



An  
Bord  
Pleanála

## Inspector's Report ABP-308724-20

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<b>Development</b>	Construction of 4 storey development above existing ground floor to include 3 apartments.
<b>Location</b>	Harbour Court, to the rear of 31 Lower Abbey Street, Dublin 1.
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2900/20
<b>Applicant(s)</b>	PIP Properties Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellant(s)</b>	Club Travel Ltd
<b>Observer(s)</b>	Transport Infrastructure Ireland
<b>Date of Site Inspection</b>	3 <sup>rd</sup> February 2020
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

- 1.1. The site has a stated area of 0.018 hectares and is located in the north city centre, on the southern side of Abbey Street Lower. At the front (northern end) of the site, No. 31 Lower Abbey Street forms part of a 4-storey red-brick terrace. The terrace mainly consists of commercial / retail uses at ground floor level and residential / office use above. The subject building itself contains a retail unit at ground floor level and the upper floors have recently been converted from offices to provide 3 apartments, one at each level.
- 1.2. To the rear of the Abbey Street Lower terrace, the site mainly contains a ground floor over basement commercial space with a small first floor store at its extreme southern end. The site bounds onto Harbour Court to the south, which is a narrow laneway mainly serving the rear of commercial properties on Abbey Street Lower, O'Connell Street and Eden Quay.
- 1.3. To the east and west of the site are similar mixed-use properties of varying height and scale. Immediately bounding the eastern site boundary is a 4-storey structure containing offices to the rear of No. 30 Abbey Street Lower. The rear of numbers 32 and 33, to the west, is mainly limited to single storey. Further west, the height of numbers 34 and 35 rises again to 3 and 4-storey respectively. There are buildings of similarly varied height and scale on the opposite (southern) side of Harbour Court.

## 2.0 Proposed Development

- 2.1. The development comprises the removal of the existing 1<sup>st</sup> floor store at the rear of the site and the construction of a 4-storey residential development above the ground floor retail space. The new development would provide 3 apartments as follows:
  - 1<sup>st</sup> floor 1-bedroom apartment (55.9 sq.m.)
  - 2<sup>nd</sup> floor 1-bedroom apartment (54.6 sq.m.)
  - 3<sup>rd</sup> and 4<sup>th</sup> floor duplex apartment (90.8 sq.m.).
- 2.2. Access to the 3 apartments would be via a first-floor pedestrian link from the rear of No. 31 Abbey Street Lower. No car-parking is proposed, and it is proposed to connect to the existing water and drainage services.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 23<sup>rd</sup> October 2020, Dublin City Council issued notification of the decision to grant planning permission subject to 11 conditions that are generally of a standard nature. Condition 4 (c) requires the provision of cycle parking facilities in accordance with Development Plan standards.

### 3.2. Planning Authority Reports

#### Planning Reports

3.2.1. The Planner's Reports form the basis of the Planning Authority decision. The initial report can be summarised as follows:

- The proposed use is appropriate for the site and its redevelopment along Harbour Court would add to levels of passive surveillance and housing stock.
- The internal floor / room areas comply with required standards.
- No private open space is provided for the two 1-bedroom apartments, but this is considered acceptable given the restricted nature of the site and the high standard of internal space proposed.
- No designated car or bicycle parking is necessary given the nature of the site.
- There would be no impact on the streetscape of Abbey Street Lower and no significant impact on Harbour Court.
- Concerns regarding overlooking of the existing apartments in No. 31 have been adequately mitigated through window positioning and screening.
- A third-party submission questions the legal basis for the proposal to erect fire-proof cladding over existing windows serving No. 30 (along the shared eastern site boundary) and further information is required in this regard.

3.2.2. A Further Information Request was issued which requested confirmation of the legal right to carry out the covering of the windows along the shared boundary. After the applicant's response, the planner's subsequent report deemed that a detailed planning history had established that permission was neither sought nor obtained for

the existing windows to No. 30. It was considered completely inappropriate and against council policy to effectively sterilize the site because of unauthorised development and a grant of permission was recommended in accordance with the terms of the DCC notification of decision.

#### Other Technical Reports

- 3.2.3. The initial report from the 'Transportation Planning Division' (30<sup>th</sup> July 2020) requested further information in relation to construction management; refuse storage and collection arrangements; and bicycle parking. These issues were not included in the Further Information request issued by the planning authority. Their final report outlined that there were no objections to the development, subject to conditions.
- 3.2.4. The 'Engineering Department – Drainage Division' stated that there was no objection subject to conditions.

#### 3.3. **Prescribed Bodies**

A TII submission recommended conditions relating to the protection of the Luas infrastructure and services, as well as potential 'section 49' contribution requirements relating to the Luas Cross City project.

#### 3.4. **Third-Party Observations**

A submission on behalf of 'Budget Travel', of 29-30 Abbey Street Lower, disputes the legal right of the applicant to carry out works to their property without written consent. Concerns are also raised about overshadowing of the property and the excessive height and bulk of the proposed development.

### 4.0 **Planning History**

The following relates to the current application site:

**P.A. Ref. 2949/19:** Permission granted (15th August 2019) for the conversion of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors from office/retail ancillary space to residential consisting of 3 no. 1-bedroom apartments and new door to ground floor façade at 31 Abbey Street Lower.

The following is relevant in relation to the adjoining sites:

32/33 Abbey Street Lower

**P.A. Ref. 3919/20:** Current application on the adjoining site (32/33 Abbey Street Lower) for conversion of 3rd Floor from office use to residential, consisting of 1 No. 2-Bed Apartment.

30 Abbey Street Lower

**P.A. Ref. 1359/99 & ABP Ref. 29N.112895:** Permission granted (ABP Order dated 6<sup>th</sup> March 2000) for second floor office extension to the rear. A proposed third floor was omitted as part of the application process.

**P.A. Ref. 2350/01 & ABP Ref. 29N.127084:** Permission refused (ABP Order dated 22<sup>nd</sup> February 2002) for third floor office extension (107m<sup>2</sup>) to the rear. The reason for refusal related to adverse overshadowing impacts on residential properties to the east i.e. along Marlborough Street.

**P.A. Ref. 0074/02:** Permission granted (25<sup>th</sup> April 2002) for third floor extension (28.6m<sup>2</sup>) to the rear containing toilets and a canteen.

**P.A. Ref. 4406/02:** Permission refused (18<sup>th</sup> February 2003) for third floor office extension to the rear. The reason for refusal related to overdevelopment of the site and adverse overshadowing impacts on residential properties to the east i.e. along Marlborough Street.

## 5.0 Policy and Context

### 5.1. National Policy / Guidance

5.1.1 The **National Planning Framework (NPF)** is the Government's high-level strategic plan for shaping the future growth and development of the country to the year 2040. A key element of the NPF is a commitment towards 'compact growth', which focuses on a more efficient use of land and resources through reusing previously developed or under-utilised land and buildings. It contains a number of policy objectives that articulate the delivery of compact urban growth as follows:

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 6 aims to regenerate cities with increased housing and employment;
- NPO 11 outlines a presumption in favour of development in existing settlements, subject to appropriate planning standards
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking
- NPO 33 prioritises new homes that support sustainable development at an appropriate scale relative to location

5.1.2 Following the theme of ‘compact urban growth’ and NPO 13, **Urban Development and Building Heights, Guidelines for Planning Authorities (2018)** outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.

5.1.3 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)** sets out the key planning principles which should guide the assessment of planning applications for development in urban areas.

5.1.4 **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)** sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking.

## 5.2. Development Plan

5.2.1 The site is zoned ‘Z5’ in the Dublin City Development Plan 2016-2022, the objective for which is ‘*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.*’ The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. Residential use is a ‘Permissible Use’ within this zoning objective. The site is also within the designated O’Connell Street Architectural Conservation Area (ACA).

- 5.2.2 Section 4.5.3.1 relates to urban density and promotes sustainable density, compact development, and the efficient use of urban land. Chapter 5 outlines the Council's approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity.
- 5.2.3 Chapter 11 of the Plan deals with Built Heritage and Culture. Section 11.1.5.4 states that the Council will seek to ensure that development proposals within ACA's complement the character of the area, including the setting of protected structures. Relevant policies include (in summary):
- CHC1** To seek the preservation of the built heritage of the city.
- CHC2** To protect the special interest of protected structures and their curtilage.
- CHC4** To protect the special interest and character of all Conservation Areas.
- 5.2.4 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 "Design, Principles & Standards" provides design principles outlining that development should respect and enhance its context.
- 5.2.5 Section 16.2.2.2 discusses 'Infill Development' i.e. gap sites within existing areas of established urban form. It is particularly important that such development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.
- 5.2.6 Section 16.7.2 includes height limits for development, including a 16m restriction for the Outer City and a 24m restriction for development within 500m of rail hubs.
- 5.2.7 Section 16.10.8 deals with 'Backland Development'. It states that the Council will allow for comprehensive backland development where the opportunity exists.

### 5.3. **Natural Heritage Designations**

The nearest designation to the site is the Royal Canal pNHA (c. 1.2km to the east). In terms of Natura 2000 sites, the South Dublin Bay and River Tolka Estuary SPA is located approximately 2.5km to the northeast, while South Dublin Bay SAC is located approximately 3.5km to the southeast.

#### 5.4. **Environmental Impact Assessment - Preliminary Examination**

Having regard to the nature and scale of the proposed development, the brownfield nature of the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

The decision of DCC to grant permission has been appealed by Club Travel Ltd, of 30 Abbey Street Lower. The grounds of appeal can be summarised as follows:

- The 3-storey over ground floor return to the rear of No. 30 provides office accommodation at all levels except the top half-floor, which accommodates staff amenity facilities. Details of planning permissions and Fire Safety Certificates for these developments are provided in the appeal.
- The development proposes alterations to the west wall of No. 30 (the 'party wall') by covering the windows to the first-floor offices.
- The party wall is in joint ownership of the applicant and the appellant. In the absence of the appellant's consent, the applicant has not established legal consent to carry out the works and the application is, therefore, invalid in accordance with Planning and Development Regulations.
- Under the terms of the Land and Conveyancing Law Reform Act (2009), the appellant contends that the only way the applicant can carry out the works is by mutual agreement and that section 46(3) of the Act prohibits the authorisation of works which would result in interference or loss of any easement of light or other easement / right relating to the party structure.
- With regard to the planning status of the existing windows, the appellant contends that they may have replaced pre-existing windows serving a



workshop. The windows predate both the preparation of a fire safety certificate application in 1999 and the appellant's acquisition of the property, and may predate the 1963 Planning Act. No planning issue regarding the windows has previously been raised by the applicant or the planning authority.

- The Fire Safety Certificate for No. 30 (Ref. 01/1245) has approved the fitting of 1-hour fire resistant heat activated shutters to the windows in the party wall. The proposed covering of the windows is not, therefore, either necessary or the only way to make the current situation safe.
- The appellant's property will be adversely affected as a result of overshadowing and loss of light to its offices and associated accommodation. The applicant has provided no assessment or mitigation in this respect.
- By reason of its excessive height, bulk and deleterious impact on adjoining properties, the proposed development is out of character with surrounding properties and should not be granted.
- The development of housing and the repopulation of the city centre is welcomed. However, development must be carried out with due consideration for existing properties and legal requirements.

## 6.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows:

- DCC have accepted the application as being valid and any grant of permission would not solely entitle the applicant to carry out the development.
- The only reason the applicant proposes to carry out the covering of the windows is due to the unauthorised insertion of the windows and the resulting fire hazard concerns. This unauthorised development should not prevent the development of the applicant's property, notwithstanding that enforcement proceedings may not be feasible due to time elapsed.
- Reference is also made to unauthorised works on the appellants property including a smoking terrace and a fire escape which involves fixtures to applicant's side of the wall.

- The applicant is entitled to erect fixtures to their side of a shared party wall without the obligation to consult the co-owner.
- The provisions of the Land and Conveyancing Law Reform Act (2009) are outside the remit of the planning process. However, section 45 of the Act facilitates development for which planning permission has been obtained.
- A 1999 planning application (DCC Reg. Ref. 1359/99) showed only one small window on the party wall at 1<sup>st</sup> floor level, which was in use as a jewellery workshop. A subsequent 2002 application (DCC Reg. Ref. 0074/02) showed the subject windows as 'existing' thereby indicating that they were illegally inserted at some time between 1999 and 2002. The change of use from jewellery workshop to office was not referenced in any of the permissions.
- The applicant would have objected to any proposed insertion of the windows on the party wall on grounds of overlooking, light and privacy, as well as the adverse impact for the future potential of the applicant's property.
- The appellant has not provided any evidence that the windows pre-dated the 1999 planning application.
- The windows remain as a serious fire hazard and the external 1-hr resistant heat activated shutters approved under the Fire Safety Certificate (Reg. Ref. No. 01/1245) have not been erected. The appellant has not indicated that they have been installed internally and there is no evidence that the Fire Safety Certificate relates to the 1<sup>st</sup> floor level.
- Reference is made to the DCC planner's comments on the matter of the existing windows and the acceptability of the proposal in general.
- The application drawings accurately indicate the levels of the proposed development, which would be in keeping with the height and scale of surrounding development.

### 6.3. Planning Authority Response

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

## 6.4. Observations

A TII submission recommends conditions relating to the protection of the Luas infrastructure and services, as well as potential 'section 49' contribution requirements relating to the Luas Cross City project.

## 7.0 Assessment

7.1. Having inspected the site and examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and having regard to relevant local/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Policy
- Visual amenity and architectural heritage
- Residential amenity
- Validity and ownership
- Impact on surrounding properties
- Traffic and transport

## 7.2 Policy

7.2.1 The proposal involves the construction of a residential development on lands zoned in the Development Plan for a mix of uses, which permits residential use. Consistent with national policy and guidance, the Development Plan also seeks to encourage the development of underutilised lands in appropriate locations. The rear portion of the site is mainly restricted to single storey and the site is generally surrounded by backland development of a much more significant height and scale. Accordingly, I consider that the site is underutilised and there is no objection in principle to the development of the site for residential use.

7.2.2 The proposed development, together with the recent conversion of the upper floors of no. 31, would result in a total of 6 apartments on a stated site area of 0.018 hectares. Whilst this equates to a high residential density of c. 333 units per hectare, it must be noted that it is at a very limited scale. The proposed development would be 4 storeys over the existing ground floor, resulting in a maximum height of c.

16.152 metres above the adjoining road level of Harbour Court, which is lower than the 24-metre height limit for the city centre as per the Development Plan.

- 7.2.3 The 2007 guidelines on '*Sustainable Residential Development in Urban Areas*' recommend that increased densities (minimum 50 per hectare) should be promoted within 500 metres walking distance of a bus stop, or within 1km of a rail stop/station. SPPR 1 of the 2018 guidelines on '*Urban Development and Building Heights*' also supports increased building height and density in locations with good transport accessibility, particularly city cores, and prohibits blanket numerical limitations on building height.
- 7.2.4 Section 3 of the guidelines on '*Urban Development and Building Heights*' sets out the principles for the assessment of applications, which should adopt a general presumption in favour of increased height in town/city cores and urban locations with good public transport accessibility.
- 7.2.5 The subject site is located in the city centre and benefits from proximity to a wide range of community, employment and business services. The Abbey Street Lower entrance to the site also directly adjoins a LUAS stop. Having regard to its central location and convenience in relation to public transport and other services, I consider that the site is suitable in principle for increased height and density. The suitability of the proposed height and scale will be further assessed on the basis of impacts on visual amenity, architectural heritage and adjoining properties.

### 7.3 **Visual amenity and architectural heritage**

- 7.3.1 Notwithstanding the potential for increased height and density, it is important that any such proposal responds positively to its context and protects the character of an area, particularly in relation to Protected Structures and Conservation Areas. The subject building and the adjoining buildings are not designated as Protected Structures. I note that the site is within the O'Connell Street ACA and that it is given a 'regional' rating in the NIAH. The NIAH outlines that No. 31 was built as part of a single composition of three identical elevations (including no.'s 32 & 33) to Abbey Street and highlights the remaining features and shared motifs along this terrace.
- 7.3.2 However, having regard to the location of the proposed development to the extreme rear of the site bounding onto Harbour Court, I consider that the proposed development would not be visible from Abbey Street and would not have an impact

on the front façade of the building and its adjoining terrace. Furthermore, I am satisfied that, in this case, the architectural heritage value of the area is not evident to the rear of the terrace, which has been subject to significant modern alterations and extensions. Accordingly, I do not consider that the proposed development would adversely impact on the architectural heritage of the area.

7.3.3 Section 3.2 of the '*Urban Development and Building Heights*' guidelines sets out the criteria for assessing proposals at the scale of the relevant neighbourhood or street. In summary, it is stated that developments should:

- Respond to the overall natural and built environment,
- Avoid monolithic appearance in terms of form and materials,
- Improve legibility and integrate in a cohesive manner,
- Contribute to the mix of uses and/or building/dwelling typologies.

7.3.4 Development along Harbour Court is characterised by a wide variety of building style and scale, including buildings of 5+ storeys of significant bulk. At present, the subject site would be comparatively low-profile, and I would have no objection in principle to 5-storey development on the site as proposed. The vertical emphasis of the south (rear) elevation is reflective of traditional plot widths and a brick finish will also help to respond to the surrounding context. The proposal involves staggered building lines at various levels and an irregular plan form, which helps to breakdown the scale of the building and avoids a monolithic appearance.

7.3.5 Of particular relevance in this case, I believe, is the substandard quality of the environment along Harbour Court. Its predominant use as a service access has meant that the area is lacking in active frontage and passive surveillance, which has contributed to a generally unattractive city-centre route. However, this can be incrementally addressed through the regeneration of backland sites with more appropriate uses and higher-quality urban design.

7.3.6 The proposed re-development of the site with a residential building would be a significant improvement to the existing environment. It would provide a much-improved façade onto Harbour Court and the residential use of the building would provide added vibrancy and surveillance to a neglected area. While an active ground-floor use would also be welcomed, I consider that the proposed development

would result in improved legibility and a better mix of uses in the area, which may facilitate more appropriate development in the future, including street-level activity.

7.3.7 In conclusion, I consider that there is a recognised need to achieve development of greater scale and density on underutilised sites like this. The proposed design approach is an appropriate response to the site context and the proposal will positively contribute to the mix of uses and building typologies in the area. The proposed development would be consistent with the height and scale of surrounding development and, having regard to its currently degraded condition, would result in an improvement to the visual amenity of the area.

#### 7.4 Residential amenity

7.4.1 While SPPR 1 of *'Design Standards for New Apartments'* sets out a requirement for a mix of apartment sizes / types, SPPR 2 clarifies that urban infill schemes, on sites of up to 0.25 hectares where up to 9 residential units are proposed, shall not be subject to a restriction on dwelling mix provided no more than 50% of the development comprises studio-type units. The proposed development site is less than 0.25 hectares and proposes less than 9 units, none of which are studio units. Accordingly, I have no objection to the dwelling mix proposed.

7.4.2 I have reviewed the overall floor areas for each unit and the internal room dimensions and areas, all of which comply with the minimum requirements as set out in Appendix 1. All three proposed units are dual-aspect and the floor-to-ceiling heights are at least 2.6 metres, which exceeds the minimum requirement for 2.4 metres.

7.4.3 In terms of external amenity space, I note that no communal space is proposed, and whilst adequate private amenity space is proposed for the duplex apartment, none is proposed for the two 1-bedroom units. Again, sections 3.39 and 4.12 of *'Design Standards for New Apartments'* provides that amenity space standards on urban infill sites up to 0.25ha may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality. Having regard to the central location of the site and the quantity and quality of internal residential space proposed, I consider that communal and private amenity space requirements can be disregarded in this case.

7.4.4 Having regard to the above, I consider that the proposed development provides an appropriate level of residential amenity for the prospective occupants of the units. A

condition should apply requiring the upgrading of the remainder of the rooftop area between the proposed development and the rear façade of the Abbey Street terrace.

## **7.5 Validity and ownership**

- 7.5.1. The validation of a planning application is the responsibility of the planning authority and the Board has no powers to deem the application 'invalid' as requested in the appeal. In this case the planning authority deemed the application to be valid, before subsequently requesting clarification on the legal right of the applicant to carry out the proposed works to the windows along the shared boundary. The applicant's response contended that the boundary between the properties is the centre line of the shared party wall and that the applicant is entitled to 'fix' to their side of that boundary. The planning authority subsequently issued a decision to grant the proposed development, including the proposed works to the shared boundary. I acknowledge that the appellant disputes the matter and asserts that written consent is required from all parties involved in the shared ownership of the party wall.
- 7.5.2. Section 5.13 of 'Development Management, Guidelines for Planning Authorities (June 2007)' outlines that the planning system is not designed as a mechanism for resolving such disputes and that section 34(13) of the Planning Act clarifies that a person is not entitled solely by reason of a permission to carry out any development. It goes on to state that, only where it is clear from a response to a further information request that the applicant does not have sufficient legal interest should permission be refused on that basis.
- 7.5.3. I do not consider that the application and appeal documents have clearly established that that the applicant does not have sufficient legal interest to carry out the works. Accordingly, should the Board be minded to grant permission, I do not have any objection on these grounds and consider that this is ultimately a civil matter to be resolved between the relevant parties, having regard to the provisions of section 34(13) of the Act. This is not to say, however, that the impacts of the proposed works are acceptable. That matter is assessed in the following section of my report.

## 7.6 Impacts on surrounding properties

### Property to the North

- 7.6.1. The proposed apartments face the rear façade of No.'s 31 and 32/33 Abbey Street Lower. The upper floors of no. 31 have recently been converted to apartments with bedrooms to the rear (south-facing) façade. The upper floors of 32/33 are currently in use as offices, although there is a current application with DCC to convert the 3<sup>rd</sup> floor to residential use.
- 7.6.2. The separation distance between the proposed and existing windows to the north varies from c. 7.5 to 11 metres. To address any overlooking of existing properties, the two north-facing bathrooms at second and third floor level will be fitted with opaque glazing. The proposed north-facing windows at 4<sup>th</sup> floor level will be above the highest (3<sup>rd</sup> floor) south-facing windows of no.'s 31-33 and I am satisfied that direct overlooking will not occur. The proposed north-facing bedroom windows are c. 10.5 metres away and have been positioned obliquely to avoid any direct overlooking. A privacy screen consisting of vertical fins will also be installed to the north of the bedroom windows.
- 7.6.3. Section 16.10.3 of the Development Plan acknowledges that a separation of 22 m was traditionally sought between the rear of 2-storey dwellings, but that this requirement can be relaxed subject to appropriate design and protection of privacy. Whilst the appeal case relates to apartments, not housing, I consider that a relaxation of the 22m separation distance should be similarly applicable, particularly in a city-centre location where high-density development should be encouraged. I am satisfied that the proposed development has been appropriately designed and mitigated to ensure that the distance from the rear of the properties to the north is sufficient and will not seriously detract from these properties through overlooking.
- 7.6.4. I note that the application did not include an assessment of overshadowing and daylight impacts. In this regard the BRE guidance on '*Site Layout Planning for Daylight and Sunlight*' is cited in the national guidance documents on residential / apartment development. In the case of opposing buildings, the BRE guidance recommends that significant effects are unlikely if the profile of the proposed development is below a line of 25 degrees measured from the centre point of existing windows.



7.6.5. On that basis I have measured the angle between the proposed development and existing windows to the north and I consider that the existing windows at 2<sup>nd</sup> and 3<sup>rd</sup> floor level are not likely to be affected. The proposed development would encroach on the 25-degree measurement taken from the existing first floor windows. However, given that these windows are south-facing and serve bedrooms / offices, not living accommodation, I consider that effects would be acceptable in this case.

#### Property to the West

7.6.6. To the immediate west of the site, the rear of no.'s 32/33 is entirely covered by a ground floor pitched roof with no openings. Further west, any windows serving no. 34 are adequately distanced from the proposed development to avoid any significant impact. Accordingly, having regard to the nature and position of existing development to the west of the site, I am satisfied that the proposed development will not have any adverse overlooking or overshadowing impacts.

#### Property to the South

7.6.7. The proposed development bounds onto Harbour Court, which provides a separation distance of c. 6 metres from existing development on its southern side. The buildings directly south of the proposed development range in height from 2 to 4 storey and the facades are generally in poor condition. While the ground and 1<sup>st</sup> floor levels are used for servicing and storage purposes, the use of the upper floors was not clear from my site inspection and an examination of the planning register. In any case, I consider that the improved usage and appearance along both sides of Harbour Court should be encouraged. And while this may result in some element of overlooking between properties, it is ultimately in the best interests of the amenities of the area. I do note that the proposed box windows on the southern façade at 1<sup>st</sup> and 2<sup>nd</sup> floor level will overhang Harbour Court lane by c. 575mm, which would further reduce the separation distance from opposing properties and set an undesirable precedent for reciprocation on the opposite side of the lane. The existing building line along Harbour Court should be maintained and a suitable condition should apply to amend this proposal in the event of a grant of permission.

7.6.8. Any overshadowing or daylight impacts on property to the south is unlikely to be significant having regard to the pathway of the sun. Accordingly, I have no objection

in terms of potential overlooking or overshadowing impacts on surrounding property to the south of site.

#### Property to the East

- 7.6.9. The potential impacts of the development on the appellant's property to the east (no. 30) is the central issue of this appeal. Aside from the questions of legal consent and ownership, which I have already addressed in this report, the appellant raises concerns in relation to the adverse impacts of the development on their property as a result of overshadowing and loss of light to 'its office and other accommodation'. While the appellant's concerns clearly relate to the proposed covering of the windows, they also appear to relate to impacts on amenity facilities at 3<sup>rd</sup> floor level, comprising what appears to be an unenclosed amenity space or 'smoking area'.
- 7.6.10 In response, the applicant contends that the elements of the appellant's property that will be affected are unauthorised and, accordingly, should not prevent the development of the subject site. I note that this assertion was effectively supported by the planning authority in its decision to grant permission. And while I am conscious that the appeal process is not a mechanism to determine questions of unauthorised development, I believe it is appropriate and relevant to consider the planning status of no. 30 on the basis of the information provided with the application and appeal documents.
- 7.6.11 The applicant refers to drawings associated with a 1999 planning application (DCC Reg. Ref. 1359/99), which showed only one small window in the party wall at 1<sup>st</sup> floor level, which was also indicated as being in use as a jewellery workshop. I have confirmed that the applicant's representation of these drawings is accurate by reference to the corresponding appeal file records (ABP Ref. 29N.112895). Drawings for a 2002 application (DCC Reg. Ref. 0074/02) for the construction of toilet and canteen facilities at 3<sup>rd</sup> floor level are also referenced by the applicant, which appear to illustrate the presence of three additional 'existing' windows at 1<sup>st</sup> floor level in the party wall.
- 7.6.12 The applicant's contention is that, at some stage between the applications of 1999 and 2002, these windows were added to the party wall and the use of the 1<sup>st</sup> floor level was changed from a workshop to offices, without the benefit of planning

permission. I also note that the applicant refers to the 3<sup>rd</sup> floor 'smoking area' as being unauthorised.

7.6.13 The appellant's contention is that the windows may have replaced pre-existing workshop windows, which may also pre-date the 1963 Planning Act. The appellant is clear that they pre-date the preparation of a fire safety certificate application in 1999 and the appellant's acquisition of the property (25 years ago), and states that there has been no issue previously raised regarding the planning status of the property.

7.6.14 On balance, I believe that there are significant outstanding questions regarding the planning status of no. 30. Firstly, whilst the appellant confirms the previous use of the 1<sup>st</sup> floor level as a workshop, there is no explanation provided for its change of use to offices. Consistent with the contentions of the applicant, I have reviewed the planning history of the building and can find no evidence of permission to authorise this change of use.

7.6.15 Regarding the windows in the party wall, I confirm that the 1999 planning application drawings showed only one window at 1<sup>st</sup> floor level (window W5, as referred to by the appellant), adjacent to the rear façade of no. 31. If, as the appellant contends, four other windows existed at this level (i.e. windows W1, W2, W3 and W4), I can see no reasonable explanation for their omission in the 1999 application drawings.

7.6.16 I note that the appellant also refers to the existence of the windows at the time of the preparation of a Fire Safety Certificate application in 1999. However, whilst the purported drawings submitted with the appeal (drawing no.'s F/1, F/2 and F/3, dated 9<sup>th</sup> March 2001) indicate 4 windows at first floor level (W1, W2, W3 and W4), they do not include the only window indicated in the 1999 planning application (i.e. W5). The drawings do not clarify whether the windows (W1, W2, W3 and W4) were existing or proposed and I note that the size and position of the windows is not an accurate reflection of those currently in place. Although the section drawing included on drawing no. F/1 would indicate that UPVC windows were 'fitted last year', this cannot be definitively linked to windows W1, W2, W3 and W4. Furthermore, the drawings are not stamped in any manner to confirm that they are an official record and I cannot, therefore, confirm their veracity.

7.6.17 I find the appellant's claims that the windows 'may' have replaced pre-existing workshop windows, and 'may' pre-date the 1963 Planning Act, unconvincing.

Furthermore, I consider that the pattern and proportions of the window openings are clearly not consistent with those of a pre-1963 vintage and are most likely a more modern installation. Whether or not they predate the appellant's acquisition of the property and whether any previous planning enforcement action took place is irrelevant.

7.6.18 At third floor level, it would appear clear that the toilet and canteen facilities permitted under P.A. Ref. 0074/02 did not include the existing window in the party wall or the existing structure comprising the 'smoking area'. Furthermore, the inconsistencies regarding the party wall openings are further confused by the inclusion in the drawings for this application of an additional three windows at second floor level, which were neither previously permitted nor currently exist.

7.6.19 While I again highlight that this is not a forum to determine questions of unauthorised development, I consider that the matter is important given that the impact on the windows and associated facilities is the central basis of the appellant's argument. On that basis, and having regard to the stated contentions of the applicant and the planning authority in the making of the decision, I consider that the onus is on the appellant to clearly establish the compliant planning status of the property and that sufficient opportunity has been afforded to the appellant to do so. For the reasons outlined above, I do not consider that the appellant has clearly clarified the matter and in the absence of same I would consider it unreasonable to obstruct the development potential of the applicant's site.

7.6.20 Therefore, in the consideration of this appeal, I do not consider it appropriate to raise concern in relation to the potential impacts on the existing openings in the party wall and the 'smoking area' at 3<sup>rd</sup> floor level. Otherwise, I am satisfied that the proposed development would not adversely impact on No. 30 by reason of overlooking or overshadowing and I have no objection in this regard.

## **7.7 Traffic and Transport**

7.7.1. Having regard to the central location of the site and the proximity to public transport services I do not consider that car-parking provision is required in this case. Whilst the DCC planner's report indicated that the absence of cycle parking was also acceptable given the nature and scale of the proposal, I note that condition no. 4 (c)

was included in the decision to require cycle parking provision. This would appear to be an error and I would consider it unnecessary as outlined in the planner's report.

7.7.2. I note the comments of the TII in relation to the need to protect and contribute towards LUAS infrastructure. I consider that this can be adequately addressed by the inclusion of conditions as proposed in the DCC decision.

## **8.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development, and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the 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**

I recommend that planning permission for the proposed development should be granted, subject to conditions, for the reason and considerations, as set out below.

## **10.0 Reasons and Considerations**

Having regard to the city-centre location of the site in close proximity to a wide range of public transport options and community and social facilities, and to the provisions of the Dublin City Council Development Plan 2016-2022; the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2020); the Urban Development and Building Heights, Guidelines for Planning Authorities (2018); and the National Planning Framework, which seeks to direct new residential development in cities into built-up serviced areas, and having regard to the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would not seriously injure the amenities of surrounding properties or the visual amenities of the area, would not seriously detract from the character or setting of the O'Connell Street Architectural Conservation Area, and would be acceptable in terms of pedestrian and

traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 22nd day of June, 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 proposed development shall be amended as follows:
  - a) the overhang of Harbour Court, caused by the proposed box windows at first and second floor level, shall be removed and shall be replaced with glazing that is flush with the remainder of the proposed southern façade.
  - b) The rooftop area between the proposed apartments and the rear façade of No. 31 Lower Abbey Street shall be suitably surfaced and landscaped.

Proposals in respect of (a) and (b) above shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of orderly development.

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

**Reason:** In the interest of visual amenity.

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include:
  - a) details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste, and
  - b) a construction and demolition method statement, prepared in accordance with the Transport Infrastructure Ireland 'Code of engineering practice for works on, near, or adjacent the Luas light rail system', demonstrating that there shall be no adverse impact on the operation and safety of all Luas infrastructure.

**Reason:** In the interest of public safety and residential amenity.

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

**Reason:** In the interest of public health

6. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Irish Water.

**Reason:** In the interest of public health

7. Proposals for a development name, numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all signs and

apartment numbers shall be provided in accordance with the agreed scheme. The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority. No advertisements / marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).

**Reason:** In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

9. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

10. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management



Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

**Reason:** In the interest of sustainable waste management.

11. Any alterations to the public road shall be in accordance with the requirements of the planning authority and where required, all repairs to the public road and services shall be carried out to the satisfaction of the planning authority at the applicant’s expense.

**Reason:** In the interests of clarity, public safety and amenity.

12. 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.

13. 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 and particulars 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 and residential amenities.

14. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities

shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

15. 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.

16. 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.

17. The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City project (St. Stephen's Green to Broombridge Line), in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Stephen Ward  
Senior Planning Inspector  
22<sup>nd</sup> February 2021