



An  
Bord  
Pleanála

## Inspector's Report ABP-310132-21

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<b>Development</b>	Mixed use development comprising of apartments and commercial units.
<b>Location</b>	10, Usher's Island, and 32, Island Street, Dublin 8.
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	2215/21
<b>Applicant(s)</b>	Vincent Keary
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Vincent Keary
<b>Date of Site Inspection</b>	24 <sup>th</sup> August 2021
<b>Inspector</b>	Colin McBride

## 1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.04965 hectares, is located in Dublin city centre on the southern Quays at no. 10 Usher's Island. The appeal site is a long narrow site with road frontage on Usher's Island to the north and Island Street to the south. The appeal site is occupied by a single-storey warehouse structure currently in use as a bicycle rental business. Adjoining structures include no. 11 Usher's Island to the west, which is a two-storey structure with a larger shed to the rear running along the western boundary of the site. This structure houses a business at ground floor level (Scooter Island) and possibly residential at first floor. To the west of the site and fronting Island Street is a five-storey apartment block. To the east of the site on the Usher's Island frontage is a two-storey day centre set back from Usher's Island and to the east of it is a three-storey block occupied by the HSE. On the Island Street frontage is a part single-storey part two-storey structure occupied by the Mendicity Institution. The northern part of the appeal site is within the Liffey Quays conservation area and there are a number of protected structures in the vicinity including no. 12 and 14 Usher's Island to the west, which are two-storey over basement Georgian properties and no. 15 Usher's Island further to the west, which is a four-storey over basement Georgian property.

## 2.0 Proposed Development

2.1. Permission is sought for the demolition of an existing single-storey building (389sqm) which extends from Usher's Island to Island Street and the construction of a part-six storey and part eight storey mixed use development consisting of the following uses, 16 no. apartment comprising of 5 no. studio apartments, 5 no. one bed apartments and 6 no. two bed apartments. Each apartment has private amenity space in the form of a balcony and has access to communal spaces. Access to the apartments is from Island Street and Usher's Island. It is proposed to provide a coffee shop at ground floor level (71sqm). The structure is six-storeys where it adjoins Usher's Island and eight-storeys where it adjoins Island Street. 28 no. bicycle spaces are provided and 16 no. storage lockers, a plant room, refuse store, services, switch room and ESB substation.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission refused based on three reasons...

1. Having regard to the built form and form and character of the surrounding area, the location of the site along the Historic Quays of the River Liffey which is a designated conservation area, and the zoning for the site, zoned Z5, where it is an objective “to consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity” and the policies and objectives of the Dublin City Development Plan 2016-2022, and in particular Section 16.2.2.2 Infill Development, it is considered that the proposed development by reasons the sites restrictive width, the elongated nature of the site, the design response and its excessive height relative to surrounding buildings, would be visually incongruous in terms of its design, which would be out of character with the streetscape and, by reason of its prominence, would be contrary to the protection of the visual amenity of the Liffey Quays Conservation Area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered by reason of its excessive scale, design including the proposed height of 8 storeys onto Island Street and the height of the glass curtain wall to the lift and stair core with associated walkways, and location adjoining existing residential properties, the proposed development would lead to an unacceptable level of overshadowing, and of overlooking of the property to the east from walkways, and would, thereby, seriously injure the residential amenities of adjoining properties and restrict their development potential. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed design to the west elevation sixth floor fronting onto Usher’s Island, by reason of the glass balcony directly overlooking the adjoining site to the west at

number 11 Usher's Island would seriously injure their residential amenities, restrict their development potential and as such, would thereby be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planning report (08/04/21): Concern was expressed regarding the design and scale of the development in the context of architectural character, its location in a conservation area, impact on adjoining amenities and development potential of adjoining sites. Refusal was recommended based on the reason outlined above.

#### **3.2.2. Other Technical Reports**

Drainage Division (02/03/21): No objection.

City Archaeologist (24/03/21): Further information including provision of an archaeological assessment.

Transportation Planning (30/03/21): Further information including clarification of the building line along Island Street and provision of cycling parking in compounds or similar to improve security.

### **3.3. Prescribed Bodies**

3.3.1 An Taisce (18/03/21): The status of the area in terms of architectural heritage is noted and existing structures of significance in the vicinity. The design was considered inappropriate in scale and design, its impact on the development potential of adjoining sites and conflict with the Z5 zoning.

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

3.4.1 A submission was received from Mark Farrell, the owner of no. 11 Usher's island.

- The owner of the neighbouring structure raises concerns regarding potential impact on development potential of his site due to the provision of the stair/lift

core structure and walkways adjacent the boundary adjoining his site as well as the provision of a corner balcony with a side aspect onto the adjoining site.

## 4.0 Planning History

ABP-301273-18 (4611/17): Permission refused for alterations to permitted development ref no. PL29S.247837 consisting of one additional storey to the permitted six-storey block onto Island Street. Refused based on one reason...

1. Having regard to the established built form and character of the surrounding area, to the provisions of the Liberties Local Area Plan with key objectives to promote sensitive infill, on lands zoned Z5, where it is an objective "To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity" and the policies and objectives of the Dublin City Development Plan 2016 - 2022, in particular Section 16.7.2 - criteria for higher buildings, and having regard to the fact that the subject site is located at a mid-point of the urban block (where landmark buildings would be inappropriate), it is considered that the proposed development, by reason of its restricted width, the elongated nature of the site and its excessive height relative to surrounding buildings, would be visually incongruous in terms of its design, which would be out of character with the streetscape and, by reason of its prominence, would be contrary to the protection of the visual amenity of the Liffey Quays Conservation Area and contrary to section 16.2.1.1 of the Development Plan. Furthermore, by reason of its excessive scale and its location adjoining existing residential properties, it is considered that the proposed development would lead to an unacceptable level of overshadowing and would, thereby, seriously injure the residential amenities of adjoining property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3466/17: Permission refused for a development consisting of alterations to approve development ref no. PL29S.247837 consisting of the provision of one additional

storey to the 6 storey block to the south of the site. Refused on the basis of visual impact, impact on adjoining development through overshadowing/injurious to adjoining residential amenities.

PL29S.247837 (3503/16): Permission granted for demolition of existing structures and construction of 10 no. 2 bed apartment with balconies in two six-storey blocks. The approved development consist of a five-storey block fronting usher's Island and a six-storey block fronting Island Street.

Adjoining sites...

4252/19: Permission granted or development of a multi-unit residential scheme comprising 15 no. apartments in 3 no. blocks at 14 Ushers Island (a Recorded Protected Structure), Dublin 8 on a site of 0.0463 ha. This entails an additional two-storey changing the existing structure to a four-storey over basement structure from its existing two-storey form.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Dublin City development Plan 2016-2022. The appeal site is zoned Z5 with a stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.

Section 16.2.2.2. Infill development

The particular character of the city and its concentration of historic buildings means that most re-development opportunities are for 'infill development' i.e. gap sites within existing areas of established urban form. It is particularly important that proposed development respects and enhances its context and is well integrated with

its surroundings, ensuring a more coherent cityscape. As such Dublin City Council will seek:

- To ensure that infill development respects and complements the prevailing scale, architectural quality and the degree of uniformity in the surrounding townscape.
- In areas of varied cityscape of significant quality, infill development will demonstrate a positive response to context, including characteristic building plot widths, architectural form and the materials and detailing of existing buildings, where these contribute positively to the character and appearance of the area.
- Within terraces or groups of buildings of unified design and significant quality, infill development will replicate and positively interpret the predominant design and architectural features of the group as a whole Chapter 16 | Development Standards: Design, Layout, Mix of Uses and Sustainable Design 310 | Dublin City Development Plan 2016–2022: Written Statement.
- In areas of low quality, varied townscape, infill development will have sufficient independence of form and design to create new compositions and points of interest and have regard to the form and materials of adjoining buildings, where these make a positive contribution to the area.

Part of the site is located within a designated Architectural Conservation Area. This includes the northern part of the site, which is part of the Liffey Quays conservation area.

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 roof-scapes, 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.

Section 16.2.1.1 Respecting and Enhancing Character and Context- New development should protect and enhanced the natural landscape features of the River Liffey.

Section 16.2.2.2 Infill Development- Infill development must respect and complement the prevailing scale, architectural quality and degree of uniformity in the surrounding townscape.



## Section 16.5- Plot Ratio Z5, City Centre 2.5-3.0

### Section 16.7.2- Building Heights • Low Rise Inner City- Up to 24m residential

The site forms part of the Liberties Local Area Plan and the Strategic Development Regeneration Area 16 (SDRA- Liberties and Newmarket) therefore the following policies apply:

Section 5.1.2-The site is located in the “Quays/ Bridgefoot Street/ Oliver Bond” character area where key objectives relating to the site include:

- Create river frontage with a consistent scale and grain along the entire length of the Quays with buildings of around four to five storeys.
- Promote sensitive infill along Usher’s Island, Usher’s Quay and Merchant’s Quay with refurbishment of buildings with heritage value.

SDRA 16- Liberties (including Newmarket and Digital Hub) Overall key objectives relevant to the proposed development include the promotion of good urban design, high-quality buildings and protect the distinctive heritage.

## 5.2 National Policy

### Project Ireland 2040 - National Planning Framework

The National Planning Framework was published in 2018. National Policy Objective 3(b) seeks to ‘Deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, with their existing built-up footprints’.

The following objectives are of note:

- National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.

- National Planning Objective 13: In urban areas, planning and related standards, including, in particular, height and car parking will be based on performance criteria that seek to achieve well-designed high quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.
- National Policy Objective 27: Ensure the integration of safe and convenient alternatives to the car into the design of our communities, by prioritising walking and cycling accessibility to both existing and proposed developments, and integrating physical activity facilities for all ages.
- National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

#### Section 28 Ministerial Guidelines

The following list of Section 28 Ministerial Guidelines are considered to be of relevance to the proposed development. Specific policies and objectives are referenced within the assessment where appropriate.

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, (Updated) Guidelines for Planning Authorities (2020)
- Urban Development and Building Height Guidelines for Planning Authorities (December, 2018)
- Design Manual for Urban Roads and Streets (December 2013)
- Architectural Heritage Protection – Guidelines for Planning Authorities (2011)

### 5.3 Natural Heritage Designations

None in the vicinity.

## 5.4 EIA Screening

5.4.1 The proposed development is of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)) but substantially under the threshold of 500 units and the development is well below the threshold of urban development which would involve an area greater than 2 hectares (appeal site is 0.04965 hectares) in the case of a business district to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the site on lands zoned for urban development, the availability of public sewerage and water supply, the absence of features of ecological importance within the site, the nature of the adjoining land uses as residential, institutional and commercial. I conclude that there is no real likelihood of significant effects on the environment based on the nature, size and location of the proposed development. No EIAR is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 A first part appeal has been lodged by Hughes Planning & Development Consultants on behalf Vincent Keary. The grounds of appeal are as follows...

- The appellant refers to a number of permissions along the quays for approved development that it considers comparable to the proposal noting that such were granted and are similar in design and scale (ref no. 4252/19 at 14 Usher's Island and ref no. 2409/20/3328/18 at 29/30 Usher's Quay).
- The proposal is compliant with Development Plan policy in relation to zoning, building height and infill development and in compliance with regional and national policy objectives. The design and layout of the apartments is in compliance with national guidance under the Sustainable Urban Housing: Design Standards for New Apartments.
- The appellant lists a number of precedents for similar development along the Quays with conservation areas and adjoining protected structures.

- In response to refusal reason no. 1 it is stated that the proposal is designed to have adequate regard to the visual amenities of the area with the structure within the height permissible at this location. It is noted that the six-storey element is within the conservation area and the eight-storey element is outside of such and the lower element is provided along the quay frontage. It is considered that the design is an appropriate in terms of visual amenity, its location partially within a conservation area and adjoining protected structures.
- In response to refusal reason no. 2 the proposal is not considered to lead to an injurious level of overshadowing. The appellant refers to a ref no. 2409/20 as a relevant case with overlooking not considered to occur due the design of the proposal.
- In relation to refusal reason 3 it is noted that the balcony in question does not facilitate overlooking of adjoining residential development and is contained within the footprint of the site and would not impact development potential of the adjoining site.
- The appellant has submitted a revised proposal, which entails an alteration of the structure to provide for a part five-storey and party seven –storey structure should it be considered necessary.

## 6.2. Planning Authority Response

No response.

## 7.0 Assessment

- 7.1. Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Principle of the proposed development

Quality of residential accommodation/development control objectives

Visual Amenity/Architectural Character/Heritage/Height

Neighbouring residential amenity/development potential

Other Issues

7.2. Principle of the proposed development:

7.2.1 The proposed development is for part six and part eight-storey development on an infill site that has road frontage on Usher's Island and Island Street. The appeal site is a narrow site currently occupied by a single-storey structure in use as a bike rental business. The appeal site is zoned Z5 with a stated objective "To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity". The proposed use include a commercial use (coffee shop) on the ground floor and 16 no. apartment units are permissible uses within this zoning objective. Given the city centre location of the site and its accessibility, the proposal for its redevelopment for mixed use development consisting mainly of residential use is consistent with development objectives of the City Development plan and national policy as set out under the National Framework Plan. The principle of the proposed development is acceptable at this location. The acceptability of the proposal is contingent on the overall quality of the development in context of relevant guidelines for apartment quality, its overall physical impact in the context of visual amenity and architectural heritage designations and its impact on adjoining amenities/development potential of adjoining sites. These aspects of the proposal are to be examined in the following sections of this report.

7.3 Quality of residential accommodation/development control objectives:

7.3.1 The proposal is for 16 no. apartment units comprising of 5 no. studio apartments, 5 no. one bed apartments and 6 no. two bed apartments. The relevant guidelines are the Sustainable Urban Housing: Design Standards for New Apartment Guidelines for Planning Authorities (2020). All of the studio units have a floor area of 41.25sqm, the one bed units a floor area of 52.43sqm and the two bed units a floor area of 77.96sqm, which exceed the minimum requirements of 37sqm, 45sqm and 63sqm respectively. Under Section 3.8 of the guidelines there is a requirement for "the majority of all apartments in any proposed scheme of 10 or more apartments shall

exceed the minimum floor area standard for any combination of the relevant 1, 2 or 3 bedroom unit types, by a minimum of 10% (any studio apartments must be included in the total, but are not calculable as units that exceed the minimum by at least 10%)". In the case of the proposed development all units exceed the minimum floor area requirements and exceed the minimum by at least 10%.

7.3.2 In relation unit mix the proposal is for 16 no. units with 5 being studio apartments. Specific Planning Policy Requirement 1 states that housing developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence-based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s). Specific Planning Policy Requirement 2 for all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha, where up to 9 residential units are proposed, notwithstanding SPPR 1, there shall be no restriction on dwelling mix, provided no more than 50% of the development (i.e. up to 4 units) comprises studio-type units; Where between 10 to 49 residential units are proposed, the flexible dwelling mix provision for the first 9 units may be carried forward and the parameters set out in SPPR 1, shall apply from the 10th residential<sup>7</sup> unit to the 49<sup>th</sup>. The proposed unit mix is compliant with the requirements of the guidelines.

7.3.3 Under Specific Planning Requirement 4

In relation to the minimum number of dual aspect apartments that may be provided in any single apartment scheme, the following shall apply:

(i) A minimum of 33% of dual aspect units will be required in more central and accessible urban locations, where it is necessary to achieve a quality design in response to the subject site characteristics and ensure good street frontage where appropriate.

(ii) In suburban or intermediate locations it is an objective that there shall generally be a minimum of 50% dual aspect apartments in a single scheme.

(iii) For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , planning authorities may exercise further discretion to consider dual aspect unit provision at a level lower than the 33% minimum outlined above on a case-by-case basis, but subject to the achievement of overall high design quality in other aspects.

Out of the 16 no. apartments 6 are dual aspect (two bed units), which equates to 37.5% of the units and is in compliance with the standards which would meet the recommendations of the guidelines of 33%.

7.3.4 All apartment units are provided with balcony areas. The requirements under the guidelines are for 4sqm, 5sqm and 6sqm (1.5m depth) for studio, one and two bed (3 person) units respectively. The proposal provides for the required standard in all cases. In relation to communal amenity space the requirements for 4sqm, 5sqm and 6sqm (1.5m depth) for studio, one and two bed (3 person) units respectively for communal amenity space. The proposal provides for a communal amenity space at first floor level between the two blocks that make up the development and the applicants planning report states that 19sqm of communal space is provided. I would estimate that over 19sqm is provided in this amenity space with approximately 60sqm provided. Recommended standards for communal open space are set out under Appendix 1 of the apartment guidelines with a standard of 4sqm per studio unit, 5sqm per one bed unit and 7sqm per two bed unit (four persons) giving an overall requirement of 87sqm. The guidelines do note that “for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, communal amenity space may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality”. I would consider that city centre context of the development and its infill nature mean that the level of communal space provided is reasonable in this case.

7.3.5 In considering daylight and sunlight impacts, the Apartment Guidelines (2020) state that PA's should have regard to quantitative performance approaches outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' (Section 6.6 refers). I have had regard to both documents. A Daylight Analysis and Overshadowing report has been submitted with the application, which I have considered. I note that internal spaces have been examined. The potential impact in terms of neighbouring properties has also been addressed, which I discuss separately in section 7.5 hereunder. With regard to the internal spaces, the apartment units at first to seventh floor have been analysed in the submitted report to determine the Average Daylight Factor for each unit. BRE209 uses the recommendations of BS8206-2 Code of practice for daylighting for ADF of 5% for well day lit space, and also the specific minimum standards for different residential room types as follows: Kitchens min. 2.0%, Living Rooms min 1.5%, Bedrooms min 1.0%. I note the updated BS EN 17037:2019 has replaced BS8206-2, however, I note BS 2008 remains the applicable standard, as provided for in the s.28 Guidelines, and notwithstanding this the BS and BRE guidance allow for flexibility in regard to targets and do not dictate a mandatory requirement. In terms of shared living/kitchen/dining space (LKD), an ADF of 1.5% is applied to the site. The British Standards BS 8206-2:2008 are where these values in the BRE guidelines are derived from. The BS guidance states that "where one room serves more than one purpose, the minimum average should be for the room type with the highest value. For example, in a space which combines a living room and a kitchen the minimum average daylight factor should be 2%). All of the apartment units feature shared living/kitchen/dining (LKD) spaces. In the case of all units (one and two bed units) the ADF of the bedrooms exceed 1%. In the case of shared living/kitchen/dining (LKD) spaces all units including the studio units exceed the 1.5% level space, however only one unit (no. 16) exceeds a 2% ADF.

7.3.6 The proposal meets the standards of the BRE guidelines for bedrooms and living spaces. The proposal does not meet the BS standards for shared kitchen spaces of 2% in the case of 15 of the apartments with one apartment exceeding the



recommended standard of 2%. The standards in relation to daylight and sunlight are a general guide only and the BRE guidance states that they need to be applied flexibly and sensibly. The document states that all figures/targets are intended to aid designers in achieving maximum sunlight/daylight for future residents and to mitigate the worst of the potential impacts for existing residents. It is noted that there is likely to be instances where judgement and balance of considerations apply. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in identifying where potential issues/impacts may arise and to consider whether such potential impacts are reasonable, having regard to the need to provide new residential development within Dublin city, and increase densities within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical. In this regard I would be of the view that the overall quality of the proposed residential units in terms of daylight levels is of a good and reasonable standard particular considered in the context of its location in a city centre location in close proximity to existing structures and in terms of the expectation of development on an under-utilised city centre site. I would consider that the overall quality and standard of residential amenity is satisfactory in the context of light levels and the amenity of future occupants.

7.3.7 The BRE guidelines state that in terms of sunlight access, for an external garden or amenity space to appear adequately lit throughout the year, it should be capable of receiving at least two hours of sunshine on 21st March on 50% of the space. The report includes an assessment of amenity space for an adjoining property and does not include an analysis of communal space provided as part of the proposed development. I would be of the view that the level and layout of amenity space is satisfactory considering the appeal site is an infill site located in the heart of the city centre. As noted above the proposal provides for sufficient amenity space both private and communal and the layout of the blocks on site are in keeping with the established pattern of development. I am satisfied that the proposal is satisfactory in the context of the overall quality and standard of residential development proposed and provides for an acceptable standard of residential amenity for future occupants.

7.3.8 The proposal provides for a development with plot ratio of 2.5 and site coverage of 89%. The permissible plot ratio within the Z5 zoning is 2.5-3.0 (Section 16.5) under the City Development plan. In relation to site coverage indicative site coverage for the Z5 zoning is 90% (section 16.6) under the City Development plan. The proposal is compliant with Development Plan policy in this regard.

#### 7.4 Visual Amenity/Architectural Character/Heritage/Height:

7.4.1 The first reason for refusal states that the proposal is unacceptable by virtue of its height, design and excessive scale in the context of its location on the Liffey Quays partially within a conservation area and in close proximity to a number of structures that are protected structures. The appeal site is a narrow site with frontage along Usher's Island to the north and Island Street to the south. Adjoining structures (Usher's Island) to the west include a three-storey structure at no. 11 with a shed to the rear of it. To the east is a two-storey day centre and a three-storey block in institutional use (HSE) with an open areas around both. Along Island Street the adjoining structures include a five-storey apartment block to the west and to the east is the single-storey portion of the Mendicity Institution property (Homelessness services). As stated above the northern part of the site is within the Liffey Quays Conservation Area and there are three protected structure in close proximity including to the west no. 12, no. 14 and no. 15 Ushers Island, which are Georgian properties (no. 12 and 14 are two-storey over basement and no. 15 is four-storeys over basement).

7.4.2 The proposed development has a height of 24.275m (parapet level 23.300m) at its highest point (the eight storey portion fronting Island Street). In terms of building height Section 16.72 of the City Development Plan sets out policy and identifies areas in which low-rise, mid-rise and high-rise structures are permissible. In the case of the Inner City low rise is indicated as being 24m in height for residential and 28m for commercial development. I would be of the view that the overall height of the structure proposed is consistent with Development Plan policy in relation to building heights.

7.4.3 The 'Urban Development and Building Heights Guidelines for Planning Authorities' (the Building Height Guidelines) provides a detailed national planning policy approach to the assessment of building height in urban areas. It provides clear criteria to be applied when assessing applications for increased height. The guidelines describe the need to move away from blanket height restrictions and that within appropriate locations, increased height will be acceptable even where established heights in the area are lower in comparison. In this regard, SPPRs and the Development Management Criteria under section 3.2 of these section 28 guidelines have informed my assessment of the application. This is alongside consideration of other relevant national and local planning policy standards. Including national policy in Project Ireland 2040 National Planning Framework, and particularly objective 13 concerning performance criteria for building height, and objective 35 concerning increased residential density in settlements.

7.4.4 SPPR 3 in the Building Height Guidelines states that where a planning authority is satisfied that a development complies with the criteria under section 3.2 then a development may be approved, even where specific objectives of the relevant development plan or local area plan may indicate otherwise. I consider that the site is potentially appropriate for increased height in light of guidance in the Urban Development and Building Height, Guidelines for Planning Authorities (SPPR3) particularly in consideration of the Development Management Criteria in section 3.2 of the guidelines relating to proximity to high quality public transport services, character of the location, the contribution of the proposal to the street, improvement of legibility and daylight and sunlight considerations alongside performance against BRE criteria. The proposal is a city centre location in close proximity to public transport and accessible. The other criteria relating to character of the area, contribution to streetscape and daylight and sunlight impact are assessed in the following sections of this report.

7.4.5 The proposed development is located at a prominent location due to its frontage along the Liffey Quays. The proposed development is significantly higher than adjoining development to the west, which is two-storeys in height and the east, which is two and three-storeys in height along Usher's Island. The site is quite narrow in

width and road frontage. The planning history for the site show that permission was granted under ref no. PL29S.247837 (3503/16) for an apartment development consisting of five-storey block fronting Usher's Island and a six-storey block fronting Island Street. Permission was refused twice to modify the permitted development and provide an additional floor level on the six-storey block approved fronting onto Island Street with visual impact and its location within a conservation area key considerations in these decisions.

7.4.6 The proposed design by virtue of its slender profile and the fact that the gable of the development will be highly visible when viewed westwards does have a significant visual impact. The applicant has submitted photomontage illustrating such. The overall height of the structure when viewed from the quays does not significantly deviate from the predominant scale of structures along the quays with four and five-storey structures common along the quays including a short distance to the east and west of the site. The appeal site happens to be at a point where the streetscape is more fragmented with the adjoining structures being two and three-storeys in height as well as set back from the footpath as in the case of the HSE/day centre property to the east. The narrow profile of the height means any structure of height would have a more prominent impact than on a site with a wider road frontage. The applicant/appellant provides a number of examples of developments permitted and constructed along the quays similar in nature and height relative to adjoining properties. In terms of the Island Street frontage height and scale of the structure is less prominent due to more ridged and defined building line and existing structures of five-storeys in height on the adjoining sites to west.

7.4.7 Previous proposals on site were for two separate blocks each fronting Usher's Island and Island Street. The current proposal maintains this pattern of development however also includes central tower housing the stairs/lift core with open walkways linking such to each level of the two blocks. Despite being a mainly glazed structure and the walkways being open in nature, this structure is as high as the eight-storey block proposed fronting Island Street and has a significant visual impact in addition to the two blocks proposed. This element in addition to the proposed six

and eight storey blocks will be highly visible when viewed along the Quays both in an eastern and west direction. I would be of the view that overall design and scale of the proposed development due to its location along the Quays, the narrow frontage of the site and height and scale of the proposed structures, would have an adverse visual impact that would be detrimental to the visual amenities of the area and the status and setting of Liffey Quays conservation area. The separation of the stair and lift/core (with walkways) from the main block also gives rise to element that is unduly prominent and would have an adverse visual impact.

7.4.8 To address the reason for refusal the applicant/appellant did submit a revised proposal for consideration, which removes one floor from each section of the development providing for a five-storey block fronting Usher's Island and a seven-storey block fronting Island Street. A five-storey block fronting Usher's Island is in keeping with previously permitted development. On Island Street the height of the proposed building will exceed the adjoining 5 storey apartment development significantly even in the revised proposal. Section 16.7.2 of the development plan provides an assessment criteria for higher buildings, the maximum height permitted for inner city is 24m and all proposals for mid- rise and taller buildings must have a relationship to the context including topography, built form, and skyline and need to protect important views, landmarks, prospects and vistas. The height of the proposed apartment building complies with the development plan standards although when considering the additional assessment criteria and the significant difference in height of the proposed building to the highest buildings in the vicinity of the site, I do not consider the additional height provides a satisfactory relationship to the surrounding area or respect the existing skyline. The additional stair/lift core structure, which is as high as the Island Street block in both the original and revised proposal would also have a significant and prominent visual impact at this location. I consider the additional height will dominate the streetscape along Island Street. In addition to the building height, the proposal provides a very poor design in terms of the road frontage along Island Street at street level. There is no attempt to provide for active street frontage on Island Street and the treatment of the street frontage at ground and first floor level is unacceptable. One of the key objectives of the SDRA 16 is "to promote the principles of good urban design including improving connectivity and

enhancing the legibility and permeability of the Liberties in relation to the wider cityscape". The proposal fails to achieve this objective in the case of the development along Island Street.

7.4.9 The subject site is included within the character area "Quays/ Bridgefoot Street/ Oliver Bond" in the Liberties LAP and the Strategic Development Regeneration Area 16 (SDRA 16) of the development plan. Key Objectives for the area include a consistent scale of four to five storeys along the river frontage and the sensitive infill of sites along Usher's Quay. Having regard to the assessment above, where I consider the additional height is out of character to the surrounding area, I do not consider the proposal would comply with the requirement for sensitive infill. I do not consider the proposed development would comply with the key objectives in the Liberties LAP and the proposed development and the revised proposal would provide for a structure that is excessive in height and scale with the additional impact of the separate stair/lift core structure and associated walkways having a significant and adverse visual impact. I would consider that the design approach to the development fails to have regard to its location in a prominent quayside location, partially in a designated conservation area as well as dealing with the slender nature of the site and provides for inadequate design approach to the street frontage along Island Street. Having regard to the established built form and character of the surrounding area, to the provisions of the Liberties Local Area Plan with key objectives to promote sensitive infill, on lands zoned Z5, where it is an objective "To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity" and the policies and objectives of the Dublin City Development Plan 2016 - 2022, in particular Section 16.7.2 - criteria for higher buildings, and having regard to the fact that the subject site is located at a mid-point of the urban block (where landmark buildings would be inappropriate), it is considered that the proposed development, by reason of its restricted width, the elongated nature of the site and its excessive height relative to surrounding buildings, would be visually incongruous in terms of its design, which would be out of character with the streetscape and, by reason of its prominence, would be contrary to the protection of the visual amenity of the Liffey Quays Conservation Area and contrary to section 16.2.1.1 of the Development Plan.

7.4.10 The appeal site is located within Strategic Development Regeneration Area 16 (SDRA 16) of the development plan under which it is a key objective to “to promote the principles of good urban design including improving connectivity and enhancing the legibility and permeability of the Liberties in relation to the wider cityscape”. The proposal provides for a substandard design approach to the street level frontage on Island Street, providing for a frontage lacking in any active frontage or lacking in any urban design character. The proposal would be contrary the key objectives of the SDRA 16 as set out under the City Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.5 Neighbouring residential amenity/development potential:

7.5.1 Permission was refused on the basis of impact on adjoining properties with refusal reason no. 2 raise concern about overshadowing of adjoining properties and overlooking from the stairs and access walkways. Refusal reason no. 3 raise concerns about the impact of a corner balcony area on no. 11 Usher’s Island. The issue of impact on adjoining development potential is also noted in the reason for refusal.

7.5.2 The layout of development provides for two distinct block, one a six-storey block fronting Usher’s island and the other an eight-storey block fronting Island Street. A glazed tower housing stair/lift core is located centrally on site with open walkways providing access to the two blocks. The overall design of the development has some regard to the pattern of development, which is mainly concentrated along the public roads to the north and south of the site. The proposal provides for two blocks that continue the pattern of development along Usher’s Island and Island Street. The stair core structure and walkway-storey are bulky structures and the walkways are open walkways. To prevent overlooking form the walkways louvered screens are provide both along the walkways and the western elevation of the stair core. Given these are circulation areas in addition to the screening proposed, I would be of the view that there is no issue of overlooking from these elements of the proposed development. In relation to the apartments themselves the orientation of windows on the blocks is

north south and is in keeping with existing pattern of development established on adjoining sites. Having regard to the city centre location of the development and provision of development conforming to the established pattern of development, I am satisfied that there are no issues relating to overlooking.

7.5.3 The issue of impact on the development potential of adjoining sites is noted in the reason for refusal and a submission from the owner of no. 11 Usher's Island raises concerns regarding such. As noted above the proposal conforms to the established pattern of development on adjoining sites (to the west) with two blocks located on the Usher's Island and island Street frontage and the orientation of windows on such being north south. This is a continuation of the established pattern of development along both streets. There is also provision of a stair/lift core structure in the centre of the site adjacent the western boundary with open walkways linking to the two apartment blocks. Despite this structure being tight to the western boundary, I do not consider such would impact on development potential as it is circulation space and could potentially be built up against. As noted earlier this structure includes louvered panels to prevent overlooking and is not a structure that is an amenity area serving the proposed development. In relation to the corner balcony on the Usher's Island frontage as first floor level, I do not agree that such would result in overlooking or impact the development potential of the adjoining development. I would consider building up against such is acceptable and the balcony has its main aspect facing north onto the River Liffey. The revised plans submitted by the applicant omits a floor from the block fronting Usher's Island and would eliminate this corner balcony element anyway.

7.5.4 In the case of the development to the east I would consider that the layout of development would allow for redevelopment of the adjoining sites as per the established pattern of development for blocks along the road frontage with windows in north south orientation. The eastern gables of the two residential blocks are blank and could be developed against in the future although the layout of development on the adjoining site may not lend its self to such a configuration of development (two-storey day centre set back from Usher's island).



7.5.5 The applicant's assessment of daylight, sunlight and overshadowing relies on the standards in the following document: - BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011). I have considered the reports submitted by the applicant and have had regard to BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011) and BS 8206-2:2008 (British Standard Light for Buildings- Code of practice for daylighting) – the documents referenced in Section 28 Ministerial Guidelines. I have given a detailed description of the interface between the proposed development and existing housing earlier in this report. I have also carried out a site inspection, considered the third party submissions that express concern in respect of potential impacts as a result of overshadowing/loss of sunlight/daylight and reviewed the planning drawings. In considering the potential impact on existing dwellings I have considered – (1) the loss of light from the sky into the existing residential units through the main windows to living/ kitchen/ bedrooms; and (2) overshadowing and loss of sunlight to the private amenity spaces associated adjoining residential development.

7.5.6 A Daylight Analysis and Overshadowing report has been submitted. This report focuses on three elements.

Average Daylight Factor, which is a measure of daylight levels with the rooms of the proposed development. The results of this aspect of the report are discussed earlier in Section 7.3.

Annual Probable Sunlight Hours (APSH), which is a measure of sunlight levels to adjoining properties. The requirement is to assess windows with an orientation within 90 degrees of due south. 11 no. windows on the rear elevations of no. 11-14 Usher's Island were assessed.

Overshadowing, with the report including shadow modelling for the 21<sup>st</sup> day of March, June, September and December at 10:00, 12:00, 14:00 and 16:00 hours. There is also an analysis of overshadowing of an amenity space at no. 9 Usher's Island on the basis of required standard of the provision of at least two hours of sunlight on March 21<sup>st</sup>.

7.5.7 The BRE guidelines In relation to APSH indicate that sunlight may be adversely affected if:

APSH is < 25% over the whole year or < 5% between 21<sup>st</sup> of September and 21<sup>st</sup> March; and receives < 0.8% times its former APSH; and reduction over the whole year > 4% of APSH. The analysis carried out correctly identifies the 11 no. windows located to the north of the site to the rear of no.s 11-14. It is not clear regarding the use of the rooms these windows are served by and in some cases may not be residential use. In the case of all windows analysed a standard of well above 25% and 5% in winter months is retained post development. This standard would meet the recommended standard set out under the BRE 209 – Site Layout Planning for Daylight and Sunlight – A guide to good practice (2011).

7.5.8 In regards to daylight impact on adjoining properties and Vertical Sky Component (VSC), there is requirement for assessment of adjoining development is based on the the 25° rule. If a development proposal does not obstruct a 25° line in a vertical section from a point at the centre of the lowest window of property that might be affected, there is no need to go further and the effect is deemed to be acceptable. If that is not the case, a more detailed assessment is required which takes account of open space or obstructions either side of the vertical section. This is the Vertical Sky Component. In this case the new development does not obstruct a 25° line in a vertical section from any window serving an adjoining property. The issue of daylight into the apartments proposed has been addressed in terms of test for Average Daylight Factor and the results of these tests have been outlined earlier.

7.5.9 In relation to overshadowing of adjoining properties and open space, the applicant's Daylight Analysis and Overshadowing report includes shadow modelling for the 21<sup>st</sup> day of March, June, September and December at 10:00, 12:00, 14:00 and 16:00 hours. There is also an analysis of overshadowing of an amenity space at no. 9 Usher's Island on the basis of required standard of the provision of at least two hours of sunlight on March 21<sup>st</sup>. The amenity space assessed is located to the east of the site and serves the two-storey day centre structure. The results of the assessment indicate that this amenity space receives at least two hours of sunlight on March 21<sup>st</sup> in compliance with the BRE standards. As noted earlier there was no

assessment of the proposed amenity space and there is no assessment of a communal area serving the five-storey apartment block located to east fronting onto Island Street. This block has a communal open space area to the north of the five-storey block. I would be of the view that configuration of development on site is such that it respects the pattern of development for concentration of development blocks along the road frontage along both Usher's island and Island Street. There is potential that the stair core structure, which is not keeping with the pattern of development does increase the level of overshadowing as it partially closes off the western boundary of the site, whereas the provision of the stair/lift core within the blocks concentrated along the street frontage would be more in keeping with the established pattern of development and result in reduced overshadowing. I would be of the view that the stair/lift core structure does have an adverse impact in terms of overshadowing and is out of keeping with established pattern of development for provision of development along the road frontage of the site. The provision of this structure allows for more development within the two main blocks, but has an adverse impact in terms of overshadowing of adjoining properties to the west. I would be of the view that the shadow modelling demonstrates such. I would be of the view that the city centre location of the site and the pattern of development on adjoining sites and permitted on site would mean a certain degree of overshadowing is unavoidable due to close knit pattern of development and the built up nature of inner city areas, I would however consider the provision of stair/lift core structure is out of keeping with the pattern of development and such will have an added impact in terms of overshadowing as it partially closes of the western boundary of the site and reduces light levels to sites and development to the west.

7.5.10 The standards in relation to daylight and sunlight are a general guide only and the BRE guidance states that they need to be applied flexibly and sensibly. The document states that all figures/targets are intended to aid designers in achieving maximum sunlight/daylight for future residents and to mitigate the worst of the potential impacts for existing residents. It is noted that there is likely to be instances where judgement and balance of considerations apply. To this end, I have used the Guidance documents referred to in the Ministerial Guidelines to assist me in

identifying where potential issues/impacts may arise and to consider whether such potential impacts are reasonable, having regard to the need to provide new residential development within Dublin city, and increase densities within zoned, serviced and accessible sites, as well as ensuring that the potential impact on existing residents is not significantly adverse and is mitigated in so far as is reasonable and practical. In this regard I would be of the view that the level of impact in general is acceptable apart from the provision of the stair/lift core structure, which is significant in scale, out of character with the established pattern of development and would increase overshadowing in relation to properties to the west. The proposed development, would, therefore be contrary to the proper planning and sustainable development of the area.

## **8.0 Appropriate Assessment:**

- 8.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 Recommendation

9.1. I recommend refusal based on the following reason.

## 10.0 Reasons and Considerations

1. Having regard to the established built form and character of the surrounding area, to the provisions of the Liberties Local Area Plan with key objectives to promote sensitive infill, on lands zoned Z5, where it is an objective “To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity” and the policies and objectives of the Dublin City Development Plan 2016 - 2022, in particular Section 16.7.2 - criteria for higher buildings, and having regard to the fact that the subject site is located at a mid-point of the urban block (where landmark buildings would be inappropriate), it is considered that the proposed development, by reason of its restricted width, the elongated nature of the site and its excessive height relative to surrounding buildings, would be visually incongruous in terms of its design, which would be out of character with the streetscape and, by reason of its prominence, would be contrary to the protection of the visual amenity of the Liffey Quays Conservation Area and contrary to section 16.2.1.1 of the Development Plan. Furthermore, by reason of the provision of a stair/lift core structure of significant scale and partially closing off the western boundary, and such being out of character with the existing and permitted pattern of development, it is considered that the proposed development would lead to an unacceptable level of overshadowing and would, thereby, seriously injure the amenities of adjoining property. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The appeal site is located within Strategic Development Regeneration Area 16 (SDRA 16) of the development plan under which it is a key objective to “to promote the principles of good urban design including improving connectivity and enhancing the legibility and permeability of the Liberties in relation to the wider cityscape”. The proposal provides for a substandard design approach to the street level frontage on

Island Street, providing for a frontage lacking in any active frontage or lacking in any urban design character. The proposal would be contrary the key objectives of the SDRA 16 as set out under the City Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Planning Inspector

09<sup>th</sup> September 2021