



An
Bord
Pleanála

Inspector's Report ABP-310424-21

Development	Demolition of the existing warehouse/industrial building and construction of a part 3 and part 6 storey over basement office building.
Location	Former Post Office Garage site, Sandwith Street Upper, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2553/20
Applicant(s)	Rails Investment Ltd (In Trust)
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party vs. Refusal
Appellant(s)	Rails Investment Ltd (In Trust)

Observer(s)

Peter Thornes

David Hughes & Carmel McCormack

John Devlin

Brian Marrinan

Geraldine Byrne

Richard Hynes

Date of Site Inspection

10th January 2022

Inspector

Stephen Ward

1.0 Site Location and Description

- 1.1. The appeal site is located on the south-east periphery of Dublin City Centre. It is approximately 1 kilometre east of College Green and 1 kilometre south-east of O'Connell Bridge. The site is bounded to the west by Sandwith Street Upper, to the south by Boyne Street and to the north by elevated railway tracks to the immediate east of Pearse Street Station. To the east of the site are the rear gardens/yards of a row of 7 two-storey Victorian brown bricked terraced dwellings which front directly onto Erne Street Upper. To the southwest of the site, at the junction of Boyne Street and Sandwith Street Upper, construction of a 7-storey residential clock is at an advanced stage.
- 1.2. The blocks in the vicinity of the subject site contain a varied scale and character of development. More recent infill development, for example on the southern side of Boyne Street, has been mainly in the form of office and other commercial development ranging from c. 4 to 6 storeys in height. There is also older residential/commercial development of a similar scale dating from the 1970's onwards. The area retains a strong character of small-scale traditional urban housing, for example along Erne Street Upper and particularly to the west of Sandwith Street Upper.
- 1.3. The site itself has a stated area of 0.265ha. Apart from an undeveloped area to the rear, it accommodates a two-storey building which was previously used as a post office garage facility. The building is described in the National Inventory of Architectural Heritage as follows:

Attached ten-bay single-storey post office garage, built 1939, now disused. Steel roof trusses and skylights running perpendicular to street, set behind brick parapet. Over burnt yellow brick laid English garden bond, with some protruding and irregular bricks, set over concrete plinth and having continuous concrete lintel band. Three vehicular entrances having stepped brick reveals with wheel guards, moulded concrete canopies and metal roller doors. Single pedestrian entrance having stepped brick reveals and panelled door. Multiple pane metal windows having concrete sills and protective metal grills.

2.0 Proposed Development

2.1. In summary, the proposed development, as amended by the applicant's further information response, comprises the following:

- Demolition of existing warehouse/industrial building on site (1,711 sq m)
- Construction of a part 3 – part 6 No. storey (7,830 sq m) over basement (1,558 sq m) office building
- 12 No. car parking spaces accessed from Boyne Street
- Secure cycle parking spaces at basement level (100 no. spaces) and within car park area (30 no. spaces)
- Pedestrian access through the site along the northern boundary
- Accessible roof terraces at third floor level (facing north, south and east) and fifth floor level (facing north, east and west)
- Non-accessible roof terraces at third floor level (facing north, south and east) and fourth floor level (facing west)
- Green roofs, hard and soft landscaping
- Substations and switch rooms, plant, bin storage, boundary treatments and all associated site development works above and below ground

2.2. It is proposed to construct a new surface water drainage system to collect and attenuate run-off from roofs, paved areas, and any residual run-off from landscaped areas. It is proposed that surface water outfall will be into the existing combined sewer on Boyne Street. It is also proposed to connect to the existing watermains and wastewater sewer on Boyne Street.

3.0 Planning Authority Decision

3.1. Decision

By order dated 12th May 2021, Dublin City Council (DCC) issued notification of the decision to refuse permission for the following reason:

The site of the proposed development contains the Department of Post and Telegraph (P&T) garage which was completed in 1939 and which is identified by the NIAH to be of regional importance. Section 16.10.17 of the Dublin City Development Plan encourages the retention and re-use of older buildings of architectural or historic merit which make a positive contribution to the streetscape. The proposed scheme entails complete demolition and site clearance which would give rise to the loss of the original historic fabric and therefore the proposed development does not relate sensitively to and complement the special character of the existing important building which is rated of regional importance by the NIAH. In addition, it is also considered that the scale, form, materiality and articulation of the proposed new development does not justify the demolition and replacement of existing historic building. The proposal would therefore set an undesirable precedent for similar type development and would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Further Information

The planning authority issued a request for further information on 13th July 2020. The points raised can be summarised as follows:

1. Request to consider the NIAH 'regional rating' for the existing building and to consider the retention and extension of this structure.
2. Concerns about the height of the proposal and an invite to align the height of the building with that of the permitted scheme to the southwest.
3. Inclusion of the permitted scheme to the southwest in the daylight and sunlight analysis.
4. Further assessment and mitigation of daylight impacts on properties along Sandwith Street.
5. Concerns of the Roads Divisions as follows:
 - Impacts on DART Underground proposals
 - Inclusion of flood defence barriers within the site

- Vehicular entrance details
- Amendments to parking proposals, including the removal of at least 6 car spaces and a 20% increase in cycle spaces.
- Details of cycle parking stands.

3.2.2. Planning Reports

The planner's final report (12th May 2021) can be summarised as follows:

- The site is zoned as 'Z5', where office development is a permissible use. It could be described as a 'transitional zone' and the impacts on surrounding residential properties will be assessed.
- The applicant's further information response has deemed that the retention and extension of the existing building is unviable. Subsequent to previous DCC and Board decisions which did not object to the demolition of the existing building, a Ministerial recommendation to DCC of 12th June 2018 gave this building a 'regional' rating, which would be deemed worthy of inclusion on the RPS. Section 16.10.17 of the Development Plan also encourages the re-use of older buildings as a central element in the conservation of built heritage, and there are many successful examples of this approach throughout the city. Accordingly, the current proposal for wholesale demolition should be refused.
- The roads division has no objection subject to conditions.
- The proposed height (24.6m) will exceed that of the previous application on the site (P.A. Reg Ref 4177/16 at 21.2m) and the permitted development to the southwest (P.A. Reg Ref 3080/19 at 22.1m). The proposal would sit more comfortably in its context if aligned with the height of the adjoining site. It is regrettable that the response to the further information request did not address the planning authority's concerns in this regard.
- Regarding daylight and sunlight analysis, the applicant's response to the further information request has acceptably demonstrated that the proposal will not have any unacceptable implications for the permitted development to the southwest. The response also outlines that daylight impacts on properties

along Sandwith Street would be consistent with existing and emerging trends and proposes no further alterations or analysis.

- The application does not require Appropriate Assessment.
- It is concluded that the applicant has not adequately demonstrated that the building cannot be retained and extended in order to protect its architectural significance, and that the scale, form, materiality, and articulation of the proposed new development does not justify the demolition of this historic building.
- It is recommended to refuse permission and this recommendation forms the basis of the DCC decision.

3.2.3. Other Technical Reports

- Drainage Division: No objections subject to conditions.
- Waste Management Division: No objections subject to conditions.
- Air Quality Monitoring and Noise Control Unit: No objections subject to conditions.
- City Archaeologist: No objections subject to conditions.
- Transportation Planning Division: The initial report (30th June 2020) requested further information on a range of issues, while the subsequent report (6th May 2021) outlined that there were no objections subject to conditions. The main issues discussed can be summarised as follows:
 - While Map J of the Development Plan illustrates the indicative alignment of the DART Underground through the site, correspondence with Iarnród Éireann (IE) has stated that IE can no longer confirm that the route will remain aligned as per the Railway Order. DCC will continue to promote strategic transport objectives but the proposed development is not considered to impact on the DART + Programme (Formerly DART Expansion Programme) and does not contravene Policy MT4 of the Development Plan.

- All flood defence barriers will be within the applicant's site, which is acceptable.
- The vehicular entrance width has been reduced and the vehicle barrier removed. No objection subject to further traffic calming measures.
- 6 no. car-parking spaces have been removed as requested and cycle parking/access proposals are acceptable subject to conditions.
- All servicing should be conducted from within the site.
- A Mobility Management Plan and Construction Management Plan should be agreed prior to occupation of the development.
- Areas to be Taken in Charge should be agreed prior to commencement of development.

3.3. Prescribed Bodies

Transport Infrastructure Ireland: Section 49 Supplementary Development Contribution Scheme applies (LUAS Cross City – St Stephen's Green to Broombridge)

Iarnród Éireann (IE): The contents of the submission can be summarised as follows:

- Obligations to protect the railway under the Railway Safety Act 2005
- The application addresses some of the issues raised in pre-planning correspondence.
- Requirements for separation distances during construction and for future maintenance.
- Request for evidence to demonstrate that the proposed basement secant piled wall will offer sufficient resistance for the adjoining IE retaining wall.
- Proposals to demonstrate that the demolition of the existing building will not damage the fabric of the existing IE retaining wall.
- Approval for any excavations which infringe upon the Track Support Zone.
- Normal vibrations and noise emanating from the railway operations and maintenance.

3.4. Submissions / observations

Several third-party submissions were received. The issues raised are covered in the observations on this appeal (see Section 6.2 of this report).

4.0 Planning History

4.1. Appeal Site

ABP Ref 300446-17: Permission refused (24th May 2018) for the demolition of former post office garage & construction of a 5-storey office building and associated works. The original application was for a 4 to 7 storey over basement office but this was reduced in height/scale following a further information submission. The reason for refusal was as follows:

It is considered that the proposed development would contravene Policy MT4 of the current Dublin City Development Plan which seeks to promote to facilitate the provision of Metro, all heavy elements of the Dart expansion programme including Dart Underground (rail interconnector) in order to achieve strategic transport objectives. The development as proposed is therefore considered to be premature pending the agreement of the requirements of Dart Underground and would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP Ref VV0018 & ABP Ref 302081-18: These cases relate to the undeveloped eastern portion of the appeal site only i.e. excluding the former garage building. Notice of entry on the Vacant Sites Register confirmed (14th December 2017). Following a Section 11 Vacant Site Levy appeal the Board confirmed (14th November 2018) that the site shall remain entered on the Vacant Sites Register.

ABP Ref NA0005: Railway Order Application approved (14th December 2011) for Coras Iompar Eireann to construct, operate, improve and maintain DART Underground railway line between Inchicore and East Wall. The boundary alignment for the order crosses the undeveloped portion of the site at its southeast corner (to the rear of 33-35 Erne Street Upper).

ABP Ref PL 29S.201738: Permission granted (28th May 2003) to erect 113 sq.m. single storey telephone exchange and associated site works. This site comprised part of the undeveloped eastern portion of the appeal site.

4.2. Adjoining site to the southwest

ABP. Ref. 305661-19: Permission granted for the demolition of existing single storey industrial building and construction of 28 apartments in a 7-storey building. This development is at an advanced stage of construction.

5.0 Policy Context

5.1. National Policy/Guidance

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

- NPO 3 (b) aims to deliver at least 50% of all new homes targeted for the five cities within their existing built-up footprints;
- NPO 4 promotes attractive, well-designed liveable communities;
- NPO 6 aims to regenerate cities with increased housing and employment;
- NPO 11 outlines a presumption in favour of development that can encourage more people and generate more jobs/activity within existing settlements;
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.

5.1.2 National Strategic Outcome 4 aims to deliver the key public transport objectives of the Transport Strategy for Greater Dublin 2016-2035 by investing in projects such as the DART Expansion Programme. The National Development Plan 2018-2027 outlines that the initial sequencing of investment will focus on delivery of non-underground tunnel elements of the programme, followed by the provision of high-frequency electrified services to Drogheda, Cellbridge/Hazelhatch, Maynooth, and Greystones. It states that the route for the remaining element of the overall

expansion programme, the DART Underground Tunnel, will be established and protected to allow for its future delivery.

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

5.1.4 The **Architectural Heritage Protection Guidelines for Planning Authorities**, hereafter referred to as the 'Architectural Heritage Guidelines', sets out detailed guidance to support planning authorities in their role to protect architectural heritage when a protected structure, a proposed protected structure or the exterior of a building within an ACA is the subject of development proposals. It also guides those carrying out works that would impact on such structures.

5.2. Development Plan

5.2.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z5', the objective for which is '*To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity*'. The primary purpose of this zone is to sustain life within the centre of the city through intensive mixed-use development. The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. The Erne Street houses to the east are zoned 'Z2', with the objective to '*Protect and/or improve the amenities of residential conservation areas*'. The adjoining site to the southwest is zoned 'Z4', with the objective to '*Provide for and improve mixed-services facilities*'.

5.2.2 Chapter 6 of the Plan deals with the 'City Economy and Enterprise' and outlines the need to develop Dublin as a dynamic city region and the national economic engine. Section 6.5.2 states that a choice of good quality cost-competitive commercial space is critical and there is a need to redevelop outdated office stock. The following economic/enterprise policies and objectives are relevant to the current appeal:

CEE1 promotes Dublin and the city centre as the national economic growth engine, promotes competitiveness and existing/new jobs.

CEE3 promotes a pro-active approach to the economic impact of major planning applications with regard to economic development and employment.

CEE4 promotes global links and competitiveness, jobs which provide quality of life.

CEE5 recognises the importance of innovation and states that the Z5 zone and inner-city area, including the Docklands, is the crucial metropolitan and national resource for innovation, promoting the proximity and diversity of uses that foster innovation.

CEE11 aims to promote and facilitate the supply of commercial space including offices, where appropriate, as a means of increasing choice and competitiveness, and to consolidate employment provision in the city.

5.2.3 Section 6.5.4 of the Plan highlights the extent of vacant sites in the Z5 zone and the potential for regeneration of these areas. Policies CEE15 and CEE16 promote the regeneration of the inner city and the use/rehabilitation of vacant buildings and sites.

5.2.4 Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA's, Conservation Areas and Conservation Zoning Objective Areas. The railway bridges over Sandwith Street and Erne Street are included as protected structures on the RPS. The site is not located within a Conservation Area and does not contain any Protected Structures, nor is the existing building included as a Proposed Protected Structure in the Draft Dublin City Development Plan 2022-2028. In summary, relevant policies of the current plan include:

CHC1 Seek the preservation of the built heritage of the city.

CHC2 Ensure that protected structures and their curtilage is protected.

CHC4 To protect the special interest and character of all Conservation Areas

5.2.5 Chapter 4 outlines the shape and structure of the City and provides for taller buildings in designated areas. Outside these designated areas and SDRAs it is otherwise policy to retain the remaining areas of the city to a maximum height of between 16m and 28m depending on location. Section 4.5.4.1 (Approach to Taller

Buildings) outlines that the spatial approach to taller buildings in the city is in essence to protect the vast majority of the city as a low-rise city, including established residential areas and conservation areas within the historic core, while also recognising the potential and the need for taller buildings to deliver the core strategy. Section 16.7.2 includes height limits for 'low-rise' commercial development in the 'inner city' (up to 28m), 'rail hubs' (up to 24m) and the 'outer city' (up to 16m). Relevant policies can be summarised as follows:

SC7: To protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence.

SC17: To protect and enhance the skyline of the inner city, and to ensure that all proposals for mid-rise and taller buildings make a positive contribution to the urban character of the city, including the demonstration of sensitivity to the historic city centre.

SC28: To promote understanding of the city's historical architectural character to facilitate new development which is in harmony with the city's historical spaces and structures.

SC29: To discourage dereliction and to promote the appropriate sustainable re-development of vacant and brownfield lands.

5.2.6 Map J of the Plan 'Strategic Transport and Parking Areas' includes a route traversing the southeast corner of the site showing an indicative alignment for the Proposed DART underground under Transport Strategy for the Greater Dublin Area 2016-2035. Relevant transport policies can be summarised as follows:

MT4: Supports the provision of Metro, the DART Expansion Programme including DART Underground (rail interconnector), the expansion of Luas, and improvements to the bus network in order to achieve strategic transport objectives.

MT22: Requires a Development Assessment for all proposals located in the vicinity of both Dublin Port Tunnel, the proposed DART Underground protected corridor, or any proposed public transport tunnel. Iarnrod Eireann should be consulted in relation to heavy rail.

5.2.7 The plan designates 18 strategic development and regeneration areas (SDRAs), which represent significant areas with substantial development capacity and the

potential to deliver the residential, employment and recreational needs of the city. The site is located within SDRA 6 Docklands (SDZ and Wider Docklands Area) and Chapter 15 of the Plan sets out guiding principles for development therein.

5.2.8 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 “Design, Principles & Standards” provides design principles outlining that development should respect and enhance its context. Section 16.10.17 deals with older building of significance which are not protected and supports the retention and re-use of buildings/ structures of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city.

5.3 **Natural Heritage Designations**

The Grand Canal Proposed Natural Heritage Area is located c. 500m to the east of the site. The nearest Natura 2000 sites are the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC, both located in Dublin Bay at a distance of c. 2km from the site.

5.4. **EIA Screening**

5.4.1. An Environmental Impact Assessment (EIA) Screening Report was not submitted with the application. With regard to EIA thresholds, Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:

- 10(b): Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, “business district” means a district within a city or town in which the predominant land use is retail or commercial use.)

5.4.2. It is proposed to construct an office development of 9,388m² on a site area of 0.265 hectares, within the ‘business district’ of Dublin City Centre. Therefore, the size of the site is significantly below the lower threshold area of 2 hectares for ‘business district’ locations.

- 5.4.3. The majority of the site is currently developed, and the surrounding area contains a mix of urban uses including development of a similar scale and nature. The introduction of an office development will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or natural heritage and is not within an Architectural Conservation Area. There are several Protected Structures in the surrounding area, but I am satisfied that impacts in this regard can be adequately addressed as planning issues in the context of proper planning and sustainable development of the area and without the need for EIA.
- 5.4.4. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 8 of this Report). There is no hydrological connection present such as would give rise to significant impact on nearby water courses (whether linked to any European site or other sensitive receptors). The proposed development would not give rise to waste, pollution or nuisances that differ significantly from that arising from other urban developments. It would not give rise to a risk of major accidents or risks to human health. The proposed development would use the public water and drainage services of Irish Water and Dublin City Council, upon which its effects would be minimal.
- 5.4.5. Having regard to:
- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Class 10 (b) - Infrastructure Projects of the Planning and Development Regulations 2001 (as amended),
 - The location of the site on lands that are zoned 'Z5', which accommodates office uses under the provisions of the Dublin City Development Plan 2016-2022, and the results of the Strategic Environmental Assessment of the Dublin City Development Plan 2016-2022, undertaken in accordance with the SEA Directive (2001/42/EC),
 - The location of the site within the existing built-up urban area, which is served by public infrastructure, and the existing pattern of urban development in the vicinity,
 - The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and

the mitigation measures proposed to avoid significant effects by reason of connectivity to any sensitive location,

- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

6.0 The Appeal

6.1. Grounds of Appeal

The decision of DCC to refuse permission is the subject of a First Party appeal by Rails Investment Ltd (In Trust). The appeal has been prepared by Thornton O'Connor Town Planning consultants. The grounds of appeal can be summarised as follows:

- Following the previous Board decision (ABP Ref 300446-17) to refuse permission on grounds of prematurity regarding the DART Underground project, IE have confirmed their agreement with the National Transport Authority (NTA) that the railway order corridor is no longer protected, and permission has been granted for a residential development on the adjoining site (ABP Ref 305661-19).
- The demolition of the existing warehouse has been previously accepted by DCC and the Board, and the DART underground project would have resulted in its demolition if it had proceeded. The appeal refers to various excerpts

from previous DCC reports, Inspector's reports and Board decisions which did not raise any objection to the demolition of the building.

- The building is not a Protected Structure and the site is not located within a Conservation Area.
- The applicant's Conservation Report (by Cathal Crimmins) concluded that the building is of minor importance and does not meet the criteria set out in the NIAH for the protection of buildings.
- Only the Elected Members can list a building for protection in accordance with s. 51 (1) and 54(2) of the Act, which has not been done in this case. Section 16.10.17 of the Development Plan (regarding buildings which are not protected) appears to provide the Council with unlawful powers which contravene the Act. The refusal based on the recent inclusion on the NIAH overrides the legislative requirements for the protection of buildings.
- There has been no input from the Conservation Department of DCC in determining that the building should now be retained.
- The Inspector's report (ABP Ref 300446-17) recognises the potential of the lands to accommodate increased height and density in accordance with national and local planning guidance. It also concluded that the amenities of third parties could be appropriately protected, and that the height, scale and massing, which is similar to the current scheme, was appropriate.
- The Board has previously granted permission for the demolition of NIAH buildings, referring to ABP Ref 308229-20 as an example.
- The proposed modest insertion would be suitable on this underutilised, vacant site, which can accommodate increased height and density adjacent to services in accordance with the Building Height Guidelines.
- The proposed massing provides an articulated glass box held in place by a brick façade that helps to integrate with the neighbourhood and industrial context provided by the railway line. The façade is given interest and articulation through its composition, detailing, and framing, which give the proposal a materiality, depth, layering and scale that responds to its surroundings. The design and massing also ensures the protection of the

amenities of surrounding properties. It represents a high-quality considered proposal through its architectural treatment and form, which clearly takes account of its environment and surrounding residential properties.

6.2. Observations

The Board has received six observations on the appeal, including one from a registered architect (David Hughes) containing supporting letters from other architecture professionals (Ellen Rowley & Shane O'Toole). The observations raise many similar issues, which can be summarised under the following headings:

Previous decisions

- Support for the decision of DCC but highlighting the '*de novo*' nature of the appeal case.
- The proposed Pearse Underground station was of high importance in linking the redesignated lines forming part of the proposed DART Underground, which is relevant in assessing the 'benefit' of the DART Underground proposal versus the loss of the P&T stores under the permitted rail order. Demolition was only deemed appropriate in the context of the need for an important piece of infrastructure, which no longer applies.
- Under ABP Ref 300446-17, the assessment by DCC and the Board was informed by a 'direction' to protect the DART Underground route, and so many other relevant issues, including the demolition or otherwise of the existing building, were moot. This assumption that the building will be demolished for the railway project no longer applies.
- The alleged precedent case (ABP Ref 308229-20) is not comparable to the current case.

The existing building

- Inclusion on the NIAH with a 'regional' rating means automatic addition to the Record of Protected Structures when the Development Plan is revised from 2022 onwards.

- The demolition of the building to facilitate a local non-descript office block is not justified.
- There can be no presumption of a 'right' to demolish any building.
- It is regrettable that the scheme has not been revised to reuse the building as there are many successful examples of this approach, including the Archer's Garage case nearby and the Arup building (Ringsend Road). It would be less expensive and would be suitable for spacious shared offices.
- Letters from Ellen Rowley (architectural historian with UCD) and Shane O'Toole (HonFRIAI IntFRIBA) outline the historic and social history of the building, while the brickwork is of technical interest.
- The building has not been protected to date as it is only now that its importance is better understood and the NIAH survey and withering of the Rail Order have provided the opportunity.
- The appellants statement that 'none of the Grade 1 Conservation Architects employed by Dublin City Council deemed the building worthy of protection' is highly contentious and the board should seek a statement on the matter.
- It is a very rare form of modern architecture in Dublin as a form of 20th Century 'Brick' Modernism, which is different to the Art Deco examples such as Archer's Garage and the Kodak Building. Other examples of the 'European Modern Brick' style are referenced.
- The building has a potential alternative use as an indoor market.

Demand

- The COVID-19 pandemic has changed work patterns, which questions the need for the scheme as a whole.
- It is more than feasible to make the project viable as a building refurbishment.

Energy / emissions

- The very large upfront embodied carbon emissions associated with new build construction cannot be clawed back.

- It is estimated that the embodied carbon saved through the retention of the existing building would be worth 61+ years of operational energy.
- The demolition approach flies in the face of Development Plan objectives, including CC1 and CC2, as well as Ireland's Climate Change goals.

Residential Amenity

- The site is in a transitional zone adjoining a residential conservation where surrounding residential properties need to be considered.
- The statement that there will be no sunlight/daylight impacts on adjoining development is incorrect. The properties on Erne Street have bedrooms and kitchens facing the development and the analysis is not a fair representation of impacts on properties on Erne Street (No.'s 34-35 have been omitted), Erne Terrace (including open spaces to the front) or Sandwith Street.
- The increased height and scale will have an overbearing impact on the area, including adjoining residential properties.
- Private areas associated with the Erne Street properties will be overlooked.
- Concerns about noise and hazards associated with substations and plant.
- Nuisance and anti-social behaviour due to the omission of a gate on the Boyne Street entrance and the extent of traffic at this location.
- Construction stage impacts including traffic, noise, dust, vibration, subsidence, methodology,
- Gradual erosion of residential amenity through cumulative developments
- Inadequate parking and congestion impacts for locals.

Height, Scale and Design

- The height and scale has increased from the previous application, despite the comments of DCC and ABP reports.
- The height, scale and density permitted on the adjoining site to the southwest is already excessive, and the current proposal is just as significant and challenging for the receiving environment.
- Substandard nature of the proposed design.

- The Building Height Guidelines are based on the conditions and criteria outlined in Section 3 of that document.

Other Issues

- Potential impacts on water supply.
- Discrepancies with drawings and boundary details/impacts.
- The applicant's constitution and legal interest in the site and adjoining sites.
- Concerns about servicing arrangements.
- Potential impacts on the water table and flooding.
- Lack of quality affordable housing in the city.
- Lack of consultation with the community.

6.3 Planning Authority Response

In addition to points previously raised, the response from DCC can be summarised as follows:

- The building was inspected by the DCC Conservation Division on 14th March 2011 on foot of a request for addition to the RPS in 2008. The Conservation Division considered the building to be of significance, but postponed further action given that the building was on the planned DART Underground route.
- In May 2018, IE informed DCC that it could no longer confirm that the underground route would remain aligned as per the Railway Order
- In June 2018, DCC received a Ministerial recommendation under s. 53 of the Act following the NIAH survey and 'regional' rating for the building.
- In 2020 the Conservation Division re-assessed the building for RPS inclusion and agreed with the three categories of special interests assigned by the NIAH, as well as the building also having a technical interest. The current application was then lodged.

- DCC considers that the over-arching approach should be to ensure that the architectural and historical significance of the building is protected and enhanced by way of repair, retention, and possibly a high-quality extension.
- The building is worthy of addition to the RPS based on the following special interests:

Architectural: Detailing and considered design distinguishes the building as an exemplar of good quality design.

Technical: Innovative use of reinforced concrete, and employment of steel trusses with the glazed roof lanterns on stanchions and girders in the 20.4m deep structure.

Historical: The location was chosen for proximity to Pearse Street Station, a historic mail station, and the original garage use was reflective of its time.

Social: A newly emerging building type of purpose-built architect-designed automobile repair garage. The location would attract another distinctive similar building, namely Archer's Garage.

7.0 Assessment

7.1. Introduction

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

- The principle of the development
- Demolition of the existing building
- Height, scale, and visual amenity
- Daylight/Sunlight
- Residential amenity
- Traffic and Parking

7.2. The principle of the development

- 7.2.1. The site is located within a 'Z5' zone where offices are a 'permissible use' in accordance with section 14.8.5 of the Development Plan. I have also outlined that the economic/enterprise policies of the Development Plan support the increased supply of office space in the city centre and that the Z5 zone is identified as the crucial metropolitan and national resource for innovation. Furthermore, I note that part of the site has been included on the DCC Vacant Sites Register and section 6.5.4 of the Development Plan highlights the extent of such sites in the Z5 and the need to encourage their regeneration in accordance with policies CEE 15 and CEE16.
- 7.2.2. I acknowledge that the principle of development on the site was previously refused by the Board (ABP Ref 300446-17) on grounds of prematurity relating to the DART Underground project. And while the local and national policies continue to support the further development of the DART project as a strategic transport objective, I am satisfied from the information on file, including correspondence from Iarnrod Eireann, that the previously approved route can no longer be confirmed. Accordingly, it would be unreasonable to continue to protect the route and prevent the development of the site on these grounds. I acknowledge the separate IE correspondence on file regarding the protection of the existing rail infrastructure and I am satisfied that these matters could be satisfactorily dealt with by condition.
- 7.2.3. Having regard to the above, I consider that the proposal to provide an office development on this underutilised city centre site would be acceptable in accordance with local and national policy and could not reasonably be seen to compromise strategic transport infrastructure objectives.

7.3. Demolition of the existing building

- 7.3.1. Concerns about the demolition of the existing building clearly form the key basis for the DCC decision to refuse permission. The observations on the appeal also place a strong emphasis on the issue. In this regard I am conscious of the timeline regarding previous decisions of DCC and the Board, as well as the status of the building in terms of architectural heritage protection.

- 7.3.2. The Board should note that the previously approved Railway Order application (ABP Ref NA0005) clearly outlined that the building would be removed and p. 51 of the Inspector's Report acknowledged the planning gain associated with the redevelopment of the block. Furthermore, the EIS submitted with the application highlighted the industrial heritage impacts relating to the redevelopment of the block and the Inspector did not raise any objection in relation to the removal of the existing building. However, it should be noted that p.12 of the appeal incorrectly attributes an assessment of the building as being a 'minor example of its architectural type' and 'limited historic significance' to pages 130-131 of the Inspector's report. That assessment was, in fact, from pages 130-131 of the EIS. The Inspector's report did not include such a specific conclusion on the building, albeit that its removal was ultimately approved by the Inspector and, more importantly, the Board.
- 7.3.3. In the more recent case of ABP Ref 300446-17, which was refused solely on grounds of prematurity and the DART Underground, I note that the Inspector's report acknowledged the nature and features of the existing building but did not specifically comment on the merits or otherwise of its demolition. However, I do not concur with the contentions of some observer's that the issue was entirely disregarded due to the previous approval of demolition under the Railway Order. The demolition clearly formed an integral part of ABP Ref 300446-17, and it could not be disregarded as part of a previous approval. In my opinion the issue was not discussed as it simply was not one of the critical factors identified in the Inspector's assessment. If there was any fundamental objection to the demolition of the building, or if it was felt that it was not justified by reason of the limited scale of the proposed office development as opposed to the strategic importance of the previously approved DART proposal, then I feel that the issue would have been raised at the time in the Inspector's report and/or, more importantly, the Board's decision. That being said, the current case requires a 'de novo' consideration, including the question of the demolition of the existing building.
- 7.3.4. I acknowledge that the NIAH survey has recorded the existing building (Reg No. 50930341, 9th August 2017) and given it a 'regional' rating. It is appraised as follows:
Designed by J.M. Fairweather of the Office of Public Works, the simple façade is particularly carefully detailed. A strong horizontal emphasis is created by the plinth and lintel course, while the stepped brick entrance reveals and narrow windows

enhance the vertical sense of the openings. The burnt and irregular bricks add colour and textural interest, while also relieving the machine like quality which is often associated with Modernist buildings.

- 7.3.5. On the basis of this appraisal and its 'regional' rating, it would appear that a Ministerial recommendation relating to the building was issued to DCC in June 2018 under s. 53 of the Act. The Board should note that s.53 (1) provides for the Minister to make '*recommendations to a planning authority concerning the inclusion in its record of protected structures*' and subsection (2) provides that '*a planning authority shall have regard to any recommendations made to it under this section*'. Therefore, it is not a mandatory requirement that the recommended structures shall be included in the RPS.
- 7.3.6. The RPS has since been reviewed by DCC as part of the preparation of the Draft Dublin City Development Plan 2022-2028, which is currently on public consultation until 14th February 2022. I have reviewed the Draft Plan, including the proposed additions to the RPS as per Volume 4 Part two and the zoning map for the site. However, despite the Ministerial recommendation, I can confirm that the subject building has not been included as a proposed Protected Structure.
- 7.3.7. Notwithstanding that the building has not been included as a protected structure or a proposed protected structure, and is not included within a designated conservation area, I acknowledge that section 16.10.17 of the Development Plan supports the retention and reuse of older buildings of significance which are not protected and which area of historic, architectural, cultural, artistic and/or local interest or buildings which make a positive contribution to the character and identity of streetscapes and the sustainable development of the city. I do not accept the appellant's assertion that this provision somehow contravenes or circumvents the RPS process. The question of whether or not it is appropriate to demolish a structure is a valid issue in any application for demolition.
- 7.3.8. I have considered that NIAH appraisal and rating of the existing building and the DCC internal reports, upon which the DCC decision to refuse is largely based. I have also considered the 3rd Party observations submitted on the application and appeal, and the applicant's Conservation Report (by Cathal Crimmins, September 2017) which concludes that the loss of the garage is of 'negative' but 'minor importance'

and needs to be weighed against the 'positive aspects of the redevelopment of the site..'.

- 7.3.9. I acknowledge that the building façade onto Sandwith Street is of design interest, including its strong horizontal emphasis punctuated by vehicular entrances and windows openings, along with its composition and materials which add colour and texture. Internal views of the large space also demonstrate the use of steel trusses with glazed roof lanterns on stanchions and girders. From a historical and social perspective, I also acknowledge that the building is reflective of the original garage use and that there are functional associations with Pearse Street Station and design associations with similar buildings such as Archer's Garage. I also acknowledge the general acceptance that new-build projects involve a higher level of 'up-front' embodied carbon compared to refurbishment projects.
- 7.3.10. However, this must be balanced against the 'Z5' zoning for the site at this accessible city centre location and local/national policies to increase building height and density in the pursuit of compact urban development. In this context and having considered the particular characteristics of the building and the site, I feel that there would be considerable challenges in achieving an appropriate quantum of development on the site while also retaining the character of the building in a meaningful way. And while, in principle, I would certainly be supportive towards considering any such approach, I do not consider that existing building is of a particular character, interest or status that would justify a refusal on the grounds of the current proposal for its demolition.
- 7.3.11. It must also be acknowledged that new-build projects can be designed to be highly energy-efficient, and the application includes an 'Energy and Sustainability Report' which demonstrates that the project can be constructed in line with the nZEB requirements and above the minimum renewable carbon threshold, a matter which is ultimately dealt with separate to the planning code under the Building Regulations. Accordingly, I have no objection to the demolition of the demolition of the existing building subject to further assessment of the proposed replacement.

7.4. Height, scale and visual amenity

Building Height Policy

- 7.4.1. I have previously outlined Development Plan policy in relation to building height in the city. In particular, I note that section 16.7.2 of the Plan includes height limits for 'low-rise' commercial development in the 'inner city' (up to 28m), 'rail hubs' (up to 24m) and the 'outer city' (up to 16m). The appeal site is located within the 'inner city' and therefore the 28m height policy applies. The proposed building height extends to 24.62m and is therefore comfortably below the Development Plan height limits.
- 7.4.2. In terms of national policy, the '*Urban Development and Building Heights Guidelines*' promotes Development Plan policy which supports increased building height and density in locations with good transport accessibility and prohibits blanket numerical limitations on building height. Section 3 of the Guidelines deals with the assessment of individual applications and appeals and states that there is a presumption in favour of buildings of increased height in city cores and urban locations with good public transport accessibility. It sets out broad principles and criteria for the assessment of proposals for buildings taller than prevailing heights. SPPR 3 sets out that where a planning authority concurs that an application complies with the criteria outlined in section 3.2 of the Guidelines, taking account of the wider strategic and national policy parameters, the planning authority may approve such development even where specific objectives of the relevant development plan may indicate otherwise.

Quantum of Development

- 7.4.3. It is proposed to provide a gross floor area of 9,388m² on a stated site area of 2,650m². The Development Plan outlines that 'plot ratio' is a tool to help control the bulk and mass of buildings, and that it is calculated excluding basement floorspace (i.e. a nett area of 7,830m² in this case). It states that 'site coverage' is a control for the purpose of preventing the adverse effects of over-development. An assessment of the Development Plan standards in relation to the proposed development is outlined below.

	Development Plan Standard for Z5	Proposed Development
Plot Ratio	2.5 – 3.0	2.9
Site Coverage	90%	54%

7.4.4. As outlined above, the proposed site coverage remains quite low and the plot ratio is within the indicative range as per Development Plan standards. On this basis there is no objection in principle to the proposed quantum of development, subject to further detailed assessment.

Assessment

7.4.5. Section 3.1 of the Building Height Guidelines outlines the broad principles that planning authorities must apply in considering development proposals for buildings taller than prevailing building heights in urban areas. In this regard I would generally concur that the proposal assists in securing the NPF objectives of focusing development in key urban centres and fulfilling targets related to brownfield, infill development and in particular, effectively supporting the National Strategic Objective to deliver compact growth in our urban centres. Furthermore, notwithstanding that the DCC Development Plan 2016-2022 pre-dates the Guidelines, the proposed building height is in line with the relevant requirements of the development plan.

7.4.6. Section 3.2 of the Guidelines sets out the criteria that a development proposal must satisfy at various scales. And while this proposal does not rely on the provisions of SPPR3 regarding the approval of departures from specific objectives of the development plan, I propose to discuss the criteria given the nature of the proposal and the issues raised in the appeal.

7.4.7. *At the scale of the city/town*, I note that the appeal site adjoins Pearse Station which is a major transport hub providing DART, commuter and InterCity services. It is also within a short walk (c.150m) of frequent bus services on Pearse Street and Merrion Square (c.400m), which coincide with the proposed 'spine' routes B and C for the 'BusConnects' project. The site is on the edge of the city centre area and is within convenient walking distance of a wide variety of city centre amenities and services,

including the LUAS Green Line service. Accordingly, I am satisfied that the site is well served by public transport with high capacity, frequent service and good links to other modes of public transport.

- 7.4.8. In terms of integration with the character of the area, I note that the applicant has prepared a Design & Access Statement and a Photomontage booklet based on 6 surrounding viewpoints. While the viewpoints are largely confined to the surrounding neighbourhood, I consider that the more peripheral viewpoints (i.e. V1, V2, V5, and V6) satisfactorily demonstrate that views from beyond these points would be sufficiently distanced and/or obscured to prevent any significant visual impact at the scale of the city.
- 7.4.9. The site is relatively small and has limited potential to make a contribution to place-making through the incorporation of new streets and public spaces. However, as previously outlined, the proposal does use massing and height to create the required density for the area.
- 7.4.10. The applicant's contextual drawings and photomontages demonstrate the impact of the development *at the scale of the district/neighbourhood/street*. I consider that Views 1, 5, and 6 demonstrate that the proposal will largely be obscured from distant views and, where partially visible, will comfortably assimilate with the scale and height of existing development in the area.
- 7.4.11. View 2 demonstrates that the proposal would have a significant visual impact. The 4-storey north-facing brick element would largely assimilate with the existing KBC development (in the background) and even 2-storey development in the foreground (i.e. at the southeast corner of the Pearse St/Sandwith St junction). The 2 upper floors largely account for the significance of the visual impact, albeit that they are still significantly lower than the profile of large scale 6+ storey development at the southwest corner of the Pearse St/Sandwith St junction. The two upper floors have been designed as a separate massing element which is recessed from the lower floors and is finished in a lighter glass curtain wall material. I consider that this approach successfully creates visual interest and a focal point at the terminus of View 2, and that the increased height and scale will provide an improved sense of enclosure around the PearseSt/Sandwith St junction. Accordingly, while the visual

impact is significant, I consider that it would successfully assimilate with the existing built environment from this viewpoint.

- 7.4.12. Viewpoint 4 represents one of the closer views to the southeast of the site. The permitted development on the adjoining site is of significance in this case as it largely screens the proposed development. Similarly, the existing terrace along Erne Street, which is designated as a residential conservation area, provides further screening. And while the upper elements of the development will be visible above the existing properties, I do not consider that the impact would be significant, nor would it significantly detract from the character or setting of these properties.
- 7.4.13. The permitted development to the southwest again provides significant screening of the development from Viewpoint 3. The proposed development mainly appears as 4-storey from this viewpoint, with the permitted 7-storey development in the foreground forming the dominant visual feature. While the upper glazed floors are visible in the background to the north, I again consider that they create a lighter separate element of visual interest at the junction of the street with the rail lines. The 4-storey brick element is the dominant feature of the development from this viewpoint, and I consider that it creates a successful transition from the existing 3-storey residential development on the western side of Sandwith Street and would not detract from the character or amenities of the area.
- 7.4.14. In general terms, I note that the design concept aims to pick up on the key historic and architectural characteristics of the classical Dublin terrace in terms of scale, proportion, façade, rhythm, materiality and openings. I consider that the proposal would sit comfortably in its context, while also reflecting the character of the existing building on site in terms of its materials, strong horizontal emphasis, and large street level openings. The proposal responds well to the surrounding built environment and would make a positive contribution to this transitioning urban neighbourhood and streetscape. The varied massing, forms and materials would ensure that the proposal is not monolithic, and the facades have been given interest and articulation through their composition, detailing and framing devices. This creates a depth, layering and scale which successfully responds to the surrounding buildings.
- 7.4.15. Given the underutilised, low-profile nature of the existing site and building, together with the context of the emerging pattern and scale of development in the area and

the adjoining site to the southwest, I consider that the proposed development would integrate cohesively and would improve the legibility of the site and the wider area.

7.4.16. In terms of the mix of uses and building typologies, I note that the area retains a strong residential presence with a mix of dwelling types from various eras. There is also a strong commercial/office presence and the rail lines and Pearse Station also account for a large proportion of transport-related land-use. Accordingly, I consider that the proposed addition of modern office space with large floor plates would make a positive contribution to the mix of employment/transport/residential uses in the area, which would be consistent with local and national policies aimed at improved integration of land-use and transportation and the creation of sustainable live/work neighbourhoods.

7.4.17. *At the scale of the site/building*, the Guidelines state that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. This is discussed further in section 7.5 of this report.

7.4.18. In terms of *Specific Assessments*, Section 3.2 also highlights that further assessment may be required in relation to micro-climatic effects, bird/bat flight lines, telecommunication channels, air navigation, urban design, and relevant environmental assessment requirements. I have had regard to the need for any such further assessment in my assessment.

Conclusion

7.4.19. In conclusion regarding height, scale, and visual amenity, I consider that the proposed development would comply with the provisions of the Development Plan in respect of height and quantum of development and would be consistent with the Building Height Guidelines and NPF policies regarding the provision of increased height and density at accessible urban locations. And while the proposed development is of a height and scale that is greater than prevailing development, I consider that the massing, form and detailing of the proposal has been suitably designed to ensure that the proposed development will successfully integrate with the traditional and emerging character of development in the area.

7.5. Daylight/Sunlight

Policy

- 7.5.1. Although the proposal does not rely on SPPR 3 of the Urban Development and Building Height Guidelines (2018) with regard to the departure from development plan building height provisions, I note that Section 3.2 of the Guidelines states that the form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light. The Guidelines state that ‘appropriate and reasonable regard’ should be taken of quantitative performance approaches to daylight provision outlined in guides like the BRE ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’. Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and / or an effective urban design and streetscape solution.
- 7.5.2. The Development Plan also highlights the value of daylight and sunlight and states that development ‘shall be guided by the principles of’ the BRE Guide. It states that a sunlight/daylight analysis of the different units may be required and modifications to be put in place where appropriate.
- 7.5.3. At the outset I would highlight that the standards described in the BRE guidelines allow for flexibility in terms of their application, with paragraph 1.6 stating that ‘Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design’. It notes that other factors that influence layout include considerations of privacy, security, access, enclosure, microclimate etc., and states that industry professionals would need to consider various factors in determining an acceptable layout, including orientation, efficient use of land and arrangement of open space, and these factors will vary from urban locations to more suburban ones.

Information & Assessment

- 7.5.4. The application included a 'Daylight & Sunlight Analysis' report prepared by the '3D Design Bureau'. The report states that all target values used in the study were obtained with reference to the BRE guide 'Site Layout Planning for Daylight and Sunlight'. The assessment contains a 'light from the sky' (VSC) and sunlight (APSH and WPSH) analysis for the windows of surrounding properties. It also includes a sunlight analysis of impacts of the open spaces/gardens of neighbouring properties
- 7.5.5. I have considered the report submitted by the applicant and have had regard to BRE 2009 – 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). I acknowledge the publication of the updated British Standard (BS EN 17037:2018 'Daylight in Buildings), which replaced the 2008 BS in May 2019 (in the UK) but I consider that this updated guidance does not have a material bearing on the outcome of the assessment and that the relevant guidance documents remain those referred to in the Urban Development and Building Heights Guidelines. I have carried out a site inspection and had regard to the interface between the proposed development and its surroundings, as well as the third-party appeals/observations which have raised concerns in relation to daylight and sunlight.

Impacts on neighbouring properties

- 7.5.6. The impact of the proposed development on the daylight/sunlight available to surrounding properties is one of the issues raised in this appeal case. The BRE guide acknowledges that, in designing new development, it is important to safeguard the daylight to nearby buildings and I note that the Development Plan also outlines the need to avoid excessive impacts on existing properties.
- 7.5.7. In general, Vertical Sky Component (VSC) is a measure of the amount of sky visible from a given point (usually the centre of a window) within a structure. The BRE guidelines state that a VSC greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building would notice the reduction in the amount of skylight.

- 7.5.8. The applicant's VSC assessment covers a total of 135 windows in surrounding properties along Sandwith Street and Boyne Street to the west and southwest; the front of the 'Erne Terrace Rear' to the north; and the rear of Erne Street Upper to the east. I am satisfied that 34 & 35 Erne Street Upper need not be included given the absence of any significant glazing opposite the proposed development. The results states that the impact on 109 (80.7%) of these windows will be 'imperceptible' i.e. they would retain a VSC of 27% or 0.8 times their former value. I note that 'slight' impacts have been identified for No. 14 Boyne St and at the rear of Erne Street Upper. However, all these cases exceed 90% of the VSC target value and I am satisfied that this represents a relatively minor departure from BRE recommendations.
- 7.5.9. The windows most affected by the development would be those identified as 5a-f and 6a-f along Sandwith Street directly west of the appeal site. These windows would achieve 73-81% of the 'target VSC value', which the applicant's assessment generally classifies as a 'moderate' impact. I note that the windows would retain VSC values of 17-22% and that the BRE Guide indicates that special measures (e.g. larger windows, changes to room layout) could achieve adequate daylight in cases where the VSC is between 15% and 27%. I would also accept that the baseline VSC values for these windows are quite high due to the underutilisation and low-profile of existing development on the appeal site opposite, and that, as a result, the proposed development would be expected to have a disproportionate impact. And notwithstanding those impacts, I note that the proposed VSC values for these properties would still be generally consistent with the proposed values for many other properties in the area, particularly those within Erne Terrace and Erne Street Upper where impacts have been classified as 'slight' or 'imperceptible'.
- 7.5.10. Consistent with BRE guidance regarding the flexible application of standards, I note that section 2.2.3 of the guide confirms that the numerical values given regarding daylight impacts on existing buildings are purely advisory, and that different criteria may be used based on the requirements for daylighting in an area viewed against other site layout constraints. Having regard to this flexibility, I consider that the number of windows experiencing a 'moderate' impact (i.e. 11 windows, or 8% of all those assessed) is a relatively minor proportion and that those windows with

'moderate' effects would still retain daylight levels that would be consistent with surrounding properties.

- 7.5.11. The applicant has included a sunlight analysis for windows using measurements of annual probable sunlight hours (APSH) and annual probable sunlight hours for the winter period (WPSH). The BRE guide states that living room windows facing within 90° of due south may be adversely affected if the centre of the window receives less than 25% of APSH or less than 5% of WPSH; and receives less than 0.8 times its former sunlight hours during either period; and has a reduction in sunlight received over the whole year greater than 4% of APSH.
- 7.5.12. Based on BRE guidance that the assessment applies only to windows facing the development with an aspect within 90° of due south, the applicant's analysis has focused on the 25 front windows of 'Erne Terrace Rear' to the north of the appeal site. The assessment finds that the majority of these windows do not currently meet the 25% APSH standard but do exceed the WPSH of 4%. However, these standards would remain virtually unchanged as a result of the proposed development and the impact is therefore classified as 'imperceptible'. This is understandably attributable to the presence of the raised railway lines directly south of the Erne Terrace Rear properties, which will continue to be the dominant influence on sunlight to these properties. Given that all post-development impacts would maintain an APSH value greater than 0.8 times its former value, I am satisfied that the impacts would be acceptable in accordance with BRE recommendations.
- 7.5.13. The applicant has carried out a shadow/sunlight assessment for the gardens of surrounding properties. The BRE guide recommends that for it to appear adequately sunlit throughout the year, at least half of the space should receive at least 2 hours of sunshine on 21st March. If as a result of new development this cannot be met, and the area which can comply is less than 0.8 times its former value, then loss of sunlight is likely to be noticeable.
- 7.5.14. The applicant has assessed the rear gardens of the 7 properties along Erne Street Upper to the east of the site. The analysis shows that none of these spaces currently meet the requirement for half of the space to receive at least 2 hours of sunshine on 21st March. However, the impact of the development would have only a minor impact on No.'s 29-30 and none of the properties would experience a reduction to

less than 0.8 times its former value. Accordingly, the loss of sunlight is not likely to be noticeable as per BRE guidance.

3rd Party appeals / observations

7.5.15. I have considered the issues raised by 3rd parties in carrying out this daylight/sunlight assessment. I note that some of the observers have raised concerns about the scope and accuracy of the applicant's analysis and contend that it is not an accurate reflection of the impact of the development. I consider that the assessment has been comprehensive in its scope and has adequately demonstrated the worst-case impacts of the development on surrounding properties. The applicant's analysis accepts that some modelling information for surrounding properties may not be as accurate as the on-site survey information. However, I accept that it would be unreasonable to expect precise accuracy in modelling a wide range of surrounding buildings and I am satisfied that the applicant's drawings, modelling and analysis accurately reflect the predicted impacts of the proposed development within reasonable tolerance levels.

Conclusions on Daylight/Sunlight

7.5.16. I again highlight that the mandatory application of the BRE standards is not required in this case by the Development Plan or by Section 28 Ministerial guidelines. Consistent with that approach, the BRE guide itself highlights further the need for flexible interpretation in the context of many other design factors.

7.5.17. I am satisfied that the applicant has carried out an assessment of impacts on neighbouring properties and that it has been competently prepared in accordance with the BRE / BS guidance and methodology. While the impacts of the proposed development are generally in accordance with the recommended standards, I acknowledge that daylight levels to some windows will be less than 27% (VSC) and/or 0.8 times their former value. However, I am satisfied that these constitute marginal shortfalls in the wider context of the overall assessment and that the BRE guidance allows sufficient flexibility in the application of standards.

7.5.18. The appeal site is located in a well-connected city centre area and, as previously outlined, increased height and density should be encouraged at such locations in order to achieve wider NPF planning objectives relating to compact development and brownfield redevelopment. Accordingly, I am satisfied that the proposed

development is acceptable at this location and that it will not excessively detract from the amenities of surrounding properties by reason of daylight/sunlight impacts.

7.6. Residential amenity

- 7.6.1. Apart from daylight/sunlight impacts, some observers have also raised concerns about overlooking and overbearing impacts on surrounding residential properties.
- 7.6.2. The proposed development would bound onto the rail lines to the north and Sandwith Street to the west. Both of these transport routes provide a significant separation distance and 'public' buffer between the proposed development and surrounding residences and I am satisfied that there will be no significant privacy impacts in these cases. To the south, the proposed development would adjoin the recently permitted residential development at the corner of Sandwith St/Boyne St. Having reviewed this proposal I note that no direct overlooking would occur as a result of the current appeal case.
- 7.6.3. The potential for impact is therefore limited to the Erne Street Upper properties to the east of the site. In this regard I note that the proposed east-facing 1st floor windows would generally oppose the rear windows of No.'s 29-32 at a distance of c.17m. There is no specific recommended standard for such separation distances in the case of opposing residential and commercial development. However, it is useful to compare this to the recognised standard of 22m for opposing residential windows in new housing developments. Therefore, having regard to the city centre context of the site and the nature of the proposed development, I am satisfied that the 17m distance would be acceptable and would not lead to any unacceptable overlooking impacts.
- 7.6.4. I acknowledge that an east-facing 3rd floor terrace is also proposed. However, this space is recessed c. 3.245m from the parapet wall at 3rd floor level and I am satisfied that the 'Section A-A' drawing demonstrates that there would be no possible angle of overlooking between this terrace and the Erne Street Upper properties. Similarly, I am satisfied that the 5th floor terrace is sufficiently elevated and angled in relation to these properties to avoid any reasonable prospect of significant overlooking impacts.
- 7.6.5. On the question of overbearing impacts, I would highlight that the proposed form and massing provides several setbacks in floor levels as the proposed development

increases in height. This is an important feature of the design, particularly at the eastern interface where it rises from 3 to 5 to 6 storey, and to the west where the façade has a small setback at 4th floor level followed by a larger setback at 5th floor level. The use of glazing on the upper floors also helps to soften the visual impact and scale of the proposal. Accordingly, I am satisfied that the proposed design provides suitable separation in a graduated approach to ensure that it would not have unacceptable overbearing impacts on surrounding properties.

- 7.6.6. Concerns have also been raised in observations about general disturbance relating to the proposed vehicular entrance, the proposed substations and plant, and the impacts associated with the construction phase of the development. I consider that these are commonly accepted elements of urban development. There would be quite a low volume of traffic movements associated with the 12-space car park and I do not consider that this or the entrance arrangements can reasonably be seen to impact on residential amenity or to encourage anti-social behaviour. Furthermore, I consider that noise impacts and other potential nuisance impacts at construction and operational stage can be satisfactorily addressed through suitable conditions. The DCC Air Quality Monitoring and Noise Control Unit had no objection to the proposed development subject to conditions.

7.7. Traffic & Parking

- 7.7.1. As previously outlined in this report, the appeal site benefits from an accessible location in close proximity to a range of public transport and pedestrian/cycling options. It is proposed to provide only 12 car parking spaces and therefore the development will be largely based on use of the widely available local sustainable transport options including rail, bus, walking and cycling. I do not consider that the limited traffic volumes associated with 12 car-parking spaces would have any significant impact on the surrounding road network in terms of capacity or safety.
- 7.7.2. The proposal for 12 spaces is well below the maximum number of spaces allowable under Table 16.1 of the development plan standards (i.e. 23 spaces @ 1 per 400m² for 'offices' in Zone 1). It is proposed to provide 130 no. staff bicycle spaces, with 100 spaces at basement level and 30 spaces in the car park area. For Zone 1 areas, the development plan standards indicate that 1 cycle space is required per 100m² for 'enterprise and employment' uses, resulting in a requirement for 93 spaces.

Therefore, I am satisfied that the proposed development would comfortably exceed the development plan requirements.

- 7.7.3. The planning authority has not raised any objection to the proposed development on grounds of traffic or parking, subject to the clarification and agreement of minor parking, access and management arrangements by condition. I would concur that the proposed development is not likely to have any significant impacts on existing traffic and parking arrangements in the area, and I am satisfied that any outstanding details, including construction-related traffic issues and servicing arrangements, can be satisfactorily addressed by condition.

7.8. Other Issues

Flood Risk, drainage and water services

- 7.8.1. The applicant's 'Civil Engineering Infrastructure Report' addresses the issue of flood risk. It reports that the site is within 'Zone B' according to the OPW fluvial and coastal flooding maps and that the 'less vulnerable' office development does not require a 'justification test' in accordance with OPW 'Flood Risk Assessment Guidelines'. The report considers the key flood mechanisms and characteristics of pluvial flooding and specific problem areas within the Dublin South East Pilot Area and proposes flood defence barriers and other precautions to ensure that any excess water is handled correctly and diverted away from the development.
- 7.8.2. I have reviewed the OPW flooding mapping data and I confirm that the site is located within the coastal/tidal flood zone for 'low probability' events with an indicative 1-in-a-1000 chance of occurring (i.e. 0.1% AED). I confirm that this is classified as 'less vulnerable development' as per Table 3.1 of the OPW Flood Risk Guidelines, which is considered 'appropriate' for the area and does not require a 'justification test' as per Table 3.2 of the Guidelines. Accordingly, I have no objection to the proposal on the grounds of flood risk and note that the applicant has incorporated additional precaution measures.
- 7.8.3. The applicant has also assessed groundwater flow impacts as part of the 'Basement Impact Assessment Report'. On the basis of desktop and site investigations, the groundwater is stated to be set at a conservative level of 3m below ground level. It states that the alternative flow route is around the perimeter of the basement and

below the high permeability gravel stratum, and also that preferential SW to NE flow direction is 'blocked' upstream by the basement under the KBC building basement to the south. It is stated that further investigations, monitoring and mitigation will be carried out to allow dewatering without impact on the surrounding properties. I consider that this is an acceptable approach to mitigate any significant impacts on groundwater in the area.

- 7.8.4. It is proposed to construct a new surface water drainage system to collect and attenuate run-off from roofs, paved areas, and any residual run-off from landscaped areas. While the applicant has indicated that the surface water outfall would be into the existing combined sewer on Boyne Street, I note that the DCC Drainage Division indicate that connection should be to a dedicated surface water sewer on Erne Street Upper to the east. I am satisfied that this matter can be satisfactorily agreed by condition. I also consider that issues relating to the capacity and connection to the water and wastewater infrastructure can be satisfactorily agreed through Irish Water.
- 7.8.5. Having regard to the above, I have no objection to the proposed development on the grounds of impacts on flood risk, drainage or water services.

Archaeology

- 7.8.6. I note that the appeal site adjoins the Zone of Archaeological Constraint for the Recorded Monument DU018-020 (Dublin City). The area previously formed the shoreline of the River Liffey and, as such, the site has archaeological potential for maritime material in the historic floodplain below the present ground level and reclamation materials. The DCC Archaeologist's report recommends that an Archaeological Impact Assessment (including test trenching) should be completed, and I have no objection in this regard subject to the attachment of a suitable condition.

Structural Impacts

- 7.8.7. The applicant's Basement Impact Assessment Report considers the impact of the proposed development on surrounding infrastructure, structures, and ground conditions. The assessment uses 'Oasys X-disp' software and focuses on damage due to displacement of neighbouring property beside the proposed excavation, as well as the railway embankment wall and the houses to the east of the development. It states that ground movement analysis is not necessary as there will be no potential

for settlement where piled foundations are proposed and underlying gravels are not susceptible to heave.

- 7.8.8. The assessment states that the maximum settlement is 20mm and around 28mm horizontal displacement for the Railway wall to the north. Further analysis gives results indicating a damage category of 0 'Negligible' as the worst-case scenario. A monitoring strategy is proposed to ensure that any movements are flagged early and suitably mitigated. The assessment also outlines that construction stage impacts will be addressed through a management plan and that the cumulative effect with other basements will still be negligible.
- 7.8.9. Having regard to the above, I am satisfied that the applicant has adequately assessed the potential structural impacts of the development on the surrounding area and has demonstrated that they are not predicted to be significant. Suitable monitoring and mitigation measures have been incorporated and it will be the developer's responsibility to ensure that these are implemented.

8.0 Appropriate Assessment

- 8.1.1. The application includes a 'Screening Report for Appropriate Assessment' prepared by OPENFIELD Ecological Consultants. It concludes that significant effects are not likely to arise, either alone or in combination with other plans or projects to the Natura 2000 network.
- 8.1.2. The proposed development involves the provision of an office development with a gross floor area of 9,388m². The site has been previously developed and has a stated site area of 2,650m². It is proposed to connect to the existing surface water and wastewater network serving the area. The surrounding area is predominantly composed of artificial surfaces and is characterised by a mix of commercial and residential development of varying scale.
- 8.1.3. None of the submissions or observations received in connection with the appeal have raised the issue of Appropriate Assessment.
- 8.1.4. The nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC (both c.

2km away). I acknowledge that there are several other Natura 2000 sites in the wider surrounding area, including more distant sites within Dublin Bay. Having carried out AA screening for other developments in the Dublin city area I am conscious that the development is indirectly connected to the Natura 2000 sites within Dublin Bay via the surface water and foul water networks. The possibility of groundwater connections must also be considered. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.

- 8.1.5. With regard to surface water, the development incorporates appropriate management measures to regulate discharge flows in terms of quantity and quality. There is also limited potential for surface water contamination during construction works but I am satisfied that best-practice construction management will satisfactorily address this matter. There would be significant dilution capacity in the existing drainage network and receiving water environment and there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Accordingly, I am satisfied that there is no possibility of significant impacts on European sites within Dublin Bay from surface water pressures from the development.
- 8.1.6. The wastewater emissions from the development will result in an increased loading on the Ringsend WWTP. However, having regard to the limited scale of the development and the associated discharges; the 'unpolluted' EPA classification of the coastal waters in Dublin Bay and the dilution capacity of these waters; and the likely completion of the Ringsend WWTP extension in the short term, I am satisfied that there is no possibility that the additional foul water loading resulting from the development will result in significant effects on European sites within Dublin Bay.
- 8.1.7. The details submitted with the application have demonstrated that the development is not likely to have a significant impact on groundwater in the area. Given the limited scale of the site and the standard construction management measures proposed, I am satisfied that any impacts on groundwater would not be likely to have significant effects on the Natura 2000 network.
- 8.1.8. I am satisfied that any proposals incorporated within the development, including surface water management proposals, constitute standard best practice and that no mitigation measures are relied upon for Appropriate Assessment screening. Having

regard to the above preliminary examination, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

Having regard to the above and the reasons and considerations set out below, I recommend that planning permission for the proposed development should be **granted**, subject to conditions.

10.0 Reasons and Considerations

Having regard to the city centre location of the site in close proximity to a wide range of public transport options and other services, the provisions of the Dublin City Council Development Plan 2016-2022, the Urban Development and Building Heights - Guidelines for Planning Authorities issued by the Department of Housing, Local Government and Heritage in December, 2018, the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts Heritage and the Gaeltacht in October 2011, and the National Planning Framework, which seeks to direct new development in cities into built-up serviced areas, the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum of development in this accessible urban location, would not seriously injure the amenities of surrounding properties or seriously detract from the character or built heritage of the area, and would be acceptable in terms of pedestrian and traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted to the planning authority on the 15th day of April, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The following shall be included within the proposed development:
 - (a) Traffic calming measures shall be provided within the site at the approach to the Boyne Street exit.
 - (b) Retractable bollards shall be installed at the northwest corner of the site.
 - (c) The public footpath shall continue at a raised level across the site entrance/exit, which shall be suitably ramped and dropped.

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

Reason: In the interest of traffic safety and convenience.

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of public health

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

Reason: In the interest of public health.

6. A comprehensive boundary treatment and landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to the commencement of development. This scheme shall include the following:-

- (a) details of all proposed hard surface finishes, including samples of proposed paving slabs/materials for footpaths, kerbing and road surfaces within the development;
- (b) proposed locations of trees and other landscape planting in the development, including details of proposed species and settings;

- (c) details of proposed street furniture, including bollards, lighting fixtures and seating;
- (d) details of proposed boundary treatments at the perimeter of the site, including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme.

Reason: In the interest of visual amenity.

- 7. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

- 8. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

Reason: In the interest of residential amenities of surrounding properties and in the interest of clarity.

- 9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of

development. This plan shall provide details of intended construction practice for the development, including hours of working, management measures for noise, dust and dirt, and construction traffic management proposals.

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

10. The developer, in consultation with Irish Rail, shall ensure that the surrounding rail infrastructure is suitably protected during the construction and operational phases of the development. Detailed plans and proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect key transport infrastructure and ensure a satisfactory standard of development.

11. The 12 proposed car parking spaces shall be permanently allocated to the proposed development and shall not be sold, rented, or otherwise sub-let or leased to other parties.

Reason: To ensure that adequate off-street parking provision is available to serve the proposed development.

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

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

13. The developer shall prepare a plan for the servicing and delivery requirements of the development. Proposals in this regard shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: To ensure satisfactory servicing and delivery arrangements in the interests of pedestrian and traffic safety and convenience.

14. During the operational phase of the proposed development, the noise level shall not exceed 55 dB(A) rated sound level, as measured at the nearest noise sensitive location. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

15. A full architectural survey of building proposed for demolition shall be carried out and shall be submitted to the planning authority prior to the commencement of development. Archive standard drawings and a photographic survey shall be prepared in accordance with the requirements of the planning authority.

Reason: In order to facilitate the conservation, preservation and/or recording of the architectural heritage of the site.

16. The monitoring and mitigation measures included in the Basement Impact Assessment Report submitted to the planning authority shall be implemented in full.

Reason: In the interest of orderly development and protecting ground stability.

17. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

18. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

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

19. Prior to the occupation of the development, a Mobility Management Plan shall be submitted to and agreed in writing with the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff employed in the development and to reduce and regulate the extent of parking, and shall also include bicycle parking

management proposals. The plan shall be prepared and implemented by the management company for all units within the development.

Reason: In the interest of encouraging the use of sustainable modes of transport and reflecting the needs of pedestrians and cyclists.

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

Reason: In the interests of visual and residential amenities.

21. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

(i) the nature and location of archaeological material on the site, and

(ii) the impact of the proposed development on such archaeological material.

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

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

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

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

Reason: To ensure the satisfactory completion of the development.

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

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

24. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City (St. Stephen's Green to Broombridge Line), in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

Stephen Ward
Senior Planning Inspector

28th January 2022