



An
Bord
Pleanála

Inspector's Report

ABP-308285-20

Development

The development involves the demolition of the existing single storey bar at ground and basement level and to construct a new part two storey to part four storey over basement building of for use as a hotel with 17 rooms.

Location

The Brewery Bar, 5-9 Newport Street, Dublin 8.

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

2571/20

Applicant(s)

Sandra Doone.

Type of Application

Permission

Planning Authority Decision

Grant with conditions.

Type of Appeal

Third Party

Appellant(s)

Evan Duggan Associates

Gary O'Brien

Observer(s)

David Salmon

Date of Site Inspection

20th January 2021

Inspector

Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is c. 2km to the south west of Dublin City centre at No. 5-9, Newport Street, Dublin 8. The sites curtilage includes what appears to be two vacant buildings previously in use as a public house known as 'The Brewery Bar', and a beauty salon/massage therapy and Physio therapy. The site has a stated area of 150 sq.m .
- 1.2. The existing buildings on site are single storey and flat roofed with a very small first floor element to the north east corner recessed from the front building line to Newport Street. There is also a basement to the public house property. Windows and doors are boarded up or have roller shutters in situ. Signage relating to the previous uses on the site remain in place. The buildings directly bound the public path and there is on street parking to the front of the site.
- 1.3. The existing buildings of the site form a central part of a terrace on the north site of Newport Street. To the west of the site there is a part single storey, part two storey house and a five storey mainly red brick finished apartment building. To the east of the site there is a four storey brown/yellow brick finish apartment building. To the rear and north of the site there is an existing 'U' shaped four storey apartment building known as the Harbour House Apartments. The proximity of private amenity space to some of these apartments i.e. two south facing balconies at second and third floor, one large first floor terrace area and a courtyard area to the overall apartment scheme is clearly evident.
- 1.4. On the opposite side of Newport Street, the terrace includes three storey, brown brick finished houses. This terrace is bookended on either end by a four storey apartment building and a part five, part six storey apartment building.
- 1.5. The site is located c.4-500m east of two Luas stops.

2.0 Proposed Development

- 2.1. The development comprises-
 - the demolition of the existing single storey buildings at ground and basement level

- the construction of a part two storey to part four storey over basement building of c. 587 sq. m.
- the extension of the existing basement (91 sq.m) from the public house into adjoining property (total 130 sq.m)
- the building to be used as a 17 bedroom hotel with a store room, staff area, gym facilities and an 18 sq.m outdoor terrace area at third floor level.

2.2. Further Information was requested on the 03/07/2020 in relation to the following-

1. The applicants legal interest in the site
2. Transportation Division concerns-
 - a. The proposed overhang at first floor level and above was not considered acceptable. Revised proposals omitting the overhand was requested.
 - b. Details required for cycle parking and bin storage.
3. Drainage Division concerns-
 - a. Services report detailing proposals for foul and surface water
 - b. A Flood Risk Assessment
 - c. Proposals for Sustainable Drainage Systems for surface water.
 - d. Surface water to be attenuated to two litres per second in accordance with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.

3.0 Planning Authority Decision

3.1. Decision

On the 31st of August 2020 Dublin City Council granted permission subject to 16 conditions, generally of a standard nature but including the following-

- Condition 3 requires a screen wall to the east of the terrace on the second floor to comprise a solid brick wall 2.45m high.

- Condition 4 requires a sample of brick finishes to be erected on site for inspection and agreement by the Planning Authority.
- Condition 5 requires detail drawings of proposed signage to be agreed with the Planning Authority
- Condition 8 requires a number of matters to be agreed in writing with the Transportation Planning Division including-
 - a) The building overhang of the public footway on Newport Street shall be omitted
 - b) Construction Management Plan
 - c) An Operational Service, Delivery and Refuse Management Plan
 - d) Cycle Parking and shower facilities
 - e) Costs incurred by the Council shall be at the expense of the developer
 - f) Compliance with the Code of Practice.
- Condition 9 outlines requirements of the Drainage Division including-
 - a) Proposed mitigation measures outlined in the Flood Risk Assessment shall be implemented.
 - b) Internal basement drainage must be lifted, pumped, to a maximum depth of 1.5m below ground level before discharge by gravity to the public sewer.
 - c) Discharge of groundwater to the drainage network is not permitted
- Condition 10 outlines requirements of the City Archaeologist.
- Condition 11 requires a Construction and demolition Waste Management Plan

4.0 Planning Authority Reports

4.1. Planning Reports

4.1.1. The final report of the Planning Officer (dated 26-08-20) reflects the decision of the Planning Authority. The following is noted from the report:

- Hotel use is listed as open for consideration under the Z1 zoning.
- Site is also located within boundary of SDRA 16 with a landuse zoning objective Z14 where hotel use is listed as permissible.
- Given the zoning and proximity of the site to the Guinness Brewery Complex a hotel development is considered acceptable in principle.
- An apartment development was refused on the site under 4615/18.
- The proposed development has been designed to reduce the scale in order to address the previous refusal.
- The proposed building line is lower than that previously permitted on the site under 2765/07.
- The design of the proposal references the surrounding industrial heritage and will likely have a positive contribution in terms of visual impact.
- The screen wall to the east of the proposed terrace should be solid wall of 2.45m in height to protect residential amenity of the adjoining house and to protect the development potential of the adjoining site.
- The principle of no parking provision is considered acceptable given the sites location and access to public transport.
- Given the constraints of the site and the scale and type of development an Operational Delivery and Refuse Management Plan should be conditioned in the event of a grant of permission.
- The proposed overhang of the public path at first floor level and above is not acceptable. The Roads Maintenance Division will not maintain under the overhang, and it would impinge on to the air space above the public path. The area below would require extinguishment of the public right of way and the

overhand would require disposal of air rights. These are reserved functions and the applicant may never attain the legal right to construct the development.

- The submission of a copy of the folio for the site at further information stage indicates that the applicant is the owner of the site.
- Following the receipt of additional information, the Drainage Division has no objection to the development subject to conditions.

4.2. Other Technical Reports

- Roads and Traffic Planning Division-
 - Following a request for additional information no objections raised subject to condition including the omission of the overhanging element of the public path at first floor and above levels.
- Drainage Division-
 - Following a request for additional information no objections raised subject to condition including the implementation of mitigation measures of the Flood Risk Assessment and in order to minimise the risk of flooding at basement level all such drainage to be lifted to a maximum depth of 1.5m below ground level.
- Waste Regulation Section – Waste Management Division-
 - No objection subject to condition
- City Archaeologist-
 - The site is close to the Zone of Archaeological Constraint for Recorded Monument DU018-020 (Dublin City) and is within the Zone of Archaeological Interest in the Dublin City Development Plan 2016-22. No objection subject to condition.

4.3. Prescribed Bodies

- None

4.4. Third Party Observations

Four third party submissions were received. The planning issues raised in the submissions can be summarised as follows-

- Overdevelopment of the site and the area
- Car parking and traffic congestion
- Extensive working hours, impacts of noise
- Overshadowing and impact on residential amenity
- Damage to adjoining property
- Ownership/legal interest of the site should be established.
- Ownership/plagiarism of the submitted plans.
- Absence of Construction and Traffic Management Plans
- Absence of drainage details.

5.0 Planning History

This Site-

- 4615/18- Partial six storey over basement residential development of 7 apartments, 14/002/19, Refusal for one reason- overall scale, height, massing overbearing, overshadowing and impact on residential amenity. Noncompliance with 2018 Apartments Guidelines the stated provisions of Dublin City Development Plan 2016-2022.
- 2765/07- Partial five storey, partial two storey over basement mixed development including public house, an office and four apartments, 13/12/07, Grant
- 3254/98- Change of use from Bookmakers Shop to bar/lounge extension, 17/02/99, Refusal for two reasons- on grounds of injury to amenities,

depreciate value of property and extension to a non-conforming use which would be detrimental to amenities.

6.0 Policy Context

6.1. Dublin City Development Plan

- 6.1.1. The appeal site has a zoning objective 'Z1 - Sustainable Residential Neighbourhoods' within the Dublin City Development Plan 2016-2022, with a stated objective *'to protect, provide and improve residential amenities'*. Hotels are Open for Consideration Uses in Z1 lands.
- 6.1.2. The site is identified within the boundary of Strategic Development and Regeneration Area (SDRA) No.16- Liberties (including Newmarket and Digital Hub) as per Fig 36 of the Development Plan. The site is not within an identified LAP Key Development Area.
- 6.1.3. Strategic Development and Regeneration Areas also have the following zoning Objective Zone Z14- *'To seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses.'* Hotels are permissible uses within Z14 lands.
- 6.1.4. Section 6.5.3 of the Plan refers to 'Tourism/Visitors', and notes that it is important to continue to develop tourism infrastructure such as visitor accommodation of various types.

Relevant policies include:

- CEE12 (i) *'promote and facilitate tourism, as one of the key economic pillars of the city's economy and a major generator of employment, and to support the provision of necessary significant increase in facilities such as hotels apart hotels, tourist hostels, cafes, and restaurants, visitor attractions, including those for children'*
- CEE13 (iii) *'To promote and support the development of additional tourism accommodation at appropriate locations throughout the city'*.

- 6.1.5. Other relevant sections of the Development Plan include:

- 11.1.5.13 Preservation of Zones of Archaeological Interest and Industrial Heritage
- 16.2 – Design Principles and Standards
- 16.5 – Plot Ratio
 - Z1- 0.5 – 2.0
 - Z14 (Regeneration)-1.0-3.0

A higher plot ratio may be permitted in certain 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 in areas in need of urban renewal*
- *To maintain existing streetscape profiles*
- *Where a site already has the benefit of a higher plot ratio*
- *To facilitate the strategic role of institutions such as hospitals*
- 16.6 – Site Coverage
 - Z1 45% – 60%
 - Z14 50%

higher site coverage may be permitted in certain 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 in areas in need of urban renewal*
- *To maintain existing streetscape profiles*
- *Where a site already has the benefit of a higher site coverage*
- 16.7 – Building Height in a Sustainable City.
- 16.38 and Table 16.1 outline that a maximum of one car parking space per four hotel rooms is required in the city centre.

- *A relaxation of maximum car parking standards will be considered for any site within parking Zone 1 (as illustrated on Map J) provided it is located in close proximity to quality public transport,.....*

6.2. Natural Heritage Designations

- 6.2.1. The site is located c. 5km west of the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).
- 6.2.2. The site is located c. 925m north of the Grand Canal pNHA.

6.3. EIA Screening

- 6.3.1. The proposed development falls significantly below the 300 bedroom mandatory requirement for EIA as per Schedule 5, Part 2, 12 Tourism and Leisure (c). In this instance, the subject site is on zoned lands, served by public infrastructure and having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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.

7.0 The Appeal

7.1. Grounds of Appeal

Two third party appeals have been received from the following-

- Evan Duggan of Evan Duggan Associates
- Gary O'Brien, of No. 3 Newport Street, the householder directly adjacent to the western boundary of the site.

Both grounds of appeal can be summarised as follows-

- The applicant is not the owner of the property and instead lies with the Brewery Bar Partnership. The appellant acknowledges section 32 (13) of the Planning Acts and that matters relating to title are a civil matter.
- The current permission, as granted is underdevelopment of a city centre site located in an area of increased density as set out by the department in an environment. The current scheme is too low a density given the commercial nature.
- The proposed development will seriously overshadow the appellants house and rear yard particularly the easterly morning sun as well as general daylight the rear yard receives.
- The rear of the appellants property will be overlooked.
- Absence of car parking
- The use of a hotel is a night time activity and its daytime activities provide an incompatible activity in this residential neighbourhood.
- The proposed development may aggravate anti-social behaviour in the area. A reinforcement of local residents would provide a level of “street-level passive (round the clock) community surveillance”. This can’t be provided by transient guests.
- The proposal represents over development of this tight, small site and sets an undesirable precedent for other developments in the area.

7.2. Applicant Response

The applicants response to the two third party appeals can be summarised as follows-

- The appeal by Evan Duggan is vexatious
- The matters relating to the title are not a planning matter and is recognised by the appellant.
- The claim of underdevelopment does not stand up to scrutiny. A previous application (4615/18) to increase density at this site was refused. A pre app consultation was held with the planning authority where it was indicated that a

proposal closer in floor area to a previously granted permission (0765/07) was more likely to succeed than the previously refused one.

- The proposed application is closer in terms of volume to (0765/07) and is improved architecturally in terms of elevation to the street and treatment in a stepped fashion to improve potential overshadowing of properties to the north. The current scheme does provide an increase in floor area over and above the earlier permission but there is no scope for any further increase in density.
- There is no change in receipt of sunlight to the adjoining house (to west) from the North, South or West. The proposal only impacts easterly light and morning sunlight. The buildings are gable to gable so the impact is minimal. The proposed building steps down from east to west thereby reducing the impact on properties to the rear but also the appellant's property.
- A sunlight diagram accompanies the application and shows minimal impact on the yard to the rear of the appellant's house (to the west). This yard is restricted in size and appears to be covered with a glazed material. It is already overshadowed by adjoining buildings. The amount of sunlight which number 3 receives will not be radically altered as a consequence of the proposal.
- In relation to overlooking the rear windows and rear wall of the proposed building will be in line with the rear wall of the appellants rear wall. It will be difficult if not impossible for a person to see sideways from these windows.
- No car parking is proposed and it is considered that patrons will arrive by taxi.
- The hotel will be located within an inner city site with all the level of activity associated with that location. The premises will not have a bar or function room that contribute to night time activity. The level of deliveries to the hotel will be low and it is not expected the hotel will have larger tour groups arriving.
- The increased footfall and informal supervision of guests arriving and leaving the hotel will ameliorate and contribute to a reduction in antisocial behaviour in the area.
- One appellant has claimed the proposal is overdevelopment and the other has claimed the proposal is underdevelopment. The applicant contends the

level of development and density is appropriate and this has been confirmed by the planning authority.

- The applicant refers to Development Plan Policy.
- The lack of hotel rooms in Dublin is well documented. 17 bedrooms would be a welcome addition to address the shortfall in the city. The development will capitalise on the sites close proximity to the Guinness Storehouse.
- The proposal addresses the sites immediate context and rises from a two storey to four storey building matching the existing adjoining apartment building.
- The development potential of the site is constrained by south facing balconies and a surface level courtyard directly to the north of the site. The layout design avoids overlooking and overshadowing.
- The staggered and stepped down building height permits sunlight and daylight access to adjoining balconies and apartments to the north. The building is lower than previously approved thereby increasing the degree of natural light to the courtyard over and above that approved. It is submitted that this will 'assuage' sunlight and privacy issues.
- The proposed building will be finished in clay brick with a Flemish bond. The sawtooth type roof profile and clay brick is intended to reflect the industrial architectural heritage of the area.
- The shadow analysis studies indicate the proposal will not negatively impact on the adjoining properties particularly to the north.
- The proposal is in accordance with policy and objectives of SDRA 16LAP

7.3. Planning Authority Response

- None received

7.4. Observations

One observation has been received from David Salmon on behalf of residents of Newport and Robert Street, Dublin 8. The issues raised by the observers can be summarised as follows-

- The proposed building will not be a hotel. Its primary function will be as a budget hostel.
- The guest facilities are limited and bedroom sizes are unlikely to provide for guests with mobility difficulties. There is only one wheelchair accessible bedroom.
- There is an overprovision of budget and student accommodation in Dublin 8.
- Parking in the area is extremely congested.
- There would be traffic congestion from vehicles servicing the proposed development.
- The proposal will impact upon privacy by way of overlooking of back gardens and directly into people's homes on Newport Street.

8.0 Assessment

8.1. I have examined the application details and all other documentation on file, including the two third party appeals and the observation received on the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the relevant issues for consideration in this appeal are as follows-

- Zoning and Principle of the Development
- Over and under development of the site
- Impact on adjoining Residential Amenity
- Parking and Servicing
- Other Matters
- Appropriate Assessment

8.2. Zoning and Principle of the Development

- 8.2.1. The applicants have applied for planning permission for a seventeen bedroom hotel. Under the provisions of the Dublin City Development Plan 2016-2022, the appeal site is zoned Z1 - Sustainable Residential Neighbourhoods' with a stated objective *'to protect, provide and improve residential amenities'*. Hotels are Open for Consideration Uses in Z1 lands. The site is also zoned Z14 with a stated objective *'to seek the social, economic and physical development and/or rejuvenation of an area with mixed use, of which residential and 'Z6' would be the predominant uses.'* Hotels are permissible uses within Z14 lands.
- 8.2.2. The site is located within an area that is predominantly residential in nature. Although there are no active uses in the existing buildings on the site it is noted that the most recent uses appear to be as a public house, a beauty salon and for massage and physio therapy.
- 8.2.3. The proposed development would add an additional 17 hotel guest rooms to the tourist accommodation offering of the city. Development Plan policies CEE12(i) and CEE13(iii), seek to continue to develop tourism infrastructure such as visitor accommodation of various types and as such these policies are supported by the proposed development.
- 8.2.4. Given the sites zonings, its proximity to the city centre and the Guinness Storehouse, and availability of public transport in the area, I consider the principle of the proposed development to be acceptable at this location.

8.3. 'Over' and 'Under' development of the site

- 8.3.1. One appellant contends that the proposed development represents underdevelopment of the site and too low a density for the commercial nature of the scheme. The second appellant contends the proposal represents overdevelopment of the site in terms of its height and density.
- 8.3.2. I consider 'density' to be an inappropriate measure for the context of the proposed hotel development. Density is a more suitable metric for determining the number of

residential properties e.g. apartments to a site's size. In this regard plot ratio and site coverage standards are considered more appropriate measures for determining the suitability of a hotel development on this site.

8.3.3. The applicants have indicated in question 10 of the application form that the proposed plot ratio will be 3.9:1. They also note the existing site coverage is 100%. While these metrics exceed the standards set out in section 16.5 and 16.6 of the Development Plan it is noted that the Plan provides for circumstances where higher standards could be acceptable. Given the nature of the proposed development, the sites proximity to public transport and the need for comprehensive redevelopment of this site where 100% site coverage already exists, I am satisfied that the proposed development is appropriate in this regards.

8.3.4. In terms of 'height' the proposal is for a part two, part three and part four storey building with a staggered building height rising from west to east. The building is designed with a 'saw tooth' roof profile. The eastern end of the building takes its height reference from the adjoining apartment development which is indicated as 13.48m high. The western gable of the proposed building is indicated as 8.38m high. It is noted that the roof of the two storey element at the western end is indicated as 6m high and is proposed as an enclosed but open terrace with 'hit and miss' brick wall on enclosing the space to the front elevation and providing a height of 8.38m to 10.03m along the pitch when viewed from Newport Street.

8.3.5. In terms of the visual impact upon the streetscape, I consider the proposed staggering of the building height in this way as an appropriate design solution given the sites context, the adjoining buildings and the streetscape.

8.3.6. Overall, I am satisfied that the proposed development does not represent overdevelopment or underdevelopment of the site or the area.

8.4. Impact on adjoining Residential Amenity

8.4.1. One appellant has raised residential amenity concerns including the loss of sunlight to private amenity space and overlooking of his property No. 3 Newport Street, which is the house to the immediate west of the application site.

8.4.2. The proximity of the proposed development to the appellant's property to the west is noted. The Planning Authority have imposed a condition requiring the screen wall to

the east of the terrace on the second floor to comprise a solid brick wall 2.45m high to ensure residential amenity of the adjoining house and its development potential are protected. Should the Board be minded to grant permission for this development as proposed, it is recommended that a condition to this effect should be applied but should refer to a screen wall to the west of the terrace which would form the boundary with the appellants property.

8.4.3. *Overlooking*

Having reviewed the drawings, I note there are no windows proposed on the north elevation. The east and west elevation are gable ends and no windows are proposed. I do not consider that windows to the south/front elevation will lead to a loss of privacy of properties on Newport Street. As such I am satisfied that the proposed development will not lead to overlooking of the appellants property, the Harbour House Apartments and their private or communal amenity space to the immediate north of the application site or any other property to Newport Street.

8.4.4. *Overshadowing/ loss of sun and day light*

One appellant has raised concerns in relation to overshadowing of his house No. 3 Newport Street and its rear yard. Of particular concern is the loss of easterly morning sun. The applicants have submitted a shadow analysis study (Drawing No. PP.04) with the application for the various times across the day for March and June 21st. The analysis is presented from an angle (rather than in plan) and appears to show minimal overshadowing of the roof of No. 3 Newport Street and no overshadowing to its rear yard area. Having regard to the orientation of the site I am satisfied that the proposed development will not unduly overshadow No. 3 Newport Street and its private amenity space.

Notwithstanding this, the site is located along the southern boundary of the Harbour House Apartment Development and it is noted that none of the grounds of appeal appear to consider the impact of the proposed development on these apartments. Having visited the site, examined aerial photography for the area and the drawings I note the proximity of private amenity spaces on the first, second and third floor and a south facing communal courtyard for the overall scheme to the development.

The private amenity space on the first floor is a terrace area that appears to be actively used as such. It also appears to abut directly onto the northern/rear

boundary of the application site. This area is clearly identified on the first floor and second floor plans (Drawing No. PP.03) for the proposed development as 'Terrace to Harbour House'. This space is also identified on the shadow analysis drawing. The shadow analysis shows this terrace currently receives minor overshadowing in March and June increasing as it gets later in the day and the sun moves from south to west. The existing shadow analysis shows some overshadowing over the course of the day of the communal amenity space in March and June.

The proposed shadow analysis appears to show/suggest significant increases in overshadowing particularly to the terrace and increases to the communal courtyard across the day in March and June thereby indicating that this private amenity space and communal open space would be significantly and unacceptably overshadowed from the proposed development.

Notwithstanding the shadow analysis drawings, it seems clear to me that the proposed development would have a substantial negative impact on the quality of access to sunlight and daylight for ground floor apartments in the Harbour House Apartments and in particular those that have aspects and fenestration facing east and west onto the communal amenity space.

8.4.5. *Overbearing*

Given the sites 100% site coverage significant development works are proposed to all site boundaries. In this context I have concerns in relation to the proximity of the proposed works along the northern boundary which appears to abut directly onto the private amenity space/terrace of a first floor apartment and a courtyard area of communal amenity space for the neighbouring Harbour House Apartments.

Drawing No. PP.03 '04 First Floor' and '05 Second Floor' plans for the proposed development clearly indicate the space abutting the application site as a 'Terrace to Harbour House'.

The proposed second floor plan shows a solid wall to a height of 2.45m along the boundary with this terrace. The '09 Proposed North Elevation' (also Drawing No. PP.03) suggests this wall will be c.3.6- 4.2m high along the southern boundary of this terrace. This would wholly and unacceptably enclose the southern boundary of the private amenity space/terrace to the first floor apartment and I consider it will

have a substantial negative visual and overbearing impact upon this private amenity space.

Drawing No. PP.02 '08 Existing South Elevation (but is in fact an existing section drawing from north to south through the Harbour House Apartments, the site and Newport Street) suggests the boundary of the site between the courtyard and the application site is c.2 m high from inside the courtyard. Drawing No. PP.03- '10 Proposed Section BB' suggests the boundary between the site and the courtyard will be increased to over 7m. The height of this new boundary will have a substantial negative visual and overbearing impact upon the courtyard communal amenity space of the Harbour House Apartments and accordingly would detract from the residential amenity of the occupiers of all the apartments.

8.4.6. *Noise*

The application proposes an enclosed terrace area at second floor level. This terrace area is to be enclosed with a 2.45m solid wall to the rear adjoining the terrace of the Harbour House Apartments. The proximity of the proposed terrace to the private amenity space of apartments on the first second and third floor of the Harbour House Apartments is a significant noise and residential amenity concern.

8.4.7. *Conclusion*

In my opinion the proposed development will have a substantial negative impact upon existing residential amenity and would undoubtedly depreciate the value of apartments in the Harbour House Apartment Development located immediately to the north of the proposed development. The proposal would negatively detract from existing residential amenity by way of overshadowing, loss of daylight, overbearing and the potential for excessive noise.

I have given consideration to addressing these matters by way of condition and the omission of the proposed terrace area, and a combination of rooms 11,12 and 13 along with a revised roof profile. However, it is my view that such amendments would significantly impact upon the quality of the overall design in terms of the front/southern elevation and its presentation to the streetscape.

Furthermore, and in the absence of a revised shadow analysis study I cannot be satisfied that an amended proposal by condition as suggested above, would still not

lead to undue overshadowing of private amenity space, communal amenity space and an unacceptable loss of daylight to existing apartments in the Harbour House Apartments. It is therefore considered that a more comprehensive redesign of the scheme to address the concerns raised would be required and is beyond the scope of alterations that could be addressed by condition and the proposed development should be refused accordingly.

8.5. Overhang to Newport Street

- 8.5.1. The Planning Authority raised concerns through the application process in relation to the proposed overhang to the public footpath at first floor level and above. They have requested the omission of the overhang by way of a condition. The Planning Authority have justified this as the development would require extinguishment of the public right of way under the overhang and the disposal of air rights. These are reserved functions and the applicant may never attain the legal right to construct the development. The applicants have not sought to appeal this condition. Accordingly, it is my view that this is a reasonable condition in this context and should the Board be minded to grant planning permission, I recommend this condition is also attached so as to allow the developer to enact the permission.

8.6. Parking, Traffic and Servicing

- 8.6.1. One of the appeals and the observer assert that difficulties would arise for car parking and servicing should the development proceed. The site is highly accessible by most transport modes, including the Luas, and clearly does not make provision for car parking. The proposed development provides for 3 bicycle parking spaces. The Roads and Traffic Planning Division of Dublin City Council have reported on the application, outlining that, subject to conditions, they do not object to the development. Considering this report, the small nature of the development, the site's proximity to the city centre and public transport and the use of maximum car parking standards in the Development Plan, I am satisfied that there would not be a necessity to provide car parking spaces to serve this hotel.
- 8.6.2. The proposed development is small in scale and servicing arrangements, including deliveries and waste management, can be appropriately addressed by way

conditions should the Board decide to grant permission. Measures to allow for the free-flow of vehicular traffic and pedestrians during the construction phase can also be submitted to and agreed with the Planning Authority, as part of a Construction Management Plan condition.

8.7. Other Matters

- 8.7.1. One of the appellants has raised *concerns over the applicant's ownership* of the site. It is noted the Planning Authority requested through additional information evidence of the applicants legal interest in the site. A folio for the site was submitted and the applicants ownership of the site was accepted by the Planning Authority for the purpose of making the application. Having reviewed this folio I am also satisfied that the applicant has established her entitlement to make this application. Notwithstanding this and as noted by the appellant himself this matter is a civil one to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.
- 8.7.2. I note the applicant's contention that *one of the submitted appeals is vexatious*. It is considered that the appellant also raised a matter clearly related to the proper planning and sustainable development of the area and as such it is appropriate that the appeal is given its due consideration.
- 8.7.3. It is noted the applicant has made a number of references to previously granted *planning permission reference number 2765/07*. The outline of the design granted by permission has been shown on Drawing No. PP.03 to demonstrate how the proposed development relates to a previously granted permission on this site and within the Shadow Analysis Study. While I acknowledge this grant of permission, I do not accept it is appropriate to consider the precedent of a previous grant of permission that has now expired and was not taken up in terms of the assessment of the impact of the proposed development on the current site and surrounding area.

8.8. Appropriate Assessment

- 8.8.1. Having regard to the nature and small scale of the proposed development and the distance from 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.

9.0 Recommendation

9.1. I recommend that permission is refused for the following reason-

10.0 Reasons and Considerations

1. The proposed development, by reason of its proximity and height along its northern boundary with the Harbour House Apartments, would seriously injure the residential amenities and depreciate the value of these properties by reason of visual impact, visual obtrusion, overbearing, overshadowing and likely loss of daylight to existing apartments. The proposed development would, be contrary to the Z1 Zoning – ‘*Sustainable Residential Neighbourhoods*’ with a stated objective ‘*to protect, provide and improve residential amenities*’ as set out in the Dublin City Development Plan 2016-2022 and would therefore be contrary to the proper planning and sustainable development of the area.

Adrian Ormsby
Planning Inspector

22nd January 2020