



Development

Amendment of permission granted, Reg. Ref. 4166/16 (ABP 29S.248884), includes an overall increase over the permitted gross floorspace of c495sq.m (from c6.331 to c6,826). The development proposes widening the footprint of the permitted building northwards along part of its northern elevation by c.1.5 metres, with associated elevational changes. Changes to the permitted atrium space at the main entrance, replacing the permitted vehicle access ramp to the basement (level -2) car park (access via Pembroke Row) with two car lifts, and an increase of 3 car spaces (from 11-14) and 36 bicycle spaces (from 44 to 80) with associated improvements to shower/changing facilities (relocated from basement level -2 to -1). The proposed amendments also include an increase in basement plant provision (to improve environmental ratings to nZeb compliant) conversion to 'office/ancillary office' use of c585 sq.m at basement -1 (previously permitted as staff facilities) relocating rearranging internal cores to improve internal floor layout, minor adjustments to floor to floor height, widening of lightwells (to enhance amenity at basement level -01) and all associated works including landscaping above and below ground.

Location

74-75, Baggot Street Lower, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.	3543/19
Applicant	Irish Life Assurance PLC.
Type of Application	Permission.
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	Third Party
Appellant	CSPCE 5 Lower Baggot Limited.
Observer	Transport Infrastructure Ireland Ltd.
Date of Site Inspection	9 th January 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site 74-75 Baggot Street Lower is located in a prominent position on the corner of Wilton Terrace and Baggot Street Lower adjacent to the Grand Canal in Dublin 2. The site was subject to a recent permission for demolition of an office building (formerly occupied by Bord Fáilte) and its replacement with a five-storey office building granted in January 2018. (ABP29S248884 4166/16). Development on the site has commenced with the building having been demolished in preparation for the new construction. The site marks an important canal crossing point to the business district and south Georgian Core of the city.
- 1.2. There are a number of other modern office blocks of varying style in the vicinity of the site and the area has been subject to much change in the recent past with a significant provision of office accommodation. Georgian buildings also feature ranging from 3 to 5 storeys in height on the opposite side of the road and from Baggot Street Bridge to the junction with Fitzwilliam Street Upper. There is a gated rear entrance from the site to the cul de sac formed by Pembroke Row at the rear which serves as access to basement car parks for commercial office buildings on adjoining sites.

2.0 Proposed Development

- 2.1. The proposal seeks to amend the permission granted under Ref 4166/16 (ABP29S248884) and includes an overall increase of the permitted gross floorspace of c495sq.m (from c6,331 to c6,826sq.m). There will be no increase in the permitted height of five storeys (c21.9m). The development proposes widening the footprint of the permitted building by c1.5m northwards along part of its northern elevation (with associated elevational changes); changes to the permitted atrium space at the main entrance (with associated elevational changes) replacing the permitted vehicle access ramp to the basement (level -2) car park (access via Pembroke Road) with two car lifts, and an increase of 3 car spaces (from 11 to 14) and 36 bicycle space (from 44 to 80) with associated improvements to shower changing facilities (relocated from basement level -2 to -1) The proposed amendments also include an increase in basement plant provision (to improve environmental ratings to nZeb compliant), conversion to 'office/ancillary office' use of c585 sq.m of space at

Basement -1 (previously permitted as 'staff facilities'), relocating / rearranging internal cores to improve internal floor layout, minor adjustments to floor heights, widening of lightwells (to enhance light and amenity at basement level -01) and all associated works, including landscaping above and below ground.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 12th September 2019, Dublin City Council issued notification of decision to grant permission subject to 12 conditions including the following of particular note.

Condition 2. Contribution €37,174.50 in accordance with Section 48 Development Contribution Scheme.

Condition 3. €18,810.00 Section 49 Development Contribution - Luas Cross City Scheme

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's report concludes that the proposed scheme is unlikely to have a negative impact on the design integrity of the permitted scheme. Levels of daylight and sunlight within the development have been safeguarded and the impact to adjacent properties is predicted to be negligible. Permission recommended.

3.2.2. Other Technical Reports

3.2.2.1 Engineering Department Drainage Division – No objection subject to compliance with Greater Dublin Regional Code of Practice for Drainage works Version 6.0. and compliance with conditions relation to surface water management of previous permission.

Transportation Planning Division report indicates no objection subject to conditions

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland – Condition regarding Section 49 Supplementary Development Contribution Scheme – Luas Cross City.

3.4. Third Party Observations

3.4.1 Submissions from Mark & Karyn Harty, 72 Baggot Street who live opposite the site. No objection on the basis that there is no increase in height.

3.4.1 Submission by Joe Bonner, Town Planning Consultant on behalf of SCPCE 5 Lower Baggot Street owners of No 76 Baggot Street Lower adjoining to the north of the site. Detrimental impact by virtue of overshadowing and loss of sunlight and will result in a depreciation in value of the property and add to running costs caused by loss of natural heating by direct sunlight. Previous proposal was reduced in terms of height scale and bulk due to concerns overshadowing and loss of daylight. Notably the Board's Inspector also recommended further reduction in height by 1m. Widening of the building will give rise to a building that is too bulky relative to its height and will be out of proportion. Cumulative impact needs to be considered. Shadow analysis and VSC study misleading as they demonstrate changes from the permitted building rather than the original building. Notable inconsistencies between previous and current studies. Regarding Appropriate Assessment in light of judgements from Irish Courts and European Court of Justice in respect of mitigation measures and having regard to the capacity issues arising in respect of the Ringsend Wastewater treatment plant development will inevitably impact on SPAs and SACs in Dublin Bay and a Stage 2 Appropriate Assessment is required.

4.0 Planning History

ABP29S248884 (4166/16) Permission granted for the demolition of the then existing five storey development on the site and its replacement with a new five storey office development. (The initial proposal was for six storeys however this was reduced. The Board granted permission following third party appeal subject to 16 conditions which included the following:

Condition 2 Architectural survey, Archive drawings and photographic survey of existing building.

Condition 3 External finishes to be agreed.

Condition 4 Operation of café/restaurant use to be agreed.

Condition 5 Odour abatement.

Condition 6 No signage advertising.

Condition 7 No additional development above parapet level.

Condition 8 Underground of cables.

Condition 9 Landscaping.

Condition 10 Water and drainage arrangements to comply with requirements of planning authority.

Condition 11 Road network

Condition 12 Mobility management strategy.

Condition 13 Waste management plan.

Condition 14 Construction management plan.

Condition 15 Site development works hours.

Condition 16 Section 48 Development Contribution.

5.0 Policy Context

5.1. Development Plan

- The Dublin City Development Plan 2016-2022 refers.
- The site is zoned Z6 Enterprise / Employment “*To provide for the creation and protection of enterprise and facilitate opportunities for employment creation*”. *It is considered that Z6 lands constitute an important land bank for employment use in the city, which is strategically important to protect. The primary objective is to facilitate long-term economic development in the city region.*”

- Chapter 6 refers to the City Economy and Enterprise.
- Chapter 16. Development Management Standards
- The site is within the conservation area. Policy CHC4. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

5.2. Natural Heritage Designations

None

5.3. EIA Screening

Having regard to the limited nature of the proposed development which relates to the alteration of a permitted development and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by Joe Bonner, Town Planning consultant on behalf of CSPCE 5 Lower Baggot Ltd. owners of 76 Baggot Street Lower the adjoining property to the north of the site.

- Detrimental impact by virtue of overshadowing and loss of sunlight and will result in a depreciation in value of the property and add to running costs caused by loss of natural heating by reason of direct sunlight.
- Previous proposal was reduced in terms of height, scale and bulk arising from the studies which demonstrated an impact on no 76 Baggot Street Lower in terms of

overshadowing and loss of daylight. Notably the Board Inspector also recommended that the height of the building be reduced by a further 1m.

- Widening of the building will give rise to a building that is too bulky relative to its height and will be out of proportion.
- Proposal will exacerbate an already significant overdevelopment of the site.
- Current application shadow analysis and VSC study is misleading as it relates to changes from the permitted building as opposed to the original building. The cumulative expansion would have significant impact.
- Notable inconsistencies between previous and current assessment studies.
- Regarding Appropriate Assessment noting relevant judgements from the Irish Courts and the European Court of Justice in respect of mitigation measures and as Ringsend wastewater treatment plant is operating overcapacity any development will inevitably impact on SPAs and SACs in Dublin Bay and therefore a Stage 2 AA is required.
- Planner's report does not take account of all issues raised in observations. Assessment is incomplete and flawed given failure to address the impact on the office building of no 76 in respect of daylight sunlight and overshadowing
- Shadow analysis and vsc study is a technical report and should have been reviewed by technical expert. Comparison should be against the original building not the permitted building which represents the true impact.
- The application is a standalone application and must be assessed entirely separately from the previous application and raises concerns which cannot be ignored or deemed de minimus.
- The scale of the permitted versus the proposed buildings and surrounding buildings is inaccurate and as a result the shadow assessment is misleading.
- Plot ratio and site coverage already exceed the maximum set out in 16.5 of the Dublin City Development Plan and the proposed development will increase both leading to overdevelopment of the site.

6.2. Applicant Response

6.2.1 The response by Sheehan Planning on behalf of the first party is summarised as follows:

- Regarding the contention of overdevelopment, it is incorrect to state that 2.0-3.0 is the maximum permissible plot ratio as this is an indicative range. Exclusion of below ground areas is standard procedure in deriving plot ratio.
- Verified photomontages demonstrate that the change is slight and almost imperceptible.
- Regarding sunlight and daylight impacts the current and previous sunlight and daylight reports prepared by specialised consultants IES who respond directly to the submissions of the appellant. The only inconsistency between the parent and current reports is that the size of garden area of no 76 was adjusted due to more accurate mapping.
- Previous application predicted minor sunlight and daylight impacts on No 76 Baggot Street well within acceptable guidelines. Notably the Inspector's recommendation to reduce the height by 1m was not accepted by the Board.
- Regarding AA the proposal is to add approximately 495 sq.m to a previously permitted scheme with no direct pathway to vulnerable habitats. Best practice measures are not variable mitigation measures (Kelly v An Bord Pleanála 2019) IEHC 84 and Heather Hills v An Bord Pleanála 2019. IEHC 450 both of which post date the CJEU decision in people over wind.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4. Observations

Observations are submitted by Transport Infrastructure Ireland notes that the site is within an area affected by the Section 49 Levy Scheme.

7.0 Assessment

7.1. Having regard to the nature of the application which refers to amendments to the development permitted under PL29S248884 and having read the grounds of appeal and all submissions, I consider that the case can be addressed and considered under the following broad headings.

- Question of overdevelopment - scale and visual impact
- Impact on the amenities of adjacent property
- Appropriate Assessment

7.2 Question of overdevelopment

7.2.1 The main change proposed to the permitted scheme is the extension northwards by c1.5m of a section of the building's northern footprint, the replacement of the permitted car ramp to the basement car park by two car lifts and modifications to the internal layout of the permitted building, including to the service cores. The proposed changes would increase gross floorspace by c 495 sq.m (from c 6,331 sq.m to 6,826 sq.m). The proposal also provides for associated changes to the external façade. Ancillary space at basement level -1 is to become office space and the car and bicycle parking provisions have increased inline with the proposed increase in floorspace. The overall height and design of the building is not altered and the key design elements are maintained.

7.2.2 The third-party appellant contends that the proposed development represents an exacerbation of an overdevelopment of the site having regard to plot ratio and site coverage. It is contended that the proposal should be viewed as development creep, and it is asserted that the widening of the building will render the design bulky and out of proportion. I note that the plot ratio associated with the development proposal increases from 3.0 to 3.3 (excluding both basement levels) or 3.6 to 3.9 (excluding basement level -2) which exceeds the indicative plot ratio standards as set out in the development plan of 2.0-3.0 for Z6 lands. Site coverage is 63% again exceeding the

indicative standard of 60%. The Development Plan provides for increased plot ratio and higher site coverage in particular circumstances such as

- adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed,
- to facilitate comprehensive redevelopment of areas in need of urban renewal
- to maintain existing streetscape profiles
- where a site already has the benefit of a higher site coverage plot ratio.

The argument for such a case can in my view be made in respect of the appeal site having regard to its location and the strategic importance of the Z6 zoning objective. I note that plot ratio is a somewhat crude instrument in terms of measuring density and the avoidance of the adverse effects of overdevelopment and the specific nature and qualitative elements of the proposal need to be considered in terms of the assessment of the appropriateness of the development as proposed to its context. In assessing the wider considerations, it is appropriate to rely on the qualitative factors defining built form including height, design, open amenity space provision, and standards of public realm.

7.2.3 In reference to the previous application and concerns expressed with regard to scale and mass, I note that having reviewed the previous application in detail the concerns with regard to the initial proposed six storey height arose primarily in the context of the site's setting within the Georgian Conservation Area. As regards concerns with respect to building mass I note the focus was in the context of the perimeter nature of the proposed block where the pre-existing building included a significant setback on the site. I note indeed that the Board's Inspector had recommended an increased setback of 2m along the Baggot Street Road frontage as well as a 1m reduction in parapet height however this was not required by the Board in its decision. The current amendment does not propose any alteration to the overall height and it is not appropriate in the context of the amendment now proposed to revisit this issue.

7.2.4 Having considered the proposed amendment, I consider that the increased footprint to the north does not give rise to a significant visual impact. I concur with the views expressed by the local authority planning officer that the verified photomontages demonstrate that the visual impact arising from the proposed widened footprint is not significant. I consider that it has been demonstrated that the magnitude of visual impact arising from the increased footprint is acceptable given the context of the site. I do not consider that the proposed amendments give rise to any disproportion in terms of scale, bulk and height.

7.3 Impact on the amenities of adjoining property.

7.3.1 On the question of the impact of the proposed amendments on the amenities of the adjacent buildings the third party appellant refers to the sunlight and daylight studies submitted with the previous application which identified potential adverse impacts of the initial proposed six storey building on the adjacent office buildings to the west and north and this led to the reduction in height to five storeys. The current proposal does not involve any amendment to the overall height. The third party also questions the accuracy of the submitted sunlight and daylight reports claiming inconsistencies with similar report provided for the governing permission particularly with regard to the permitted and proposed amenity spaces. I note that in response to the appeal the report by IES Ltd. outlines that the original study was based on satellite imagery whilst second report was based on site survey which revealed the amenity space to be larger than originally modelled therefore more accurate.

7.3.2 As regards the assertion that the Board should request a shadow analysis and VSC study based on the original building versus the proposed development, I note as referenced by IES, Appendix F of the BRE Guidance document 'Site Layout Planning for Daylight and Sunlight' which provides that VSC and annual probable sunlight hours for a previously permitted scheme to be used as an alternative benchmark however it would be inappropriate for it to be treated in the same way as an existing building and for the developer to set 0.8 times of the value of the permitted scheme as benchmarks. The VSC values for the proposed development show a % reduction of VSC values for various test points of the adjacent property to

the north varying between 1.2% and 5.7% and in relation to the property to the northwest between -1.9% and 0.5%. The reduction in VSC values in respect of properties to the east varies between 0% and 2.9%. As regards sunlight hours to the amenity spaces the reduction is 5% from the permitted scheme. I regard the analysis undertaken to be reasonable and based on the detail submitted and having regard to the design of the development I consider that the additional overshadowing arising is not significant in the context of the site.

7.4 Appropriate Assessment

- 7.4.1 As regards appropriate assessment Article 6(3) of the Habitats Directive 92/43/EEC requires Appropriate Assessment to be carried out for any plan or project not directly connected with or necessary to the management of a European Site (or site) concerned, but that is likely to have a significant effect thereon, on its own or in combination with other plans or projects, in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of any European site.
- 7.4.2 There are four Natura 2000 sites within the appeal site's potential zone of influence, namely North Dublin Bay SAC (000206), South Dublin Bay cSAC (000210), South Dublin Bay and River Tolka Estuary SPA (004024) and North Bull Island SPA (0004006). I note the distance to these sites and the fact that the site is fully serviced within an urban area. There are no direct pathways to vulnerable habitats and I find no basis to find that foul and surface water pose a risk to designated sites.
- 7.4.3 As regards issues raised with regard to the additional loading to an overcapacity Ringsend wastewater treatment plant I note permission under the provisions of S37E of the Planning and Development Act 2000 as amended with regard to the upgrade of Ringsend Wastewater Treatment Plant ABP-301798-18 which comprised revisions and alterations to 2012 Approval PL29NYA0010 and which was subject to NIS Report and Appropriate Assessment by the Board ABP-307198-18.

7.4.4 Having regard to the brownfield nature of the site and scale of the development an amendment to an extent permission and nature of the receiving environment and 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 and projects on a European Site.

7.4.5 It is reasonable to conclude that on the basis of the information on the file, which I considered adequate in order to issue a screening determination, that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on any European site, in view of the sites' conservation objectives, and a Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required.

8 Recommendation

8.1 Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be granted for the development for the reasons and considerations set out below.

9 Reasons and Considerations

9.1 Having regard to the planning history, to the location of the development and pattern of development in the area, and to the provisions of the Dublin City Development Plan 2016-2022, to the nature, scale, layout and design incorporated in the proposed amendments to the permitted development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of adjoining properties or the visual amenities of the area it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans and projects on a

European Site. and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 29th day of January 2018 under reg ref no PL29S248884 and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

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

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme.

- 4 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. 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Bríd Maxwell
Planning Inspector

12th February 2020