1.0 Introduction

ABP303676-19 relates to two no. third party appeals against the decision of Dublin City Council to issue notification to grant planning permission for the demolition of an existing 3-storey office building at Merrion Street Lower and the construction of a 5-storey office building in its place. The appeals lodged in respect of Dublin City Council's decision raise a number of concerns in relation legal entitlements to develop land outside the applicants control, impacts on existing rights of way to the rear of the site. It is also considered that the proposed development constitutes an overdevelopment of a relatively small site, will give rise to overlooking of adjoining premises and will impact on the character of surrounding protected structures.

2.0 Site Location and Description

2.1. The appeal site is located at Merrion Street Lower in Dublin City Centre. The site is located centrally along the eastern side of the street between Clare Street and Lincoln Place. The site is located between the Davenport Hotel and No. 1 Merrion Square North which backs onto the subject site. The Mont Clare Hotel on the eastern side of Merrion Street Lower is located directly opposite the site. Both the Davenport Hotel and the adjacent houses facing onto Merrion Square North are all protected structures. The building on the subject site is not a protected structure. The site itself is roughly rectangular in shape and occupies an area of 544 square metres (0.0544 hectares). The site accommodates a three-storey office building which fronts directly onto the street with car parking provided to the rear. The office block, known as the Merrion Building or Morrissey's was constructed in 1956 and occupies a gross floor area of 362 square metres. The site also accommodates a wayleave vehicular access between the office block and the adjoining Davenport Hotel to the north. This provides access to the rear of Nos. 1-4 Merrion Square adjacent to the southern boundary of the site. The rear of the site is currently used as surface car parking. The parking spaces appear to be shared between a number of adjacent buildings.

- 2.2. There are a large number of protected structures within the vicinity of the site although the office building on the subject site is not listed as a protected structure. The site is also located in a Conservation Area and a zone of archaeological interest.
- 2.3. The building fronting onto Merion Square North are in institutional/educational use (American College Dublin and Emerald Cultural Institute).

3.0 Proposed Development

- 3.1. Planning permission is sought for the demolition of the existing three-storey office block on the subject site and its replacement with a five-storey office block. The ground floor is to accommodate a reception area, circulation and ancillary areas together with 108 square metres of office space. The first floor incorporates a rear return which cantilevers over the surface car parking area in the rear yard of the building to form an undercroft. The first floor likewise comprises of office space, circulation area and toilet/shower changing facilities etc. Similar, although not identical layouts are proposed on the second and third floors. The third and fourth floors are setback slightly from the rear and from No. 1 Merrion Square to the south of the subject site. The front elevation of the building incorporates eight window bays surrounded by a selected brickwork finish. The third floor will be finished with a floor to ceiling proprietary triple glazed system while the fourth floor will comprise of a powder coated steel brise soleil system. The building will rise to a maximum height of 17.83 metres above ground level. Three car parking spaces will be located within the undercroft area to the rear of the building.

4.0 Planning Authority's Decision

Dublin City Council issued notification to grant planning permission subject to 14 standard conditions.

4.1. Documentation Submitted with the Application

- 4.1.1. The application was accompanied by a number of reports which are briefly summarised below.

- 4.1.2. A **Design Statement** was submitted by SSA Architects. It notes that the existing building comprises of an unattractive mid-20th century precast concrete office development located within a central Georgian quarter of Dublin. The new contemporary style building to replace it will, according to the statement present a more positive aspect to passers-by, by incorporating a design which fits comfortably with the existing architectural language of the street. It is stated that the proposed design is inclusive, energy efficient, distinctive and adaptable. The design has sought to ensure that no overlooking or overshadowing will be created by the proposal.
- 4.1.3. A separate **Shadow Survey** was also submitted indicating the level of shadow that will be experienced throughout the day on dates in April, July and December for both the west and south-east elevation.
- 4.1.4. A separate **Conservation Report** was prepared by Padraic Murray which assesses the impact of the proposed development on Nos. 1-3 Merrion Square to the immediate south which are protected structures. It describes the surrounding environment and the site on which the proposal is located. The report concludes that the proposal will have no discernible impact on protected structures and that the proposal protects the existing architectural and civic design character of the area and improves the visual amenities of Merrion Street Lower. It is also considered that the proposal is fully in accordance with the conservation zoning objectives for the site.
- 4.1.5. A **Planning Statement** was also submitted by McCutcheon Halley Planning Consultants. It sets out details of the pre-planning consultations held with Dublin City Council as well as describing the proposed development and the site context. The report also sets out the planning history and sets out the policies, objectives and development standards in the Dublin City Development Plan as they relate to the proposed development. It is concluded that the proposal is fully consistent with the land use zoning and policy objectives set out in the said plan and represents a significant upgrade in terms of office accommodation and provision together with improving the overall visual amenities of the area through a building which comprises of a higher architectural quality on the existing streetscape.
- 4.1.6. A **Stage 1 Screening for Appropriate Assessment** was also submitted by McCutcheon Halley Planning Consultants. It concludes that there will be no risks of

significant negative impacts on any European site as a result of the proposed development either alone or in combination with other plans and projects and, as such, a Stage 2 Appropriate Assessment is not required.

- 4.1.7. An **Engineering Services Report** prepared by CS Consulting Group was also submitted. It sets out details of the proposed foul drainage and the existing foul drainage infrastructure serving the development. Waste will be discharged into the public system and will be designed in accordance with Dublin City Council and Irish Water's requirements. The report also sets out the proposed stormwater drainage arrangements which will incorporate the principles of sustainable urban drainage systems. Details of the public potable water supply are also set out.
- 4.1.8. In terms of **Roads, Traffic and Transportation**, vehicular and pedestrian access arrangements shall be as per the existing established access on site. Three car parking spaces and 20 bicycle spaces shall be provided. Details of public transport services in the area are set out. Details of the operational waste management are also referred to in the report.
- 4.1.9. A separate report by CS Consulting Group sets out details of the **Outline Method Statement for Demolition of the Existing Building**. It states that the contractor will develop a Construction and Demolition Waste Management Plan in accordance with best practice guidelines issued by the department.
- 4.1.10. A separate **Waste Management Plan** was also submitted by CS Consulting Group. It outlines the principle and measures by which the waste generated during the construction and operational phase of the proposed development will be managed and disposed. All such management and disposal will be in accordance with relevant legislation.
- 4.1.11. A separate report by CS Consulting Group sets out details of a **Mobility Management Plan Framework**. It notes that 56 local and national bus routes are located within a 5-minute walk of the subject site. The report goes on to set out details of the proposed mobility management plan that will be put in place to encourage more sustainable transport trips to and from the proposed development.
- 4.1.12. A **Flood Risk Assessment Report** was also submitted. It notes that historically the site in question has not suffered from past flooding events and that the subject site is located outside the 0.1% AEP zone. The incorporation of a sustainable urban

drainage system including the provision of an attenuation tank to limit the stormwater discharge rate will allow the public drainage system to better deal with pluvial flows during extreme storm events.

4.1.13. An **Outline Construction Management Plan** was prepared by CS Consulting Group. It details the project description; the logistics involved in construction and addresses environmental waste management and traffic management issues.

4.2. **Initial Assessment by Planning Authority**

4.2.1. A report from the **Engineering Department Drainage Division** states that there is no objection to the development subject to standard conditions.

4.2.2. The **City Archaeologist** report notes that the proposed development is located within the border of a zone of archaeological constraint and recommends that a standard archaeological condition be attached in the event that planning permission is granted.

4.2.3. A report from the **Waste Management Division** states that the proposed development should comply with various national standards and protocols in relation to waste which are detailed in the report.

4.2.4. A report from the **Transportation Planning Division** notes the information submitted with the application and states there is no objection to the proposed development subject to six standard conditions.

4.2.5. The initial planner's report assesses the proposed development in making specific reference to:

- Justification for the demolition of the existing building.
- An analysis of the overall design and height of the building which is deemed to be acceptable.
- The planner's report notes that there is no significant impact in terms of overlooking and overshadowing.
- The report generally considers that the proposal is acceptable in terms of roads and traffic and archaeology. Nevertheless, the planner's report recommends that additional information be sought in relation to the following:

1. The application site is located in an Architectural Conservation Area within the Georgian core of the city and abutting five protected structures. Given the sensitive location of the site, a full visual assessment is required.
2. The applicant is also requested to clarify whether or not any plant will be required at roof level.

4.3. **Further Information Submission**

- 4.4. Further information was submitted on behalf of the applicant by McCutcheon Halley Planning Consultants on 19th December, 2018. The further information includes a comprehensive visual assessment including photomontages. The assessment concludes that the proposed design by virtue of its scale and size will not be visible from the adjoining Georgian Area and therefore will have no impact on the architectural setting of the surrounding area. Photomontages depicting the building in the context of the existing streetscape are attached to the submission.
- 4.5. In relation to plant it is stated that there will be no plant at roof level with the exception of a water tank which will not be visible. Other elements of plant infrastructure including the substation and VRF air conditioning units are located at ground floor level.
- 4.6. A **subsequent planner's report** was prepared on foot of the additional information request. It concludes that the submitted visual assessment demonstrates that the proposed building will not have a detrimental impact on the adjoining protected structures or the integrity of the Architectural Conservation Area. On this basis it is considered that the proposed development is in accordance with the proper planning and sustainable development of the area and it is therefore recommended that planning permission be granted for the proposed development.

5.0 **Planning History**

- 5.1. No appeal files are attached.
- 5.2. Details of the planning history relating to sites in the surrounding area (Davenport Hotel, 1, 2 and 4 Merrion Square North) are set out in Section 5 of the planning statement report submitted with the planning application.

6.0 Grounds of Appeal

6.1. The decision of Dublin City Council to issue notification to grant planning permission was the subject of two third party appeals both of which are outlined below.

6.2. Appeal on behalf of Lisa Underwood

This appeal was submitted by Niall Phelan Architects the grounds of which are outlined below. The appellant is the owner of No. 1 Merrion Square North. It is stated that there is no objection in principle to the site being developed. However, there are a number of concerns which are set out below.

- It is stated that there is an existing single external doorway within the rear/side of the boundary wall at No. 1 Merrion Square North to the immediate south of the subject site. The location of the doorway is indicated on a map on page 2 of the appeal. This door serves as a fire escape and provides access to the rear car park. No reference has been made to the existing doors on any of the drawings lodged as part of the planning application. The planning authority deemed it unnecessary to include a condition requiring that there should be no obstruction to the existing doorway when the development is fully complete. Nor is there any reference to the requirement for this access to be maintained during the construction period. It is noted that a number of columns are proposed to support the undercroft area and there are genuine concerns that this area may not be retained as an open area in the future. It is requested that a condition be attached retaining unimpeded access to the doorway in question.
- While it is acknowledged that some effort has been made to reduce the extent of overlooking of the adjoining protected structures, concerns are expressed that the proposal, while incorporating measures to reduce overlooking, nevertheless incorporates a significantly large element of glazing on the south-western face of the third and fourth floors of the proposed development and these will face directly towards the rear of Nos. 1-4 Merrion Square North. There are a number of windows to the rear of the protected structures at Nos. 1-4 Merrion Square North and these will be overlooked by the glazed elements at third and fourth floor levels. This constitutes a significant

intrusion. It is argued that the brise soleil does not reduce overlooking but is incorporated to ensure that there is no direct or excessive sunlight.

- Finally, the grounds of appeal argue that the proposal constitutes an overdevelopment of the subject site and at 1,232 sq.m, it is nearly four times larger than the existing building on site. While it is acknowledged that there was a number of design decisions incorporated to reduce the impact of the proposed development on neighbouring protected structures. This will not mask the significant size of the development. The setback at the upper two levels is not sufficient to reduce the prominent impact arising from the proposal. It is suggested that the fourth floor should be removed altogether as it constitutes an overintensification of development on site.
- The undercroft area does not incorporate sufficient height for emergency vehicles.
- The parapet level of the proposed development is 1 metre higher than the parapet level of the existing building and it is considered that the existing parapet level should be retained so as not to detract from the adjoining protected structure.

6.3. Appeal by Minoa Limited

This appeal was submitted by the owners of Nos. 2-3 Merrion Square. The grounds of appeal are outlined below.

- It is argued that the proposed development will encroach upon adjoining lands and the proposed building will oversail the boundaries of Nos. 2 and 3 Merrion Square. For this reason, it is argued that the application should be invalidated. It is argued that the developer has no legal right to encroach on the said lands.
- It is also apparent from the drawings submitted that the proposed office development will oversail an existing right of way and will impede vehicular access to the rear of Nos. 2-3 Merrion Square. Concerns are also expressed that the proposal may impede access of emergency vehicles including fire engine to access the rear of Nos. 2-3 Merrion Square. It is noted that no

autotrack analysis was provided at additional information stage to ascertain the provision of safe access and egress for vehicles.

- It is argued that the proposed development does not protect the existing character of the area and that the proposal, being located in a Conservation Area would have a detrimental impact on protected structures in the vicinity. The rear of the office building will be located in close proximity to the rear elevation of Nos. 1-4 Merrion Square and will have a detrimental impact on the existing curtilage of these structures. The proposal will also have a significant impact on the southern façade of the hotel and will reduce access to daylight and sunlight to the hotel bedrooms.
- It is argued therefore that the proposed development due to its scale, height and bulk is not in keeping with the area and will have an adverse impact on the curtilage of numerous protected structures in the vicinity.

7.0 Appeal Responses

7.1. Planning Authority's Response

7.2. It appears that Dublin City Council have not submitted a response to the grounds of appeal

7.3. Response on behalf of the Applicant

7.4. A response to the grounds of appeal was submitted on behalf of the applicant by SSA Architects. The response is briefly summarised below.

- In respect of the access door referred to in Ms. Underwood's grounds of appeal, it is noted that this door is not a fire escape and that the door in question has no associated fire signage as required under BS5588 or Part B of the Building Regulations. The door has no panic bar to allow an escape in the case of a fire. In addition, it is noted that the door does not open directly onto the applicant's site but opens across No. 2 Merrion Square. On foot of legal consultation, it is confirmed that there is no existing right of way for the occupants of No. 1 to traverse the applicant's site. There are no rights bestowed upon the owners or occupiers of No. 1 Merrion Square which would

allow escape across the applicant's site. As the doorway and access and egress to the purported fire escape is outside the curtilage of the applicant's site, the applicants have no ability to influence the blocking or interference with the said doorway.

- In relation to access for emergency vehicles it is stated that there is an access to the building within 45 metres at the principle entrance. Access is also available along Merrion Square North and Merrion Street Lower's full perimeter accordingly, any need for fire brigade access to the rear is not sustainable. It is argued that the existing arrangements for No. 1 Merrion Square are fully compliant with Part B of the Building Regulations. There are numerous examples of secondary development to the rear of properties along the southern end of Merrion Square and none of these units require the headroom for an ambulance to get direct access to the rear of the original buildings.
- In terms of overlooking, it is stated that the construction of the office development will improve the appellant's amenity in terms of overlooking as the proposed rear of the office block will effectively screen direct overlooking which currently exists from the hotel bedrooms associated with the Davenport Hotel. The setback along the south-western elevation at third floor level will also reduce the potential for overlooking.
- With regard to the overdevelopment of the site, the response states that a report was prepared from a Grade 1 conservation architect submitted with the application which confirms that there will be no negative impact associated with the protected structures. The existing building constitutes a dilapidated, out of date, reinforced concrete structure that no longer serves its purpose. The existing building on site does not represent an efficient use of space. A building of an increased size and footprint is merited on the basis of its city centre location.

7.5. With regard to the appeal submitted by Minoa Limited the following is stated.

- The applicant has consulted with its legal advisers and it is contended that no oversailing of adjacent lands will occur. All work will be contained within the

control and ownership of the applicant's lands. Correspondence to this effect is attached.

- It is also stated that there is no blocking of the existing right of way. Furthermore, it is stated that this is a civil matter that is outside of the scope of the planning system. Drawings are submitted which illustrate that the proposal will have a minimal impact on services which can be provided along the right of way. The height over the right of way is confirmed as 3 metres minimum.
- With regard to the impact on the protected structure and Conservation Area in the vicinity, reference again is made to the independent report by the Grade 1 Conservation Architect submitted with the application. The conclusion that the proposed development does not injure the existing character of the surrounding protected structure was supported by Dublin City Council in its grant of planning permission. The proposal represents a more sustainable use on a valuable and scarce land resource within the city centre.
- With regard to the potential impact on hotel rooms, it is noted that the applicant in this instance is the same owner as the hotel and clearly has no concerns in relation to the loss of amenity provided to the bedrooms in this area. The shadow survey and sunlight analysis as submitted clearly demonstrates that any impact in this regard is negligible.

7.6. Further Submission by Appellants

Submission by Niall Phelan Architects on behalf of Ms Lise Underwood

- It is reiterated that the door serving no. 1 Merrion Square North is used as a fire escape. Unimpeded access /egress must be maintained always.
- Concern is reiterated with regard to the clearance height to the undercroft at 3.0 meters as it could impact on emergency vehicles gaining access to the rear of the buildings facing onto Merrion Square North.
- It is re-iterated that the windows on the elevations of 1-4 Merrion Square will be overlooked as a result of the proposal. This constitutes an unacceptable intrusion. Arguments that the office block extension to the rear will screen direct views between the Davenport Hotel and the rear of the buildings

fronting onto Merrion Square are non-sensical. It is reiterated that there will be significant overlooking from the 3rd and 4th floors of the proposed building into the rear elevations of 1-4 Merrion Sq. North.

- It is reiterated that the proposed over development of the site will have a significant impact on surrounding protected structures. The proposal shoe-horns a large office block into a restricted site.
- Finally, it is stated that the land registry maps clearly indicated that the other 3rd party appellants lands (Minoa Ltd), are being encroached upon.

Submission by Minoa Ltd.

- Concerns in relation to legal title and over-sailing of adjoining lands that are allegedly not in the applicant's ownership are reiterated.
- Concerns are reiterated in respect of restricted access for emergency vehicles to the rear of the buildings on Merrion Square.
- The proposal, due to its height scale and bulk, will impact negatively on the character and setting of protected structures in the vicinity.

8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022. The site is governed by the land use zoning objective Z8 "*to protect the existing architectural and civic design character and to allow for only limited expansion consistent with this conservation objective*". The plan notes that lands zoned Z8 incorporate the main Conservation Areas of the city primarily Georgian squares and streets. The aim is to protect the architectural character/design and overall setting of such areas. It specifically states that offices may be permitted where they do not impact negatively on the architectural character and setting of the area and do not result in an overconcentration of offices. Offices are listed as a permissible use under the zoning objective. The site is located within a Conservation Area and all sites contiguous to the subject site including the building fronting onto Merrion Square North and the Davenport Hotel, are protected structures.

8.2. The site is also located within a zone of archaeological interest.

8.3. Policy CHC4 provides guidance on Conservation Areas. It states the following:

It is the policy of the Council to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting all Conservation Areas will contribute positively to the character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting wherever possible. Enhancement opportunities may include:

- (1) Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.
- (2) Reinstatement of missing architectural detail or other important features.
- (3) Improvement of open spaces and the wider public realm and reinstatement of historic routes and historic plot patterns.
- (4) Contemporary architecture of exceptional design quality which is in harmony with the Conservation Area.
- (5) The repair and retention of shop and pub fronts of architectural interest.

It is the policy of Dublin City Council that development will not:

- (1) Harm buildings, spaces, original street patterns and other features which contribute positively to the special interest of the Conservation Area.
- (2) Involve the loss of traditional, historic or important building forms, features and detailing including roofscapes, shopfronts, doors, windows and other decorative detail.
- (3) Introduce design details and materials such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors.
- (4) Harm the setting of a Conservation Area.
- (5) Constitute visually obtrusive or dominant form.

8.4. Section 11.1.5.6 states that all new development must have regard to the local context and distinctiveness and the contribution of the local scene of buildings, landmarks, views, open spaces and other features of architectural, historic or

topographical interest. It is particularly important within Conservation Areas that design is appropriate to the context and based on an understanding of Dublin's distinctive character areas.

8.5. EIA Screening Determination

Having regard to the modest nature of the development comprising of small office building on a site area of c.0.0544 hectares located within a city centre environment, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

9.0 Planning Assessment

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the following issues to be relevant in determining the current application and appeal before the Board.

- Principle of Development
- Ownership and Right of Way Issues
- Emergency Vehicle Access to the Rear of the Building
- Overlooking and Overshadowing Issues
- Overdevelopment of the Subject Site
- Impact on Protected Structures in the Vicinity

9.1. Principle of Development

- 9.1.1. The principle of office development on the subject site is in my view acceptable in principle having regard to the fact that office use is currently established on site and that office space is a listed permissible use under the Z8 zoning objective contained in the development plan. The development plan stipulates that an overconcentration of office use under the Z8 zoning objective should be discouraged. However, I note that the prevailing uses in the vicinity are, on the whole, institutional and hotel uses

and as such there is not a predominance of office space in the immediate vicinity of the site.

- 9.1.2. The National Planning Framework also seeks to ensure that serviced lands in urban areas, particularly city centre are developed and more sustainable densities in order to reduce landtake and ensure that existing infrastructure is more efficiently utilised as well as improving the viability of public transport services. The provision of a higher quantum of development on the subject site, subject to qualitative safeguards which are assessed below, is in my view acceptable in principle.

9.2. **Ownership and Right of Way Issues**

- 9.2.1. Concerns are expressed in both appeals that the proposed development impinges upon and oversails lands which are not in the ownership of the applicant and furthermore the proposal impinges on a right of way and a fire escape from the rear of No. 1 Merrion Square North.
- 9.2.2. In relation to the issue of oversailing of adjoining lands, the drawings submitted indicate that the building in question will be entirely located within the red boundary of the planning application site and therefore no oversailing of adjoining lands will occur. Any dispute in relation to landownership or oversailing of adjoining lands is a civil matter between the parties in question which will be required to be determined in the court of law. The development control management guidelines are clear and unambiguous in stating that "*the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts*". Notwithstanding the above arguments, the Board if it considers it appropriate, could in my view attach a condition requiring that the proposed building does not oversail or overhang any adjoining lands.
- 9.2.3. Similar conclusions in my view can be reached in respect of any issues regarding the impingement or curtailment of the right of way through the site to the rear of the properties facing onto Merrion Square North. The drawings indicated that access to the rear of the said properties will be maintained through the undercroft area at ground floor level. Access to the rear of No. 1 Merrion Square and the doorway in question will be maintained. Whether any impingement to this right of way as a result of the supporting columns at ground floor level occurs is a civil/legal matter between

the parties concerned. Again, I reiterate that it is not the responsibility of An Bord Pleanála to adjudicate on such matters as these are matters to be determined in a Court of law.

9.3. Emergency Vehicle Access to the Rear of the Building

- 9.3.1. The height of the undercroft area is 3 metres and this in my view is adequate to ensure that most emergency vehicles including ambulances to the rear of the building. I do acknowledge however that larger fire engines may be restricted. However, a key consideration relates to whether or not the development complies with Part B of the Building Regulations with regard to fire safety requirements. While compliance with such regulations is strictly outside the remit of the planning legislation, it is incumbent on any developer to ensure that any proposed development on site fully complies with all requirements set out under the Building Regulations including requirements regarding access and fire safety issues. The applicant in his response to the grounds of appeal states that he is fully compliant with the requirements of Section B5 of Part B of the Building Regulations. While the provision of an undercroft area at ground floor level may limit or somewhat restrict the potential access for some of the larger emergency vehicles, this in itself is not justification to refuse planning permission once the Building Regulations can be complied with. The applicant has indicated in his response to the grounds of appeal that the proposed development will be fully compliant with any Building Regulation requirements.

9.4. Overlooking and Overshadowing Issues

- 9.4.1. It is acknowledged that the proposed development has potential to give rise to increased levels of overlooking over and above that associated with the existing three-storey office development on site. Overlooking may be an issue in respect of the rear of Nos. 1-4 Merrion Square North. The potential for overlooking mainly arises as a result of the incorporation of two additional floors (Floors 3 and 4) within the overall structure. However, the Board will note that these floors are set back from the southern boundary of the site thus the separation distance between the upper floors of the proposed building and the upper floors of the rear elevation of the buildings fronting onto Merrion Square North is in the order of 16 metres. This

separation distance is relatively generous having regard to the built-up nature of the surrounding area and the need to maximise the development potential of lands in the city centre in order to achieve the wider strategic objectives referred to above in the National Planning Framework.

- 9.4.2. I do acknowledge that there is a two-storey rear return at the back of Nos. 2 and 3 Merrion Square which will reduce the separation distances between the buildings in question.
- 9.4.3. I further note that in the case of the upper floor it is proposed to incorporate a brise soleil on the external elevation. While the primary function of a brise soleil may be to reduce heat gain by deflecting direct sunlight, it will undoubtedly assist in mitigating against direct overlooking of the windows in the buildings to the south. While some obscure overlooking will continue to exist, direct overlooking will be greatly reduced.
- 9.4.4. Overlooking is more likely to be a potential use in the case of the proposed third floor as the drawings submitted indicate that this floor is to incorporate floor to ceiling glazing. However, the Board should bear in mind that a c.16 metre separation distance is being achieved which in my view is reasonable having regard to the city centre location of the site. The Board will note that Nos 1-4 Merrion Square accommodate educational, institutional and cultural uses that operate during normal business hours and therefore are not as sensitive to the issue of overlooking as would be the case if the buildings were in residential use. It is not appropriate in my view to apply the more stringent and generous separate distances of 22 metres associated with suburban type residential development. The Board will note that the proposed use in this instance is not residential but office activity which will not be occupied on a 24-hour basis and is most likely to be occupied during normal business hours. Therefore, any potential impact on privacy is likely to be restricted to normal business hours.
- 9.4.5. With regard to the hotel rooms in the Davenport Hotel to the north of the site, a similar situation would arise, with the maximum occupancy of the hotel bedrooms would occur outside business hours and therefore would be unlikely to coincide with office business hours. In my view it is not appropriate to apply residential standards in relation to overlooking in the case of a proposed office development within the city centre. Again, I refer to the National Planning Framework which states (page 67) “to

enable brownfield development, planning policies and standards need to be flexible, focusing on design led and performance based outcomes rather than specifying absolute requirements in all cases. Although sometimes necessary to safeguard against poor quality design, planning standards should be flexibly applied in response to well-designed development proposals that can achieve urban infill and brownfield development objectives in settlements of all sizes. This is in recognition of the fact that many current urban planning standards were devised for application to greenfield development sites and cannot account for the evolved layers of complexity in existing built-up areas”. In my opinion such statements should be taken into consideration in adjudicating on applications such as the one presently before the Board.

- 9.4.6. With regard to the issue of overshadowing, shadow casting diagrams were submitted with the original application and it is apparent that additional overshadowing derived from the proposed redevelopment of the subject site would not be significant. It is again an inevitable consequence of redeveloping infill sites within the city centre and more sustainable densities that some level of additional overshadowing will occur. The increased levels of overshadowing which will occur would be acceptable in my view.

9.5. Overdevelopment of the Subject Site

- 9.5.1. As referred to above, there is a greater emphasis in the National Planning Framework to develop city centre infill sites at higher more sustainable densities in order to maximise the utilisation of services and to encourage better use of public transport, cycling and walking. This is particularly important in the case of office development which, as an employment land use, is a major trip generator. It is appropriate therefore that any office development in accessible areas such as the city centre which is well served by public transport should maximise space available. The proposed development at five storeys in height cannot be considered excessive and is of a similar, if not more modest size and scale, than the buildings which surround it. The height of the building at less than 20 metres cannot be considered excessive in such a prominent city centre location. I acknowledge that the proposed development exceeds the indicative plot ratio and site coverage set out in the development plan for lands governed by the Z8 zoning objective. (Indicative plot ratio of 1.5 and indicative site coverage of 50%), however the development plan also

states that a higher plot ratio may be permitted in certain circumstances such as where developments:

- Adjoin major public transport termini and corridors.
- And where developments seem to maintain existing streetscape profiles.
- And where developments seek to facilitate comprehensive redevelopment in areas in need of urban renewal.

9.5.2. It can be reasonably argued that the above criteria set out in the development plan would apply to the site in question. The quantum of development proposed in the subject site is therefore justified and appropriate in my view.

9.6. Impact on Protected Structures in the Vicinity

9.6.1. The proposal in my view will not have any adverse impact on the setting or context of surrounding protected structures. I fully acknowledge that the site and the environs of the site is very sensitive from an architectural and built heritage perspective. But the Board should have regard to the fact that the existing building on the site is of little architectural merit and does nothing to enhance the aesthetic of the streetscape along Merrion Street Lower. The scale and mass of the five-storey building proposed is more appropriate and proportionate in terms of height and scale and therefore improves the visual amenities of the streetscape. The fenestration arrangements on the front elevation, as pointed out in the planner's report, incorporate a vertical emphasis with classical proportions which reflects the Georgian character of surrounding streets. The proposed development in my view represents a visual improvement over that which currently exists on site and therefore contributes to, rather than detracting from, the architectural aesthetic of the streetscape. The applicant as part of the planning application submitted a report by a Grade 1 Conservation Architect which assess the proposed development from an architectural perspective and it reasonably concludes in my opinion that the proposal will have no discernible impact on protected structures in the area and will represent an improvement in the civic design character of the area and in particular Merrion Street Lower.

10.0 **Appropriate Assessment**

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

11.0 **Conclusions and Recommendation**

Arising from my assessment above, I consider that the Board should uphold the decision of the planning authority and grant planning permission for the proposed development on the basis that the proposed office development represents a visual improvement over what currently exists on site and therefore will contribute in a positive way to the character of this sensitive Conservation Area and furthermore the proposed development in my view will not have any significant or material impact on surrounding amenities. The proposed development is, therefore, in my opinion in accordance with the proper planning and sustainable development of the area.

12.0 **Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

13.0 **Reasons and Considerations**

Having regard to the Z8 zoning objective where office development is a permissible use, it is considered that the size and scale of the proposed development, subject to conditions set out below, would not seriously injure the amenities of the area or properties in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the information received by the planning authority on the 19th day of December, 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 the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The applicant or developer shall enter into water and/or wastewater connection agreements with Irish Water prior to the commencement of development.

Reason: In the interest of orderly development.

5. Site development and building works shall be carried out only between the hours of 0700 to 1800 hours Mondays to Fridays inclusive, and between 0800 hours and 1400 hours on Saturdays and not at all on Sundays or bank holidays. Deviations from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To safeguard the residential amenities of property in the vicinity.

6. 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.

7. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried

out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadway are kept in a clean and safe condition during construction works in the interest of orderly development.

8. The developer shall comply with the requirements set out in the Dublin City Council Codes of Practice from the Drainage Division, Transportation Planning Division and the Noise and Air Pollution Section.

Reason: In the interest of orderly development.

9. 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
 - (c) 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.

10. Details of the storage, presentation and collection of commercial waste during the operational phase shall be agreed in writing with the planning authority prior to commencement of development.

Reason: To ensure sustainable waste management practices.

11. A total of three car parking spaces shall be permanently allocated to the proposed use and shall not be sold, rented or otherwise sublet or leased to other parties.

Reason: In the interest of orderly development.

12. The applicant shall undertake to implement all the measures set out in the Mobility Management Plan and to ensure that all future tenants of the proposed office development comply with the objectives of the Plan. A Mobility Manager for the overall scheme shall be appointed to oversee and co-ordinate the preparation of individual plans.

Reason: In the interest of sustainable transport provision.

13. Cycle parking to be provided on site shall be secure, conveniently located, sheltered and well lit. Shower and changing facilities shall also be provided as part of the development. Details of the proposed cycle parking to be provided shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: To facilitate more sustainable forms of transportation.

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

Reason: To protect the visual amenities of the area.

15. The developer shall pay to the planning authority a financial contribution of €59,880 (fifty-nine thousand eight hundred and eighty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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 An Bord Pleanála to determine.

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

16. The developer shall pay to the planning authority a financial contribution of €32,479 (thirty-two thousand four hundred and seventy-nine euro) in respect of Luas Crosscity Scheme in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under

section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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 An Bord Pleanála to determine.

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

Paul Caprani,
Senior Planning Inspector.

17th May, 2019,