



An
Bord
Pleanála

Inspector's Report ABP 307062-20.

Development

Demolition of basement slab and supporting structures, carpark ramp podium and basement level.

Construction of a six storey over basement enterprise centre to 23.37m in height with shared workspace from ground to fifth level, cafe and collaboration zone, roof terrace substation and hard and soft landscaping and vehicular access from New Street. 16 car spaces, 2 lift cores 3 stair cores 57 cycle spaces ancillary development.

Location

New Street, Dublin 8.

Planning Authority

Dublin City Council.

P. A. Reg. Ref.

3752/19.

Applicant

BCP Fund Management DAC

Type of Application

Permission

Decision

Grant Permission

Third Party Appellants

Fergal and Jai Bonner

Liam Keogh

Peter Tansey

Observers

Richard Breen and Sebastian Enke

Brid Smith TD

Date of Inspection

5th July, 2020.

Inspector

Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site which has a stated area of 1520 square metres and comes within “The Fumbally Campus” is located off a cul de sac from New Street South to the east. It is to the east of New Row South along which there are terraced two storey houses known as Lauderdale Terrace. Fumbally Square, comprising office use and to the south west by office/residential development. The rear gardens of Lauderdale Terrace, two storey terraced houses facing onto New Road South adjoin the western boundary. The River Poddle, which is culverted is located to the east of the site at the rear of the Lauderdale Terrace houses Cathedral Court a residential development incorporating some ground floor commercial uses is to the east.
- 1.2. At basement level within the site there is carpark, which is in use while at surface level where there is a concrete slab the permitted mixed-use development above which was not constructed with the site lying vacant. (P. A. Reg. Refs. 2188/01 refers.)
- 1.3. It is noted from the submission on file that there is a concurrent proposal before the Board on Appeal, for development on adjoining lands (P. A. Reg. Ref .4423/19/ PL 307217 refers.)

2.0 Proposed Development

- 2.1. The application lodged with the planning authority supplemented by further information submission as lodged on 14th February, 2020 indicates proposals for:
 - Demolition of the concrete slab, (1,107 square metres) and,
 - Construction of a six story over basement building each floor with a setback from the boundary with New Row south/Lauderdale Terrace for use as an enterprise centre, incorporating a café, communal area and reception at ground floor level, along with outdoor seating and meeting and collaboration zones, shared work space at ground to fifth floor levels inclusive along with a roof terrace photovoltaic panels green roofs and a landscaped courtyard.
 - Vehicular and pedestrian access is off New Street vial the cul de sac and two

pedestrian linkages, through routes to the south/south west illustrated on the submitted masterplan are also indicated in the application.

- 2.2. The subdivision of the floor plan layouts is flexible to allow for the needs of starter industrial enterprises. According to the application it is intended that a clustering effect is to be created by linkage with the adjoining enterprise centre building at Fumbally Square. The total stated floor area of the proposed development 4,459 square metres and maximum height is 23.37 metres with a plot ratio of 2.2 and site coverage of 49%.
- 2.3. An architectural design statement and a masterplan design statement for the Fumbally Studio, Fumbally Square and the proposed development accompany the application.
- 2.4. The ground floor is designed as an open plan space accessible to tenants and public with a range of facilities facilitating connectivity and interaction, including a café and outdoor space and pedestrian linkage between the adjoining streets and adjoining residential and commercial developments within the campus. through the building. The upper floors are designated as flexible shared working spaces intended mainly for small start-ups, small enterprises, and workspace for individuals/freelancers on a short to medium term lease arrangement. The totally available space amounting to 3,018 square metres.
- 2.5. With regard to BRE standards and to the New Row South properties (in particular Nos 12-26 Lauderdale Terrace) reference is made to the daylight, sunlight and overshadowing report included with the application in concluding that the proposed development's level of impact on the internal accommodation is acceptable. The separation distances to each level within the proposed building are taken into consideration by the planning officer in concluding that significant overbearing impact on the residential properties would not occur. It is concluded that overlooking and disturbance to privacy are adequately ameliorated in the fenestration design and terrace screening arrangements.
- 2.6. Further to issue of a request for multiple item additional information regarding parking circulation and services vehicles access and circulation and receipt of a response, the parking and access arrangements including arrangements for services vehicles, off New Street were deemed acceptable. The provision for sixteen car

spaces, the standard requirement of 17 required (for Parking Area 2 within the CDP) is accepted.

3.0 **Planning Authority Decision**

3.1. **Decision**

- 3.1.1. By order dated, 13th March, 2020 the planning authority decided to grant permission subject to conditions most of which are of a standard nature. Café opening hours are confined to 7.00 am to 8.00 pm Mondays to Saturdays excluding public holidays under Condition No 6 attached to the decision.

3.2. **Planning Authority Reports**

- 3.2.1. The initial report of the **Transportation Planning Division** contained recommendations for multiple item additional information to be requested on access, circulation and parking arrangements for private cars, services vehicles and cycle facilities and interconnectivity with adjoining development. Reservations about the cycle access to cycle parking were indicated in the final report on the further information submission although all other details were considered satisfactory according to the report.
- 3.2.2. The report of the **City Archaeologist** indicates a recommendation for inclusion of an archaeological monitoring condition. It is pointed out that mediaeval remains to a depth of 4.3 metres were identified in archaeological testing undertaken immediately to the south of the site.
- 3.2.3. The report of the **Drainage Division** notes the presence of a surface water sewer traversing the site for which a three metres separation distance would be maintained from structures. It indicates recommendations with regard to measures to be taken in relation to the public sewer and for submission of a flood risk assessment report. The report of the Transportation Planning division includes refers to the planning history and the observation the current application. It included recommendations or some matters to be addressed for clarification by a request for additional information on carparking cycle parking pedestrian and vehicular access mobility management and arrangements for service vehicles.

- 3.2.4. The reports of the **planning officer** indicates satisfaction with the proposed contemporary design and selectin of material sand finishes which he describes as given the building a “lightweight appearance” in conjunction with amelioration of potential dominance by the setbacks which respects adjoining buildings and with “positive impact on the streetscape.

3.3. **Third Party Observations**

- 3.3.1. The issues of concern indicated in the third party observations relate to objections to enterprise centre use at a large scale whereas residential use is preferred having regard to the zoning objective, incompatible contemporary design for the building overdevelopment, excessive height and scale, overbearing impact, overshadowing and overlooking of the properties on Lauderdale Terrace, disturbance and security implications of increased permeability through the site, traffic congestion and increased demand for parking.

4.0 **Planning History**

P. A. Reg. Ref 4738/06 (PL 220220) The planning authority decision to grant Permission for a three to six storey, twenty-two-unit apartment block. was overturned following appeal on grounds of overbearing impact and overlooking and overshadowing of adjoining properties on Lauderdale Terrace, New Row South. This development was commenced with a basement slab remaining in situ on the site.

P. A. Reg. Ref. 2188/01 (Duration extended for a further period in 2007 under P. A. Reg. Ref. 2188/01): Permission was granted for a mixed-use development comprising a five-storey office building over a basement carpark, change of use of Nos 7 and 12 A Fumbally Lane to office use and, a three storey over basement carpark apartment building for sixteen two bed units. The basement carpark and concrete slab/podium, which is within the current application site was constructed but the permitted residential block above was never constructed.

5.0 Policy Context

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site location is, along with the adjoining lands to the west side, (Lauderdale Terrace) the north and east, within an area subject to the zoning objective: Z1: *To protect and improve residential amenities.*
- 5.1.2. The lands to the south, Fumbally Square and adjoining lands to the west and east are subject to the zoning objective Z6: *“To provide for the creation and protection of enterprise and facilitate opportunities for employment creation.”*
- 5.1.3. An enterprise centre is open for consideration within the Z1 zoned lands. ‘Enterprise Centre’ land use is defined, according to Appendix 21 as *“use of a building or part thereof or land for small scale starter type industries and services usually sharing grouped service facilities.”*
- 5.1.4. The location is within the Strategic Development and Regeneration Area 16 (Liberties and Newmarket Square.) according to Section. 15.1.1.19. It is the policy of the planning authority to stimulate the economy and to include a critical mass of appropriate development and investment to provide significant employment opportunities and to ensure the character of areas in the Liberties is protected and enhanced by contemporary and high quality design in new buildings.
- 5.1.5. The site is located within a zone of archaeological constraint for recorded monument DU018-020 and within a zone of archaeological interest. Reference is made to Policy CHC 9 and section 11.1.5.15 of the CDP refer to protection of archaeological material. The warehouse/store, to the south west on New Row South is included on the record of protected structures. (This building and adjoining land is subject of an extant grant of permission for change of use to commercial and construction of a six-storey residential block under P. A. Reg. Ref. 3335/17)
- 5.1.6. The site location comes within the area of the Liberties Local Area Plan, 2009 the duration of which is extended to May, 2020. (LLAP) The site location is within the Newmarket/Chambers Weavers’ Character Area.

6.0 The Appeals

6.1. Fergal and Jai Bonner

6.1.1. An appeal was received from AK Planning on behalf of the appellant party on 15th April, 2020.on behalf of the appellant, Fergal and Jai Bonner of No 20 Lauderdale Terrace, New Row South. According to the appeal:

- With regard to the land use zoning and policies in the CDP the 'Z1' land use zoning is a response to the site context it is a restrictive zoning that militates against large scale industrial and commercial development although there is some exception for non-residential and complimentary small scale uses as provide for in Section 14 of the CDP. It is questionable as to how the proposed development can be reconciled with the land us designation.
- The overarching objectives of the LLAP (extracts of which are included in the appeal) which apply to the site and relate to the quality of life for living working and visiting with high quality public spaces, connectivity appropriate diversity of housing and infrastructure innovation and culture and heritage and environmental sustainability.
- There is no clear definition of an enterprise centre and the claim that the proposed development can be defined as an enterprise centre is questionable. A CDP should be clearer and more prescriptive. The current proposal is a manifestly large-scale commercial building. The development description exploits the vagueness and dearth of definition with the CDP's written statement. It is accepted that enterprise centres can be considered within a 'Z1' zoned area if it is successfully integrated into the built environment.
- The revised proposal for the permitted enterprise centre development under P. A. Reg. Ref. 3112/17 on Barrow Street referred to in the planning officer report was reduced to three storey (with second floor setback) over basement from a four storey basement building proposed, to address the residential context.
- With regard to the visual Impact, plot ratio, loss of amenity:

- The bulk and mass, particularly due to the constrained site have negative visual impact on the surrounding residential area. Height should be commensurate with the immediate residential context.
 - Overlooking of residential properties on Lauderdale Terrace will occur because the mitigation by way of angled windows and solid screening wall would be insufficient.
 - The application lacks CGIs showing the context which includes protected structures. 3D representations are vital. Reliance on 2D contextual representations is unacceptable. The façade facing Lauderdale is the sole aspect of the block and most pertinent view. A genuine perspective for consideration would be the Dean Street/New Row South intersection where there are commercial buildings as a backdrop to Lauderdale Terrace. It is requested that backland focused montages inclusive of the curtilage to the roof the protected structure be made available by the applicant.
- With regard to the plot ratio, the planning officer's reasoning for acceptance of the 2.2 plot ratio, in excess of the range for the Z1 zoned lands, because it is adjacent to a transport corridor, is in walking distance of the city centre and is infill, is questionable. The plot ratio is 2.3 or above when the basement, parking and plant and ancillary accommodation are included. The site coverage stated to be 49% is based on the internal floor area and the footprint was the basis the coverage would exceed fifty percent.
 - With regard to overshadowing, impact on residential amenities will be extensive. The private rear gardens of the properties on Lauderdale Terrace would be overshadowed for long periods.
 - The street is historically and architecturally significant and it is policy to encourage, (as provided for in the Living City Initiative) to assist and encourage people to reside in the historic inner city. The proposed development is contrary to this regeneration policy in its impact on residential amenities.

6.1.2. It is requested that permission be refused due to serious injury to the visual and residential amenities of the area and depreciation of property values having regard to

height, design, proximity to residential properties, and overbearing and incongruous impact.

6.2. Appeal by Liam Keogh

6.2.1. An appeal was received from Liam Keogh on his own behalf on 22nd May, 2020 according to which:

- The proposed development does not accord with the 'Z1' zoning objective because, office use which takes up the majority of the space in the large floor plates is not permitted and there is little difference between an enterprise centres and offices space. The enterprise centre on the adjoining site complies with the Z6 zoning objective. Residential use as previously permitted completes the Fumbally campus.
- The structure is too large, excessive in form and scale and is incongruous for the backland site, plot ratio is 2.19 whereas a plot ratio of circa 0.5 is appropriate for the location adjacent to two storey houses. It would have overbearing impact on the Lauderdale Terrace houses. It has no harmony with the Fumbally complex of New Street south buildings and the CGOs submitted are insufficient and do not include images from New Street South.
- Overlooking of Lauderdale Terrace will occur by way of oblique views which would seriously affect the residential amenities of these properties especially the rear gardens.. It is not agreed that the Daylight, sunlight and Overshadowing report is acceptable. The impacts on Lauderdale Terrace can be avoided by more appropriate design.
- The proposals included which relate to permeability are intentional only and do not form part of the application and demonstrate the backland nature of the site. The pedestrian route would be through two private developments thus lessening the public benefits, especially for tourist unfamiliar with the area.

The proposed development would set undesirable precedent for similar development on backland sites including a site at the rear of New Court on New Street South.

6.3. Appeal by Peter Tansey

- 6.3.1. An appeal was received from Peter Tansey on his own behalf on 04th June, 2020. (The appeal includes references to an unconstructed first floor rear extension at the appellant's property for which Permission was granted based on reasoning related to the context and configuration relative to adjacent dwellings allowing for flexibility with regard to the depth of the proposed extension. P. A. Reg. Ref. WEB1315/16 / PL 247478 refers.) A section drawing is included in the appeal to show the distance of the building to No 21 Lauderdale Terrace and adjoining houses including the ground floor extension and permitted first floor extension and the private open space.

According to the appeal:

- The application drawings lack section and contiguous elevations resulting in difficulties in establishing the relationships and separation distances. The façade is undulating with fifty percent of it being formed by windows. The plans and light studies do not include the twenty-year-old ground floor extension and the permitted first floor extension to No 21 Lauderdale Terrace.
- The angled windows proposed do not prevent overlooking and this is evident in the north west elevation where it is possible that greater overlooking to the south will occur. The landscaping provides a continuous stepped access to a raised platform terrace which would be one metre above the boundary will and directly overlooks the rear garden of Lauderdale Terrace.
- Loss of sunlight access to the houses on Lauderdale Terrace is significant and would be unacceptable. More details should have been included in the sunlight and daylight drawings. The application submission is to be simplified with regard to the effect of the height and proximity of the building to the gardens and internal accommodation at No 21 Lauderdale Terrace and to the extensions.

In support of the claims made in the appeal with regard to overshadowing, reference is made to extracts from EN 17037 European Daylighting Standard and it is contended that it should have been referred to in the Daylight Sunlight Study submitted with the application. Extracts are provided along with sections and observations whereby the appellant elaborates on the appeal claim as to the development resulting in an unacceptable

overshadowing impact. Overshadowing would reduce the effectiveness of the solar panels on the roof of No 21 Lauderdale Terrace.

- The Lauderdale Terrace Gardens are unique in the depth and aspect of the gardens offering amenity and scope for extensions and greater capacity for enlargement of habitable accommodation.
- The combined effect of the proposed development, (The Collective and Fumbally Square), which would make as a quarter would have impact on the historical nature and character of the area. An assessment of the sustainability of this quarter should have been carried out.

6.4. Applicant Response

- 6.4.1. There are two submissions, from the applicant's agent each of which are summarised below:
- 6.4.2. A submission was received from Avison Young on behalf of the applicant, BCP Fund Management DAC on 18th June, 2020 in which it is requested that the decision to grant permission be upheld.
- 6.4.3. According to the submission Fumbally campus /Fumbally Exchange is a not for profit shared-working spaces for start-ups (on five to ten-year leases) in a hub for small businesses and it will contribute to innovation and vibrancy and to regeneration at Fumbally. The proposed development will build on the tradition in the area contributing to continued start up growth in media advertising marketing software, technology and architecture. The site presents a unique opportunity for a purpose-built enterprise centre to facilitate clustering of businesses, connectivity, flexible working spaces, and shared facilities. There is scope for integration with the adjoining buildings in improving vibrancy, vitality and permeability in the area through pedestrian linkage shared spaces, increased connectivity, and pedestrian linkage. It will link with the adjoining Fumbally campus and the former South Studios improving pedestrian connectivity in a cluster.
- 6.4.4. In response to the appeals, it is submitted that:
- The development of an Enterprise Centre is permissible in principle within an area zoned "Z1" as defined in the CDP " (p.239): " *Use of a building or part*

thereof, or land for small scale 'starter type' industries and services usually sharing grouped service facilities." There were no issues raised in relation to the nature of the development in the planning officer report. The appellant implies that small scale developments only are envisaged for the 'Z1' zone but there are several schemes within the enterprises centres uses which have been permitted on Z1 zoned lands including developments at Barrow Street under P.A. Reg Ref. 3112/17 and, following appeals, at Pembroke Road/Lad lane under P. A. Reg. Ref. 4070/18. The inspector commented that there was no issue with the adaptable floorplates. The ground floor of the proposed development is to be an open area encouraging circulation by tenants and visitors and, innovation, integration and clustering at Fumbally.

- The verified views for the development were submitted with the application instead of CGIs to portray the development at the most sensitive locations following discussions with the planning authority. Dean Street from which the development will be visible is not sensitive, there is a more urban form and character to Dean Street which is an active busy street with three to six storey buildings in the vicinity. A similar proposal for a four to eight storey a mixed-use development increasing the urban character of the area will be visible from Dean Street for which permission was granted under P. A. Reg. Ref. 4423/19. (It is subject to appeal under P. A. Reg. Ref. 307217 refers.)
- Higher plot ratios are provided for in the CDP adjoining public transport termini and corridors, facilitating comprehensive redevelopment in areas in need of urban renewal and to main streetscape profiles (P 316) as acknowledged in the planning officer report in reference to section 16.5 of the CDP and also with reference to the support for increased height and density in Urban Development and Building Height: Guidelines for Planning Authorities, (December, 2018.)
- With regard to sunlight and daylight access and overshadowing of the properties on Lauderdale Terrace, it is acknowledged that there will be an impact at 10 am on the appellant party's property on 21st March and that this would be 'miniscule'. It is submitted that no overshadowing of the rear gardens of these properties would occur from 12.00 pm onwards or at 8.00 am on 21st March and that on June 21st, minor impact at 7.00 am and 9.00 am

with no impact from 11.00 onwards and that the rear gardens of these properties are already overshadowed by existing development.

- The proposed development will not have adverse impact on sunlight to the Appellant's property and is consistent with BRE Guidelines, "*Site Layout Planning for Daylight, Sunlight*" (BRE Guidelines) at least fifty percent of a rear garden should receive two plus hours of direct sunlight on 21st March. Furthermore, if as a result of new development this is not achieved, loss of sunlight is likely to be perceptible if the area receiving sunlight on 21st March is less than 0.8 times its former value or less than twenty percent alteration to the existing context..(Illustrations are provided in Appendix 1 attached to the submission.) The Daylight, Sunlight and Overshadowing report submitted with the application shows that the rear gardens at Nos 13, 19, 20, 21, 23, 25 and 26 Lauderdale Terrace will comply with either of these criteria. With regard to Nos 19 and 20, 84 per cent of the private open space achieves more than two hours direct sunlight at present and 73% with the proposed development in place.

6.4.5. A submission was received from Avison Young on behalf of the applicant, BCP Fund Management DAC on 3rd July, 2020. This response is to the Appeals by **Liam Keogh and by Peter Tansey** and it includes an updated Sunlight, Daylight and Shadow Analysis inclusive of written submission and diagrams in Appendix 2.

6.4.6. With regard to Mr Tansey's property at No 21 Lauderdale:

- There are no ambiguities in the drawings with separation distances being shown at every level including in sections and with regard to overlooking having regard to setbacks and oblique angles for fenestration. The applicant will accept a condition to provide for additional screening at the boundary. The permitted unbuilt first floor extension has been taken into consideration in assessments. Very little further development could be built at No 21 under exempt development entitlements.

- The additional sunlight, daylight and overshadowing assessments the report on which is attached to the submission includes the permitted extension shows little impact for the majority of the day in shadowing effect. It indicates a slight increase in overshadowing over the garden 1- am -12 pm on 21st, march, June and December and increased overshadowing between 7.00 am and 11 am on 21st June and no change in overshadowing on 21st December. It is shown that there is consistency with the recommended BRE standards which are appropriate standards accodign to the submission and the CDP. The bedroom in the permitted first floor extension would receive sufficient sunlight and daylight.
- With regard to the appeal by Mr. Keogh of No 13 Lauderdale Terrace, the case made in the applicant's submissions, (including the response to the appeal by Fergal and Jai Bonner) as to consistency of the proposed land use with the zoning objective and as to the design including the articulation of the façade, form, separation distances and height demonstrating the amenities, privacy and lighting to the adjoining properties is reiterated.
- Contentions in the appeal as to poor quality design are rejected it being affirmed that the design process was iterative and is a solution is an entirely specific response to the site, is appropriate to the adjoining developments and surrounding context and that it completes the streetscape profile along New Street. It responds well to the adjoining development in Fumbally Square and is high quality in amenity and permeability for the future occupants and public. The verified CGIs which portray the development from the most sensitive locations demonstrate improvements to the public realm including a welcoming entrance space. The development is a quality infill on an underutilised street contributing to the consolidation of the city and maintaining it as an innovative economic driver.

6.4.7. It is requested that the planning authority decision be upheld

6.5. Planning Authority Response

6.5.1. There is no submission from the planning authority on file.

6.6. Observations

Richard Breen and Sebastian Enke

6.6.1. An observation was received from Richard Breen and Sebastian Enke of No 6 Lauderdale Terrace on their own behalf on 19th June they state that redevelopment of the site and regeneration in the area is to be welcomed. According to the submission there are several concerns about the subject proposal.

- The proposed development is extreme overdevelopment and detrimental in impact on existing development. The previously permitted development was three storey, reduced from four storeys. (PL 2188/01 refers) The refusal in 2006 was 3-6 storey and based on overheating, overshadowing effects, (PI 4378/06 refers) The impact for the Lauderdale Terrace houses, (Nos 16-26 would be a boxed in effect, like having two cruise ships moored to the side.
- The structure is excessively overbearing and too close to the boundaries. 3D scale models and cross axis North south and south north aspects of New Row South and East West and West East for New Street to New Row South are necessary. They should include a proposed additional floor for the Marland Offices adjoining development and the concurrent proposal for the lands to the south by developer TC Fumbally.)
- The rear gardens and bedroom windows of the Lauderdale Terrace houses will be overlooked, the screening measures are deficient and the separation distances being circa fifteen metres whereas thirty-five metres is required.
- Natural light to the houses and gardens will be reduced, morning sunlight being eliminated whereas afternoon light is already restricted by the Markland development and the proposal for the adjoining site (TC Fumbally) will exacerbate this impact.
- The Lauderdale Terrace properties are already affected by light pollution and this would be exacerbated by the proposed development to an unacceptable extent.
- A unique urban wildlife corridor between the rear boundary wall of Lauderdale Terrace and the culverted Poddle River should be protected.

- There is inadequate provision for green space. Vertical planting within the development would be welcome.
- There is excessive demand for parking in the area and major increases in traffic due to the development of two hotels and student accommodation and BTR developments, and all of which contribute to congestion and noise and lack of on-street parking for residents. Sixteen basement spaces accessed by a car lift is not adequate.
- The over concentration of transient accommodation in the area is contrary to local communities and to encouragement of city living in sustainable communities.

Brid Smith TD

- 6.6.2. An observation was received from Brid Smith TD on 29th June 2020 in which she states that she supports the grounds of the appeal by Fergal and Jai Bonner with regard to scale and height of the proposed structure, intensification of use particularly with regard to current public health issues and with regard to adverse impact on the residential properties on Lauderdale Terrace.

7.0 Assessment

- 7.1. The issues considered central to the determination of a decision having regard to the appeals and considered below are:

Nature, Scale and Intensity of Development/Overdevelopment.

Design, Mass and Form.

Residential Amenities of Adjoining properties – Lauderdale Terrace.

Parking and traffic safety and convenience.

Other Considerations

Environmental Impact Assessment Screening

Appropriate Assessment Screening

7.2. Nature, Scale and Intensity of Development/Overdevelopment.

- 7.2.1. Although residential development was originally authorised through the prior grant of permission for the site the proposed development of an enterprise hub is permissible within an area subject to the Z1: zoning objective: *to protect and or improve residential amenities*. It is reasonable, given the proposed use and the zoning objective that the considerable scale and intensity of use of the development might be questionable. However, the location is within an inner-city urban regeneration area for which, with regard to national and local strategic policy provides for encouragement of consolidation with particular regard to underutilised or vacant brownfield infill site. The area in which the original industrial uses are long obsolete is subject to major regeneration in a mix of uses as provided for in the CDP in conjunction with the wide ranging residential development ranging from historic terraced houses, apartment schemes, small infills, student housing along with hotels/apart hotels and supporting new commercial and retail facilities.
- 7.2.2. It is demonstrated that the proposed development contributes to interconnectivity and integration and, to encouragement and consolidation in conjunction with the adjoining enterprise development within the Fumbally and with the existing business facilities in technology and media and related enterprises. It contributes to a building cluster, with its own identity enclosed from the west by the established New Row South properties and is acceptable, in views from the public realm and should have scope to combine in a cluster with possible future development on adjacent, which would be considered on their separate merits.
- 7.2.3. In conjunction with the wide ranging residential development within the vicinity, notwithstanding any presumption as to residential development on the subject site, having regard to the zoning objective the proposed, the proposed somewhat intensive enterprise centre contributes to the encouragement of vibrancy and vitality characterised by a mix of residential and commercial development in a regeneration area close to public transport, facilities and amenities at local level and in the city centre.
- 7.2.4. The site coverage is well within the range recommended in the CDP for residential areas whereas the plot ratio at 2.2 is over the indicative range of 0.5-2.0 which is permissible according to the CDP on transport corridors, well served by public

transport options and close to services and facilities and the centre of the city. The permeability provided for in the proposed development and in the masterplan provided with the application provides for planning gain within the locality by way of pedestrian linkage through the site along pedestrian desire lines and by means of public access to outdoor space and internally at ground floor level.

- 7.2.5. There is no objection to the proposed intensity and scale of development not least the nature of use which would contribute to the local economy and to vibrancy and vitality at the location and the wider Newmarket area. In view of the foregoing, it is agreed with the planning officer that the site location has the capacity to accept the proposed development having regard to its scale and intensity. It is therefore not agreed that the proposed development is over development, as contended in the appeals and observer submission.

7.3. Impact on Residential Amenities

- 7.3.1. The most sensitive adjacent developments are the long-established terraced properties to the west side of the site along Lauderdale Terrace, on New Row South, which include the properties of the Appellant Parties. One of the Appellants draws attention to an existing ground floor rear extension and an unconstructed first floor extension for which there is a current extant grant of permission the impact on which he contends was not taken into consideration.
- 7.3.2. In an inner city inner urban context, within a regeneration area, with new developments replacing obsolete uses, an assumption as to an expectation as to standards for protection of residential amenities commensurate with suburban lower density residential development, on an indefinite basis adjacent development in would be unrealistic, unreasonable and contradictory to the achievement of strategic objectives for encouragement, enhancement and consolidation of efficient, effective and sustainable and integrated economic development and employment creation alongside residential communities.
- 7.3.3. Flexibility and balance are therefore warranted with regard to potential for undermining, on a reciprocal basis, development potential. This is borne in mind with regard to the potential impact of the constructed and permitted extensions at No 21 Lauderdale Terrace and reciprocally, the extent, if any and justification for

constraints on the development potential on the application site in considering future development.

- 7.3.4. Further to close examination of the application drawings and the Architectural Design Statement submitted with the application it is agreed with the planning officer that the proposed development is acceptable having regard to potential for overbearing impact, overshadowing and overlooking of the adjoining properties on Lauderdale Terrace.
- 7.3.5. Each floor is setback by two metres from the floor beneath, therefore resulting in the separation distance being increased by an additional of two metres by each level. As stated in the planning officer report the separation distances along the boundary with the Lauderdale Terrace properties increase from circa 10. metres to 20.5 metres at ground level to 23.6 metres to 38.4 metres at the sixth (top) level. As a result of the increasing separation distances as the building steps away from the boundaries any potential for overbearing impact on the Lauderdale Terrace properties is satisfactorily addressed.
- 7.3.6. With regard to overshadowing, bearing in mind the stepped back building form, towards the east of the proposed building, it is considered that it is satisfactorily demonstrated in the *daylight, sunlight and overshadowing study* supplemented by the diagrammatic illustrations shown in the architectural design statement included with the application that obstruction and diminution of morning light sunlight access to the rear gardens and rear elevation windows of the Lauderdale properties would be relatively immaterial overall. At No 21 Lauderdale Terrace it is anticipated that the attainable level of light to the unconstructed first floor extension would be greater than at ground floor level owing to its higher level and reduced shadow effect by the existing buildings on Lauderdale Terrace. It is of note that the best scope for light access to the interior of the Lauderdale Terrace properties is to the front elevation in addition to access from the south west over the rear of the adjacent warehouse building over the rear gardens.
- 7.3.7. With regard to overlooking, given the position forward of the north west elevation of the external terraces, to which access is to be confined to access for maintenance works purposes only, (and which can be confirmed and clarified by condition if permission is granted) the translucent screening and, the orientation of the

fenestration, there is no scope for undue overlooking of the Lauderdale properties internal accommodation and private rear garden space. It would be necessary for occupants within the proposed Enterprise centre to access the terraces and look over the screens in order to obtain a view that would directly overlook the adjoining Lauderdale Terrace properties.

- 7.3.8. However, it is understandable that potential for perceptions of overlooking would arise, particularly given to the radical change in the context of the surrounding built environment for occupants of the Lauderdale Terrace properties attributable to the insertion of the proposed on the adjoining vacant land.
- 7.3.9. As a result, there is 'three way' design mitigation in the proposed development which addresses potential adverse impact on the adjoining properties having regard to the height of the proposed building with an effective stepping away in the outlook and perspective when viewed from the adjoining residential properties and in the proposed fenestration and screening.
- 7.3.10. Given the urban location and nature of use of the campus as an enterprise hub, it is reasonable for the proposed external outdoor space, (also adjacent to the Lauderdale properties' boundaries) linked to the café and ground floor publicly accessible meeting and circulation space to be available as an important element within the campus having regard to the nature of use. Subject to the use of the café and outdoor seating and collaboration zones at ground floor level and the fifth floor roof terrace being confined to the hours of 7.00 am to 8.00 pm on Mondays to Saturdays only, and good management, it is reasonable to conclude that an undue daytime noise, nuisance and disturbance directly attributable to the use of the outdoor space, affecting residential amenities would not occur. The successful similar uses, elsewhere in the inner city, such as Daintree at Camden Street referred to as an example in the applicant's submissions provide assurance that a similar activity would not cause adverse impact on residential amenities of the Lauderdale Terrace properties.

Parking, Traffic Safety and Convenience.

- 7.3.11. The objections raised in the observer submission centre on potential for obstruction, congestion and pressure on demand for on street parking in the area that would be attributable to the proposed development.

- 7.3.12. The on-site parking provision for sixteen spaces is just short of the requirement for a maximum of seventeen spaces as indicated in the CDP table 16.2 for locations within Parking Area 2. Additional trip generation to that of the existing adjoining development accessed from the proposed New Street entrance would be relatively low. Any proposal for or additional requirement for carparking provision would undermine both national and local policy objectives to discourage private car transport and to proactively encourage alternative and sustainable modes of travel, primarily public transport, cycling and walking. Furthermore, the site location is close to services and facilities along a public transport corridor within the city, close to rail and bus stations and to the city centre.
- 7.3.13. It is agreed with the planning officer that, as confirmed in the supplementary Transportation Planning Divisions report several outstanding design, circulation, carpark access and layout and management issues and cycle parking have been clarified and resolved satisfactorily in the supplementary submissions, including the swept path analysis lodged with the further information submission.

7.4. Other considerations

- 7.4.1. The observer party has raised concern as to potential impact on the area over the path of the culverted Poddle River which the observer party identifies as a wildlife corridor. It appears that this area is rich in wildlife and that some disturbance is inevitable during a construction project. However, the separation distance is in excess of three metres, there are no objections from the Drainage Division and, no direct interference with the ground supporting the wildlife corridor is anticipated. Subject to adherence to a Construction and Environmental Management Plan, a comprehensive and definitive version of which would be available further to appointment of a contractor and agreement with the planning authority, by way of compliance with a condition.

7.5. Environmental Impact Assessment Screening.

- 7.5.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.6. Appropriate Assessment.

- 7.6.1. Having regard to the, the location of the site which is an inner city brownfield site on serviced land and, to the nature and scale of the proposed development, no appropriate assessment issues arise, the proposed development would not 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. In view of the foregoing, it is recommended that the planning authority decision be upheld and, that permission be granted. Draft Reasons and Considerations and Conditions follow.

9.0 Reasons and Considerations

Having regard to the site location within the Liberties and Newmarket Square Strategic Development and Regeneration Area within the Dublin City Development Plan, 2016-2022 according to Section. 15.1.1.19 of which it is the policy of the planning authority to stimulate the economy, to include a critical mass of appropriate development and investment to provide significant employment opportunities and to ensure the character of areas in the Liberties is protected and enhanced by contemporary and high quality design in new buildings adjacent development; to the adjoining developments at Fumbally; to the nature of the proposed use as an enterprise centre; to the proposed building footprint and form in a series of setbacks from the western site boundary and, the proposed design for fenestration and screening, it is considered that subject to compliance with the conditions below, the proposed development would not seriously injure the residential amenities of adjoining properties by reason of overbearing impact, overshadowing, overlooking or noise and nuisance, would not seriously injure the visual amenities of the area, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on 17th February, 2020 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The ground floor cafe and outdoor seating/meeting and collaboration space at ground floor level and, the fifth-floor roof terrace shall be operational and open for access between the hours of 7.00 am and 8.00 pm on Mondays and Saturdays only.

Access to all other terrace levels for upper floors shall not be permitted and access shall be confined to maintenance purposes only.

Reason: To protect the amenities of the adjoining residential properties.

3. A temporary works design shall be submitted to and agreed with the planning authority prior to the commencement of the development. It shall show the location whether the ground anchors which are part of the design and which are outside the site area (red line boundary) and extend into the public domain. A Ground Anchor Installation Licence (GAIL) shall be obtained prior to the commencement of any works reliant on ground anchors to be located within the public domain. For any ground anchors which are part of the design, proposed to be located in other third-party lands, if any, a letter of

consent from all other relevant landowners, shall be submitted to and agreed in writing to the planning authority.

Reason: In the interest of clarity and orderly development.

4. Site clearance and development works shall be carried out only during the construction phase between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, excluding bank holidays and, between 08.00 to 14.00 on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the protection of the amenities of adjoining properties.

5. For the construction phase of the proposed development, noise management measures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

For operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed: -

(i) An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]

(ii) An LAeqT value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.

(c) All sound measurement shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with respect of Community Response" as amended by ISO Recommendations R 1996 1 and 2 "Description and Measurement of Environmental Noise" as applicable.

Reason: To protect the residential amenities of property in the vicinity of the site.

6. All arrangements for clearance and decontamination of the site and for construction of the development shall be managed in accordance with a Demolition and Waste Management Plan which shall be prepared, submitted and agreed with the planning authority prior to commencement of development. The plan shall be 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.

Reason: In the interest of public health, safety and amenity

7. Prior to the commencement of development, the applicant shall submit and agree in writing with the planning authority, a comprehensive construction management plan which shall include full details of the following requirements.
 - (a) the location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and on-site car parking facilities for site workers during construction.
 - (b) The timing and routing of construction traffic and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network.
 - (c) Details mitigation measures for noise, dust and vibration, and for monitoring, including noise monitoring locations for the purposes of the construction phase of the proposed development. Noise levels shall accord with the standards set out in BS 5228: *“Noise Control on Construction and Open Sites Part 1 Code of Practice for Basic Information and procedures for noise control”* and, shall not result in grounds for complaint as provided for in B.S. 4142. *“Method for rating industrial noise affecting mixed residential and industrial areas”*

- (d) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater.
- (e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (f) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interests of clarity, residential and public amenities, health, safety and sustainable development.

8. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

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

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

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

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

9. Water supply and drainage arrangements, including the attenuation and disposal of surface water, which shall incorporate SUDS drainage methods and shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

10. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

11. Proposals for a name and associated signage for the proposed block shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity and orderly development.

12. No advertisement or advertisement structure (other than those shown on the drawings submitted with the planning application) shall be erected or displayed on the building in such a manner as to be visible

from outside the building, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

14. No additional development, including lift motor enclosures, air handling equipment, storage tanks, ducts or external plant, or telecommunication antennas, shall be erected at roof level other than those shown on the plans lodged with the application. All equipment such as extraction ventilation systems and refrigerator condenser units shall be insulated and positioned so as not to cause noise, odour or nuisance at sensitive locations.

Reason: In the interests of visual amenity.

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

Reason: In the interest of the visual amenities of the area.

16. Details of a public lighting scheme to include measures to prevent light spillage into adjoining residential properties, shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development.

Reason: In the interest of public safety and visual amenity.

17. Communal waste storage areas for shall be designed and managed in accordance with the proposals within an operational waste management plan lodged with the planning authority. Waste materials shall be transferred to the designated surface level space on the day of collection only.

Reason: In the interests of residential and public amenities.

18. The management and maintenance of the proposed development, following completion, shall be the responsibility of a legally constituted management company, which shall be established by the developer. A management scheme, providing adequate measures for the future maintenance of the development; including the external fabric of the buildings, communal spaces, landscaping, roads, paths, parking areas, lighting, waste storage facilities and sanitary services, shall be submitted to and agreed in writing with the planning authority, prior to occupation of the development.

Reason: In the interest of amenity and orderly development.

19. Prior to commencement of development, the developer shall lodge with the planning authority, a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

20. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the

area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

21. 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 is applied to the permission.

Jane Dennehy
Senior Planning Inspector
10th July, 2020.