



An
Bord
Pleanála

Inspector's Report ABP-309208-21.

Development	Permission for redevelopment, conservation, refurbishment and change of use of No. 134 James Street, Dublin 8 D08 V6H (Protected Structure) from recording / rehearsal studio to 20 bedroom hotel.
Location	No. 134 James Street, Dublin 8 D08 V6H.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2410/20.
Applicant(s)	Kaivalya Properties Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions.
Type of Appeal	First Party
Appellant(s)	Kaivalya Properties Ltd.
Observer(s)	None.
Date of Site Inspection	01/04/2021.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located at the corner of James's Street and Steeven's Lane within Dublin City Centre, south of the River Liffey. St. Patrick's University Hospital lies to the west, and across Steeven's Lane from the site. The LUAS line runs along the western boundary of the site, and within 8m of the subject site, connecting St. James's Hospital to the south west and Heuston Station to the north of the site. The closest LUAS stop to the site is at St. James's Hospital, approximately 290m away and Heuston Station is approximately 360m from the site.
- 1.2. The building on the subject site, known as the Jam Factory and identified as a protected structure in the Dublin City Council Development Plan 2016-2022, PS no. 4056, is described as a formerly terraced two bay four-storey house built c1750, now an end-of-terrace and in use as a studio. The substantial building makes a strong impression on the streetscape, with its rendered façade setting it apart from its neighbouring red brick buildings.
- 1.3. The subject application site has a stated area of 268m² and the existing buildings on the site have a stated floor area of 484.92m². The protected structure, to be retained has a floor area of 328.22m² and the building to be demolished has a floor area of 156.7m².

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for permission for the redevelopment, conservation, refurbishment and change of use of No. 134 James's Street, Dublin 8, D08 v6H (Protected Structure) to provide a 20-bedroom hotel. The proposed development consists of or comprises the carrying out of works to a protected structure. The proposed development will consist of
 - (a) internal and external modifications, refurbishment and change of use of the existing protected structure and two-storey bow ended return from its current recording/rehearsal use to a hotel;
 - (b) demolition of the existing two-storey workshop/music rehearsal space building to the rear of the existing protected structure and construction of six-storey over lower ground floor annex building with rooftop cafe,

5th floor terrace facing Steeven's Lane and two glazed link bridges over two floors to No. 134 James's Street;

- (c) external courtyard fronting Steeven's Lane;
- (d) all associated site development works, including water/wastewater services, surface water attenuation, bicycle parking, landscaping, boundary treatments and signage.

The proposed development includes a customer entrance from James's Street and a service entrance to the rear of the property accessible from Steeven's Lane,

all at No. 134 James Street, Dublin 8 D08 V6H.

The proposed development will have a total floor area of 898.49m², which includes the retention of the protected structure, 328.22m², and the construction of the new annex building with a floor area of 581.1m².

2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form;
- Cover letter -
The letter sets out the details, plans and reports submitted in support of the proposed development.
- Planning & Design Statement -
This document, prepared by HW Planning & Kiosk Architects, sets out the proposed development and context in terms of site location, pre-planning engagement, planning policy context and planning history associated with the site. Part 4 of the report details the design context submitting that the development has been conservation led and that the design approach will result in the protected structure and its existing built form to be retained, becoming increasingly prominent. The proposed new annex will sit visually independent of the retained structures which will create a visual engagement between old and new but will not physically attach in an overbearing or domineering sense.
Part 5 of the report presents an assessment of the proposed development noting that the proposed hotel complies with the zoning objective for the site

and is an appropriate and viable use. The height of the proposed annex complies with both the Dublin City Development Plan and the Urban Development and Building Height Guidelines for Planning Authorities, published in 2018. The report also notes issues relating to heritage, archaeology, access & parking and sun path analysis.

Part 6 of the report concludes that the proposed development represents a natural and positive evolution of an important city centre site on one of Dublin City's most significant streets. It is submitted that the design fully respects existing context, including conservation character, which has been advanced on the basis of sound, well considered best-practice architectural principles.

- Planning Presentation -

This document, prepared by Kiosk Architects, includes maps, plans, photographs and details of the development concept. The presentation also includes sections and details of a sun path study and 3D model views.

- Architectural Heritage Impact Assessment -

The AHIA, prepared by John Cronin & Associates, includes an introduction, methodology and Part 3 sets out the context of the development in terms of location, legal & policy framework, architectural heritage, planning history, cartographic review and historical context. Part 4 presents a description of the site including the building, which includes details of all internal floors.

Part 5 of the report presents an assessment of the significance of the proposed development, noting that the demolition of the existing extension to the rear of the Protected Structure does not form part of the curtilage of the PS and is of no architectural heritage significance. Its demolition is deemed to have no negative impact. The report also notes proposals for the exterior of the PS and concludes that the retention and repair of windows and frames will have a positive impact on the streetscape and that the proposed 3 new gable windows will not negatively impact on the building.

Internally, the report notes that the main features of significance are the staircase, sections of plain cornice and skirting in the stairwell and a mid-eighteenth century nine-over six painted timber sash window with quadrant and fillet detail to the glazing bars. The report seeks to address all elements of the original historic fabric on each floor which will be impacted by the

proposed development. Part 6 of the assessment concludes that the proposed development will provide an opportunity to conserve and restore the structure and should be granted subject to conditions relating to the conservation and repair of the street-frontage building and the bow-ended rear return under the supervision of a suitably qualified conservation consultant / architect. The assessment includes a photographic record of the building, both internally and externally, at appendix 1.

- Urban Drainage, Site Flooding and Site Services Report -
The report, prepared by Lawrence Buckley Consulting Engineers, includes an introduction and details of existing site services. The report presents proposals for the development in terms of foul drainage, storm drainage, water supply and access for deliveries and refuse. Section 7 of the report deals with flood risk noting that the site is not at risk from coastal or fluvial flooding. The development is such that it will not result in flooding elsewhere.
- Planning Stage Construction & Construction Access Report -
The report, prepared by Lawrence Buckley Consulting Engineers, includes an introduction and notes that the works have been designed from a constructability viewpoint with consideration to the corner location and proximity to LUAS, which passes within 8m of the site. The works are designed in two elements including a) alterations and works to the existing building and b) construction of new works.
- In addition to the above, the planning application included the following drawings -
 - Site survey
 - Irish Water Records
 - Watermain
 - Drainage
 - Service access
- The application also included photomontages and details of the pre-planning consultation.

2.3. Following a request for further information, the applicant submitted the following additional details to the Planning Authority:

- Revised plans and particulars
- Photomontages
- Revised engineering details
- Revised Architectural Heritage Impact Assessment
- Daylight Reception Analysis

2.4. The response submits that the proposed plot ratio of 3.34 is comparable to previously permitted development on the site and given its proximity to Heuston Station, Dublin City Centre, key employment and high frequency public transport, it is considered the most efficient use of the land. In addition, it is submitted that the proposed height accords with national policy and the Dublin City Development Plan. Increased heights have been permitted in the vicinity. Arguments are made in terms of the separation distance between the building and the protected structure, and a number of the concerns raised by the Conservation Officer and the Road Planning Division have been addressed.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission for the proposed development subject to 17 conditions including condition 3 which states as follows:

3. The development hereby approved shall be revised as follows: The rear annex building shall be reduced in height by one floor, by omitting the fourth floor which comprises three bedrooms, ensuring that the structure and enclosure on the top floor reads as a light touch feature, so that the parapet of the new brick structure does not exceed the height of the eaves of the rear wall, to reduce the impact on the architectural character and setting of the protected structure. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been

submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, planning history, internal technical reports, third party submissions and the City Development Plan policies and objectives.

The initial planning report considers that the proposed development is acceptable in principle but raises concerns in terms of plot ratio and visual and overbearing impact associated with the proposed height of the annex building proposed to the rear of the protected structure. The report further considers the comments of the Conservation Officer and the Road Planning Division and concludes that further information is required.

Following the submission of the response to the FI request, the planning report concludes that the proposed development is acceptable subject to compliance with a number of conditions. The Planning Officer recommends that permission be granted for the proposed development, subject to 17 conditions, including condition 3 which requires the omission of a floor in the annex building.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

City Archaeologist: No objection subject to compliance with condition.

Drainage Division: No objection subject to compliance with conditions.

Road Planning Division: The report sets out the details of the proposed development, the planning history and TII submission. It is noted that the footpath provision along Steeven's Lane, in particular on the east side, is of substandard width. The main pedestrian access will be via the existing entrance to No 134 James Street

from Bow Lane West and a rear pedestrian service entrance is proposed via existing gates of Steeven's Lane. It is also noted that the footpath along Steeven's Lane is to provide service access connection to Bow Lane West / James Street including refuse bin transfer and is a key pedestrian link from the site connecting to the north and Heuston Station.

The Division is concerned that the substandard footpath width could result in potential conflicts between pedestrians and the Luas Line. It is requested that the applicant review the walled front courtyard design to facilitate an increased footpath width. It is further noted that there are a number of cabinets located on the footpath along Steeven's Lane adjacent to the junction with Bow Lane West. It is not clear if the proposed courtyard entrance will conflict with existing cabinets.

The proposed development is considered acceptable in terms of cycle parking provision, no car parking provision and the principle of the proposed service arrangements. A Construction Management Plan should be conditioned for both demolition and construction phases having regard to the TII submission in the event of a grant of permission. Further information is required. Following the submission of the response to the FI request, the Road Planning Division submitted a further report advising no objection to the proposed development subject to compliance with conditions.

Conservation Officer: Report notes that the existing building on the site is a protected structure RPS No. 4056 and is located within an area zoned Z4. The building has also been surveyed by the NIAH (NIAH Ref. 50080308) The Jam Factory, as being of Architectural interest and has been afforded a regional rating. The building is also identified as a Building Monument DU018-440---- and is scheduled for inclusion in the next revision of the Record of Protected Monuments and Sites due to its

architectural and archaeological significance as an early building.

The Conservation Officers report advises support of the proposed works in principle, subject to the achievement of sufficient conservation gain in relation to the careful repair and interventions of the Protected Structure. A number of concerns are raised with regard to the information submitted in terms of the current detail, significance and condition of the protected structure and the proposed works that are to be undertaken. Further information is required to be submitted in relation to a number of elements. It is particularly noted that the very rare early 18th century historic windows and architraves on the rear elevation underwent careful repair works under the BHIS Conservation Grant Scheme in 2014 supported by DCHG and DCC. Concern is raised that these windows are shown as replaced with one-over-one sashes on the submitted architect drawings. This error shows a lack of understanding of the significance of the fabric.

In addition, concern is raised with regard to the reference to 'render thru colour' in relation to the proposed repair works to the protected structure. This must be omitted and only breathable materials such as lime render shall be used on the PS. Concern is also raised in terms of inadequate structural information, fire upgrade works, service routes and roof works provided.

It is considered that the proposed new building is too high relative to the protected structure particularly as it is only 2.25m from the PS. It is recommended that the building is reduced by 1 floor with the loss of three bedrooms. The proposed green wall on the new building is appealing but unlikely to success within the tight space. A light coloured glazed brick should be considered and glazing opes to ensure some animation of the façade which the PS looks out on.

Following the submission of the response to the FI request, the Conservation Officer noted the additional information submitted but advises that there are still several items that remain in question and will need detailed submissions by way of condition. The omission of the gable windows is welcome. The Conservation Officer recommends a number of conditions.

3.2.3. Prescribed Bodies

TII: The report notes that the development is located in close proximity to the Luas line and to the Luas Overhead Conductor System. There should be no adverse impacts on Luas operation and safety.

3.2.4. Third Party Submissions

There is 1 no. third party objection/submission noted on the planning authority file from Diageo Ireland. The issues raised are summarised as follows:

- The submission notes the proximity of the subject site to the existing brewery on a 50 acres site which has been in operation for more than 250 years. Diageo is keen to protect the 24-hour operation of the brewery and to ensure that proposed uses in the vicinity are compatible.
- The submission notes the development plans for the Diageo site, being one of only two sites in Dublin City, the other being Dublin Port, zoned Z7 where it is the stated objective 'to provide for the protection and creation of industrial uses and facilitate opportunities for employment creation'.
- It is considered that the proposed development would result in a noise sensitive use in the proximity of an operational brewery.
- It is requested that the applicant be requested to submit a) detailed measures to ensure that noise levels within the building are acceptable and b) a noise report which assesses existing noise and proposes mitigation measures to ensure that noise levels within the proposed hotel are at a level at which residents would be comfortable. Measures should include a contingency for increased operational noise on the brewery site.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

PA ref 2474/09: Permission granted for the demolition of the existing workshop/music rehearsal space building at the rear of the existing protected structure and the construction of 6 storey mixed use building of 2 levels of raised basement to the rear and partly abutting and linking to the protected structure. The development also provides for the refurbishment and change of use of the protected structure from current recording / rehearsal space use to a 6-bedroom bed and breakfast use.

The Board will note that condition 2 of this grant of planning permission, amongst other things, required the omission of the proposed fourth floor from the proposed rear extension. Revised plans and particulars were required to be submitted prior to commencement of development. The reason for the condition was to protect the character and setting of the existing protected structure on the site, and to provide for an improved standard of amenity.

As such, planning permission was granted for only 5 storeys in the rear building. There was no appeal to the Board in this regard.

PA ref 2474/09x1: Permission granted to extend the validity of the above permission.

PA ref 2441/17: Permission refused for the demolition of the existing two storey workshop / music rehearsal space building to the rear of the existing protected structure and the construction of two, five storey split level, five-bedroom townhouses with residential guest house use. The reasons for refusal are summarised as follows:

1. Inadequate private open space provided
2. Provision of under-croft car parking in close proximity to the operation of the LUAS would obstruct road users and encourage additional vehicular movements along the LUAS line.

3. The development would not provide safe access and egress from the two houses and windows would prejudice the redevelopment potential of neighbouring property.

PA ref 4595/17: Permission refused for the demolition of the existing two storey workshop / music rehearsal space building to the rear of the existing protected structure. Full refurbishment and change of use of the existing PS from its current recording / rehearsal space use to a 6-bedroom guest house and the construction of a 6 storey extension (5 over basement) to the rear to provide a 16 bed guesthouse. The reasons for refusal are summarised as follows:

1. Scale, location and excessive plot ratio and site coverage constitutes over development of the site contrary to Section 16.11 of the Development Plan.
2. The development would prejudice the redevelopment potential of neighbouring property.
3. The rear extension due to scale and bulk would adversely affect the character and setting of the protected structure.

5.0 Policy and Context

5.1. Architectural Heritage Protection Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht 2011).

5.1.1. The proposed development involves works to a protected structure and as such, *'Architectural Heritage Protection, Guidelines for Planning Authorities'* are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52(1), the Minister is obliged to issue guidelines to planning authorities concerning development objectives:

- a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and
- b) for preserving the character of architectural conservation areas.

- 5.1.2. The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures. The guidelines seek to encourage the sympathetic maintenance, adaption and re-use of buildings of architectural heritage.
- 5.1.3. Chapter 13 deals with Curtilage and Attendant Grounds and Section 13.5 relates to Development within the Curtilage of a Protected Structure and Section 13.8 of the Guidelines relate to Other Development Affecting the Setting of a Protected Structure or an Architectural Conservation Area. The following sections are considered relevant:
- Section 13.8.1
 - Section 13.8.2
 - Section 13.8.3

5.2. National Inventory of Architectural Heritage

- 5.2.1. The National Inventory of Architectural Heritage (NIAH) is a unit within the Department of Environment, Heritage and Local Government engaged in compiling an evaluated record of the architectural heritage of Ireland. Where an NIAH survey of a particular area has been published, relevant planning authorities will be provided with information on structures within the area of that survey. The planning authority can assess the content of, and the evaluations in, an NIAH survey with a view to the inclusion of structures in the RPS according to the criteria outlined in these guidelines.
- 5.2.2. This area of Dublin City Centre includes a number of protected structures and structures listed on the NIAH. The proposed development before the Board relates to a development to a protected structure and The Jam Factory, dated 1730-1770, is included in the NIAH as follows:
- The Jam Factory, James's Street Dublin, NIAH ref **50080308** – Regional Rating.

Description:

Formerly terraced two-bay four-storey house, built c.1750, now end-of-terrace, and in use as studio. Pitched slate roof behind raised rendered

parapet having moulded coping. Cast-iron rainwater goods, terracotta ridge tiles, red brick and rendered chimneystacks. Chimney breast abutting west elevation. Lined-and-ruled render to walls, channelled render quoins, plinth course and cast-iron wall-ties. Square-headed window openings, painted masonry sills and one-over-one pane timber sash windows, replacement uPVC windows to third floor. Some small-pane timber sash windows to rear elevation. Segmental-headed window opening to ground floor, timber framed window. Round-headed door opening set within round-headed recess, plain fanlight over double-leaf timber doors, granite step.

Appraisal

This substantial building makes a strong impression on the streetscape, its rendered façade setting it apart from its neighbouring red brick buildings. A relatively unadorned façade is enhanced by the retention of timber sash windows, which lend a patina of age to the structure. Its form and scale is indicative of its status, and Thom's Directory shows that it had a long occupancy by merchants, such as William Ruddell, a tobacco, snuff and cigar manufacturer, who resided there for several decades until the 1920s. The large arched window to the ground floor may have been an alteration for commercial reasons, or it may have formed an integral carriage arch to access the rear, before the demolition of the neighbouring building, no.135.

5.3. Development Plan

- 5.3.1. The Dublin City Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. Under the Plan, the subject site is zoned Z4: District Centres, where it is the stated objective 'to provide for and improve mixed-services facilities'.
- 5.3.2. The Plan states that as the top tier of the urban centres outside the city centre, key district centres have been identified which will provide a comprehensive range of commercial and community services. To maintain their role as district centres, new development should enhance their attractiveness and safety for pedestrians and a diversity of uses should be promoted to maintain their vitality throughout the day and evening. In this regard, opportunity should be taken to use the levels above ground

level for additional commercial/retail/ services or residential use with appropriate social facilities. Higher densities will be permitted in district centres, particularly where they are well served by public transport. In terms of permissible uses, hotels are permitted uses under the Z4 zoning objective.

5.3.3. The subject building is a Protected Structure. Chapter 11 of the CDP deals with Built Heritage and Culture and Section 11.1.5.4 deals with Architectural Conservation Areas and Conservation Areas where it is stated that DCC will seek 'to ensure that development proposals within all Architectural Conservation Areas and Conservation Areas complement the character of the area, including the setting of protected structures, and comply with development standards'.

5.3.4. The following policies are relevant in the context of the proposed development site:

Policy CHC1: To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.

Policy CHC2: It is the policy of Dublin City Council to ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest
- b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances
- c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials
- d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure
- e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works

- f) Have regard to ecological considerations for example, protection of species such as bats.”

CHC4: To protect the special interest and character of all Dublin’s Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.

Enhancement opportunities may include:

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

Development will not:

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

Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of Conservation Areas and their settings.

The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability.

5.4. Liberties Local Area Plan 2009 (extended to May 2020)

5.4.1. The Liberties Local Area Plan 2009, and adopted again in April 2014, extended to May 2020, identifies that the site lies within Character Area 2 – Guinness (Diageo) Lands and the Digital Hub. This area straddles James’s St, extending from slightly north of Marrowbone Lane all the way to the river. The area is industrial in character, having served as the premises for Guinness’ brewing operations since 1759 and eventually covering some sixty acres. Much of this land has been sold and redeveloped as part of the Digital Hub, and much remains to be redeveloped, most notably the land strip along the river at Victoria Quay. Building heights vary vastly from one story metal sheds to upwards of nine stories in the Guinness Storehouse, a large Late Victorian brick building recently conserved and renovated as a Museum for Guinness.

5.4.2. The Liberties Local Area Plan state that the key objectives for the area include:

- New mixed-use development along Steeven’s Lane and Watling Street should redefine these thoroughfares and provide an appropriate transition between their quays and James’s Street.
- The Grand Canal Harbour area should become a distinct yet integral part of the transformed Guinness Quarter to the south of James’s Street with an emphasis on leisure and cultural tourism while creating a unique waterside residential environment. Water should be re-introduced within the footprint of the conserved existing harbour walls which should be within the public realm.
- The Digital Hub land to the south of Thomas/James’s Street along with St. James’s Gate should create lively active frontage along narrow streets and around small courtyards to foster the extension of the creative industry activity into the public realm.

- The Digital Hub site to the north of Thomas Street should develop a building typology that reflects the long narrow plots of the historic development on Thomas Street and create lively street frontage along a high-quality pedestrian route past the windmill to Bonham Street.

5.5. Other Policy & Guidance Documents

- Greater Dublin Regional Code of Practice for Drainage Works Version 6.0.
- DEHLG and OPW Guidance ‘The Planning System and Flood Risk Management – Guidelines for Planning Authorities’ (2009).

5.6. Natural Heritage Designations

- 5.6.1. The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 4.4km to the north east of the site and the South Dublin Bay SAC (& pNHA)(Site Code: 000210) which is located approximately 5.3km to the south east.
- 5.6.2. The Grand Canal pNHA (Site Code 002104) lies approximately 1.3km to the south and the Royal Canal pNHA (Site Code 002103) lies approximately 2.6km to the north while the North Dublin Bay pNHA, (Site Code 000206), is located approximately 4.1km to the north east of the site. The Liffey Valley pNHA (Site Code 000128) lies approximately 4.2km to the west.

5.7. EIA Screening

- 5.7.1. Part 2, Section 10(iv) of Schedule 5 of the Planning and Development Regulations, 2001 (infrastructure Projects) provides that the following category requires a mandatory EIA -
- Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere. (In this paragraph “business district” means a district with a city or town in which the predominant land use is retail or commercial use).

The area of the subject appeal site falls substantially below the 2 hectares threshold. As such, there is no mandatory requirement for Environmental Impact Assessment.

- 5.7.2. Having regard to nature and scale of the development, together with the brownfield nature of the site and the previous grant of permission associated with the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

- 6.1. This is a First party appeal against the decision of the Planning Authority to include Condition 3 in the decision to grant planning permission for the proposed development. This condition requires the omission of the fourth floor in the proposed rear annex building, comprising 3 bedrooms. It is submitted that the condition is unnecessary and unreasonable in terms of its imposition.

- 6.2. It is submitted that the proposed development represents a more sensitive built intervention than that previously permitted by Dublin City Council on this site under 2474/09 and that the current proposal provides for more conservation gain. No. 134 James's Street is in a state of critical disrepair and the remedial works included are necessary to safeguard its heritage and long-term future. Following pre-planning consultation, the applicant gave favourable consideration to the retention of the bow shaped room to the rear of the protected structure, contributing to a sizeable increase in build costs. It was made clear that a minimum of 20 bedrooms would have to be met to make the project viable.

- 6.3. The grounds of appeal are summarised as follows:

- The height of the annex as proposed will not compromise the setting and architectural character of the protected structure.
- The proposed development provides for significant conservation gain relative to development previously permitted on the site by Dublin City Council.
- The proposed development complies with the Urban Development and Building Heights Guidelines for Planning Authorities 2018.

- There are no other planning impediments to a grant of planning permission for the proposed design.

It is requested that permission be granted for development as proposed. There are a number of enclosures with the appeal, including a further report from John Cronin & Associates and a supplementary design statement from Kiosk Architects¹.

6.4. **Planning Authority Response**

None.

6.5. **Observations**

None.

7.0 **Assessment**

7.1.1. Having regard to the nature of this appeal, and having undertaken a site visit, as well as considering the information submitted, and the proposed development, the Board will note that the appeal relates solely to the inclusion of condition 3 in the grant of permission. I am satisfied that the principle of the proposed development is acceptable given the location of the site and the zoning afforded to the area. In addition, I note the planning history of the site. As such, I consider it reasonable to treat this case under Section 139 of the Planning and Development Act, 2000 as amended and the merits of the inclusion of the condition should only be considered.

7.1.2. Condition 3 of the grant of permission states as follows:

3. The development hereby approved shall be revised as follows: The rear annex building shall be reduced in height by one floor, by omitting the fourth floor which comprises three bedrooms, ensuring that the structure and enclosure on the top floor reads as a light touch feature, so that the parapet of the new brick structure does not exceed the height of the eaves of the rear wall, to reduce the impact on the architectural character and setting of the

¹ I note that the Section 3 of the Kiosk Architect supplementary design statement includes a footer which does not relate to the subject site. The images and photomontages included however, do relate to the subject site.

protected structure. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

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

7.1.3. In terms of the planning history of the site, the Board will note that the previous grant of planning permission sought the construction of a 6-storey building to the rear of the protected structure, PA ref 2474/09 refers. The validity of this permission was extended on the 28th day of August 2014 and the new expiration date was 30th October 2019. As such, this permission has expired. I note the applicant has relied on this decision in their appeal of condition 3 of the current Dublin City Council decision. The Board will note that condition 2 of the previous grant of planning permission, amongst other things, required the omission of the proposed fourth floor from the proposed rear extension to protect the character and setting of the existing protected structure on the site. As such, planning permission was granted for only 5 storeys in the rear building. There was no appeal to the Board in this regard.

7.1.4. With regard to other comments submitted in the first party appeal in terms of the current state of critical disrepair of the protected structure, I would note that the owner of the property has an obligation to protect and secure the heritage of the building. This obligation exists regardless of the decision of the Board in terms of this Section 139 appeal. While I acknowledge the conservation gain arising from a grant of planning permission, it would seem that the issue of height of the new building at this site has been a concern for the Planning Authority since 2009. In any case, I propose to consider the detail of this appeal on its merits.

7.2. **Impacts to Protected Structure & Design**

7.2.1. It is the stated policy of Dublin City Councils Development Plan, Policy CHC1 refers, to seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city. In addition, Policy CHC2 seeks to ensure that the special interest of protected structures is protected. The Board will note that the subject building is a Protected Structure and therefore, it is necessary to consider the

impact of the proposed development on the subject building, as well as adjacent protected structures.

- 7.2.2. Policy CHC2 sets out a number of criteria for works to protected structures, including the requirement to not cause harm to the curtilage of the structure. Therefore, the design, form, scale, height, proportions, siting and materials should relate to and complement the special character of the protected structure. The inclusion of condition 3 seeks to omit a floor, and three bedrooms, in order to reduce the impact of the new annex building on the architectural character and setting of the protected structure. In this regard, I acknowledge the content of the first party appeal, and note the requirements of national guidance in terms of building heights. However, I am inclined to agree with the Dublin City Council Conservation Officer with regard to the omission of the floor as required by condition 3 of the grant of planning permission. The location of the site, now on a prominent corner, together with the identification of the property as not only a protected structure, but also a building monument and the minimal separation distance between the PS and the proposed new structure, I consider it appropriate that the visual impact of the proposed development should be reduced as required by the condition. As such, I consider that condition 3 as written is both appropriate and necessary.

7.3. **Appropriate Assessment**

- 7.3.1. The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 4.4km to the north east of the site and the South Dublin Bay SAC (& pNHA)(Site Code: 000210) which is located approximately 5.3km to the south east.
- 7.3.2. Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also 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.

8.0 Recommendation

I recommend that planning authority be directed, in accordance with Section 139, Subsection (1) of the Planning & Development Act, 2000-2011, to RETAIN condition 3 of the grant of planning permission for the following stated reasons and considerations.

9.0 Reasons and Considerations

Having regard to the pattern of development in the area, the zoning objective associated with the site and the planning history, it is considered that the inclusion of Condition 3 as written is both appropriate and necessary in order to protect the visual integrity of the Protected Structure, also identified as a building monument and to reduce the visual impact of the proposed new annex building on the site.

A. Considine
Planning Inspector
20th April 2021