



An
Bord
Pleanála

Inspector's Report ABP310811-21

Development

Planning Permission for the demolition of a two-storey industrial unit and the construction of 13 Residential Units in a 5 storey block including set back penthouse together with ancillary works.

Location

25-26 Charles Lane.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

2623/21.

Applicant

Shelford Limited.

Type of Application

Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party -v- Refusal.

Appellant

Shelford Limited.

Observer

Luke Gardener Limited

Date of Site Inspection

23rd November 2021.

Inspector

Paul Caprani.

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1.0 Introduction

ABP310811-21 relates to a first party appeal against the decision of Dublin City Council to issue notification to refuse planning permission for the demolition of a two-storey industrial unit and the construction of 13 apartments at a site at Nos. 25-26 Charles Lane in north inner city, Dublin. Planning permission was refused on the basis that the proposed height, design, bulk and extent of the building would be out of character with the historic and sensitive context of the site and would therefore be contrary to the policy statements contained in the development plan. An observation was also submitted supporting the decision of the Planning Authority.

2.0 Site Location and Description

- 2.1. The appeal site fronts onto Charles Lane a relatively narrow lane which runs to the rear of and parallel to Mountjoy Square East. As the crow flies the subject site is located approximately 1.5 kilometres north-east of Dublin City Centre. Mountjoy Square is an historic and architecturally important square dating from the late 18th century and has largely remained intact. Charles Lane is a relatively narrow lane and was likely a former stable lane associated with the Georgian dwellings fronting onto Mountjoy Square East. The areas to the rear of the houses fronting on Mountjoy Square were developed in the mid-20th century as small warehouses and commercial premises. More recently three and four storey apartment developments have been constructed at either end of the lane whereas the central portion of the lane accommodates former factories and warehouses which are currently in a derelict condition.
- 2.2. The subject site occupies a rectangular area and faces directly onto a small former residential enclave Tyrrell Place. It comprises of a small terrace of two-storey red brick dwellinghouses on the northern side of the cul-de-sac, all of which are currently derelict.
- 2.3. The subject site is located to the immediate rear of 25-26 Mountjoy Square East. It comprises of a rectangular block of land (c.17 metres by 20 metres). The gross floor area of the site with a total site area of 387 square metres (0.0387 hectares). The

rear boundary of the site is located over 45 metres from the rear of the main building fronting onto Mountjoy Square East.

- 2.4. The site itself comprises of a series of delapidated sheds. Lands directly opposite the site on the eastern side of Charles Lane also comprise of delapidated sheds surrounded by undeveloped land. Pavee Point Training Centre is located further east along Charles Street Great.
- 2.5. Lands contiguous to the north of the site accommodate a single storey printing works while lands to the immediate south of the site are undeveloped and overgrown.

3.0 Proposed Development

- 3.1. Planning permission is sought for the demolition of all existing structures on site. It is proposed to construct a five storey residential development with a recessed top floor. The building rises to a height of 15 metres (with an additional 1 metre for the lift shaft at rooftop level). The building is to incorporate a reddish brick finish with steel framed windows on all elevations. Private balcony areas are to be located on the rear (west elevation) which are to overlook an area of private open space amounting to just over 100 square metres in size at the rear of the site.
- 3.2. At ground floor level it is proposed to provide one studio apartment (42.1 square metres) and 1 no. one-bedroomed apartments (51.85 square metres). Cycle parking and one off-street car parking space as well as bins and buggy/scooter storage areas are to be provided at ground floor level along the southern boundary of the site.
- 3.3. The first, second and third floors incorporate identical layouts with each floor accommodating three one-bedroomed apartments ranging from 49.3 to 53.1 square metres in size.
- 3.4. At the top floor level it is proposed to provide 1 no. two-bedroomed apartment (75.75 square metres) and an additional studio apartment at 43.65 square metres. Both top floor apartments are to incorporate recessed balconies to the front and rear of the unit. A detailed breakdown of the residential units to be provided are set out in the tables below.
- 3.5.

Table 1: Key Figures

Site Area	0.0387 hectares
Site Coverage	36%
Plot Ratio	2.29
No. of Houses No. of Apartments	0 13
Density –	335 units per ha
Dual Aspect Single Aspect	9 Units 4 Units
Part V Provision Apartments	None
Public Open Space Provision Communal Open Space	0 102.25 sq m/ 26% of the site area
Car Parking – Apartments/ Residents	1
Bicycle Parking	20.

Number and Size of Units

	Studio	1 bed	2 Bed
Ground floor	1 (42.1 sqm)	1 (51.8 sqm)	-
1st Floor	-	3 (49 – 53 sqm)	-
2nd Floor	-	3 (49 – 53 sqm)	-
3rd Floor	-	3 (49 – 53 sqm)	-
4th Floor	1 (43.6 sqm)	-	1 (75.7) sqm

4.0 Planning Authority's Decision

Dublin City Council issued notification to refuse planning permission for a single reason which is set out below.

1. *It is considered that the proposed development, by virtue of the height, design, bulk and extent would be out of character with the historic and sensitive context of the site, would represent a visually prominent form of development relative to its immediate environment. It is therefore considered that the proposed development would be contrary to Policy CHC2 and Section 16.10.10 of the Dublin City Development Plan and the proper planning and sustainable development of the area.*

4.1. Documentation Submitted with the Planning Application

- 4.1.1. A covering letter submitted with the application states that the application is similar to the recently permitted scheme on the same site except that an additional floor has been reinstated having been omitted in response to a further information request on the previously permitted scheme. All other aspects of the scheme are identical to the permitted scheme. The report goes on to set out details of the site and its surroundings. It provides details of the historic evolution of Mountjoy Square. It also details design of the proposed development.
- 4.1.2. It is stated that the five storey element of the proposal would not be visible from the square. And it is noted that a larger apartment building which is one storey higher is located to the south of the site at the corner of Charles Street and Charles Lane.
- 4.1.3. The report goes on to assess the proposal in terms of its energy rating and assesses the architectural impact arising from the massing and height of the building has been carefully designed to ensure that it remains subservient to the houses fronting onto the square.

4.2. Planning Authority's Assessment

- 4.2.1. A report from the Engineering Department Drainage Division stated that there is no objection to the proposal subject to standard conditions.

- 4.2.2. A report from Transport Infrastructure Ireland states that if the application is successful the Planning Authority are asked to include a Section 49 Contribution Levy Scheme.
- 4.2.3. A number of letters of objection were submitted expressing concerns in relation to the size and scale of the proposed development in the context of an Architectural Conservation Area and in the context of surrounding protected structures.
- 4.2.4. A report from Irish Water indicates the presence of an existing water/waste infrastructure pipe along the proposed development site. Irish Water does not permit building over its assets and therefore the applicant will be required to engage with Irish Water to incorporate diversions to assess the feasibility of any potential building over this infrastructure. Further information is requested in this regard.
- 4.2.5. A report from the Roads and Streets Traffic Department recommends that should planning permission be forthcoming, a number of conditions be attached in relation to the provision of secure and well-lit cycle parking, the provision of a pedestrian footpath along the western side of the lane and the preparation of a Construction Management Plan. Details are also required with regard to Residential Traffic Plan, a Servicing and Operations Plan and details of all materials to be used in public areas.
- 4.2.6. A report from the Environmental Health Officer states consideration to the nearest noise and dust sensitive locations must be given when considering the demolition and construction phase of the development.
- 4.2.7. The planner's report notes that the submitted application would be substantially in keeping with that granted under PL2689/20 with the exception of the additional storey. It is noted that the plot ratio figure is above the indicative level contained in the development plan. However, as the proposal is for residential development on a underutilised plot the higher plot ratio may be acceptable in this instance.
- 4.2.8. It is noted that the applicant attempts to justify the mass and scale of the proposal on the basis that there is a six storey block on the corner of Charles Street and Charles Lane. However, the planner's report considers that this is not an acceptable precedent as this block graduates down to four storeys along the street frontage. As presented, the proposed height of the building is not considered to be appropriate given the sensitive location. It is considered that the proposed relationship with the adjoining terrace of protected structures is unacceptable and would result in an

undesirable precedent for future developments along the laneway. On this basis it is recommended that the applicant should be refused. It is noted that the proposed units would either meet or exceed the required floor areas set out in the Apartment Guidelines and this is considered acceptable. The dual aspect ratio at the private and communal open space are also deemed to be acceptable as is the storage requirement for each of the units. It is also considered that the proposed development and the associate blank façade are not considered to be an acceptable design response. It is also noted that while a shadow study has been submitted no assessment on the impact of daylight and sunlight has been submitted.

- 4.2.9. Finally, it is noted that no issues arise with regard to appropriate assessment. In conclusion therefore it is considered that the overall height of the development is unacceptable due to the excessive height.

5.0 Planning History

- 5.1. No planning history files are attached.
- 5.2. One planning application is very relevant to the proposal before the Board and partial details are contained in a pouch to the rear of the file. Under Reg. Ref. 2689/20 planning permission was granted on the subject site for the demolition of the existing two-storey industrial unit and the construction of a residential apartment development on the subject site. The original application submitted sought planning permission for a five-storey structure containing 13 units.
- 5.3. The Planning Authority expressed concerns in relation to the overall height and requested further information from the applicant which included the applicant to submit a complete architectural assessment of the buildings to be demolished on site.
- A reduction in the height of the building by one storey.
 - Alterations in design.
 - A sunlight/daylight assessment of the proposed development.
 - Further details in relation to communal open space.
 - Details of the proposed pedestrian access and

- the requirement to submit
 - a Servicing and Operations Plan,
 - a Preliminary Construction Management Plan
- and, further details in relation to cycle parking.

5.4. The applicant submitted revised proposals showing the omission of one floor. The revised development contained 10 apartments, 2 studios, 7 one-beds and 1 two-bedroom unit. Dublin City Council required further clarification of information on some aspects of the additional information submitted but overall concluded that a residential development was welcomed on the subject site and planning permission was granted for the four-storey structure on 15th February, 2021.

6.0 Grounds of Appeal

The decision was appealed on behalf of the applicant by Professor Cathal O'Neill and Company Architects. The grounds of appeal are outlined below.

- It is noted that the application is similar to that recently permitted under Reg. Ref. 2689/20 with the exception of having the top floor reinstated.
- The proposal sets out the historical context of Mountjoy Square. It notes how delapidated the square had become throughout the 1970s and 1980s and that many areas to the rear of the original houses were converted into industrial areas with many purpose-built factories.
- The grounds of appeal outline the design rationale behind the proposal and notes that the applicant had explored the possibility of constructing apartments specifically for social housing with the local authority. However, the discussions became too complex and it was decided to proceed with a standard application.
- It stated that the site is an awkward one with blank walls on either side of the public laneway to the north and east of the site. It is argued that the rear garden would be a pleasant space to look out over and would be planted and landscaped to a high standard.

- The height of the building at five storeys including a setback penthouse would be lower than the main houses and would not be visible from the Square. It is noted that there is a larger apartment building to the south on the corner of Charles Street and Charles Lane which rises to six storeys in height.
- A significant separation distance of 38 metres is maintained between the windows of the proposed apartments and those of the main houses at Mountjoy Square.
- It is also noted that it is proposed to retain to some extent some of the earlier stonework and brickwork exactly as permitted under permission Reg. Ref. 2689/20.
- Careful design considerations were imposed to ensure that the building remains subservient to the main buildings on Mountjoy Square.
- The grounds of appeal go on to refer to the planner's report where the report acknowledges that the building is substantially in keeping with the approved scheme and that the plot ratio of 2.3 may be acceptable.
- It is noted that Dublin City Council has decided to grant planning permission for a much taller six storey building with higher floor to ceiling heights from the corner with Charles Street and Charles Lane opposite the site.
- The grounds of appeal also note that the proposed layout was deemed to be acceptable and that the apartment mix and sizes meet or exceed the required standards. Circa 70% of the units are dual aspect and there are appropriate levels of communal open space in compliance with the development plan.
- It is contended that contrary to what is stated in the planner's report, there will be a negligible impact arising from the proposed development when viewed from the junction of Charles Lane and Charles Street as only truncated glimpses of the building will be seen. It is further noted that blank façades to the sides of the building are a feature of most buildings in urban streets except corner sites. It is generally not permissible for any buildings to have fenestration on party boundaries.

- In terms of daylight, sunlight and overshadowing, it is stated that if the application had been otherwise deemed acceptable this information would also have been acceptable.

6.1. In conclusion it is stated that the proposed development is the same as that previously granted on site. The only question to be determined was whether or not an additional storey would adversely impact on the amenities of the area. It is suggested that an additional one storey would have no negative effect on the houses of Mountjoy Square and the proposal is modest in size when compared with similar redeveloped sites in the vicinity of Merrion and Fitzwilliam Squares.

7.0 Appeal Responses

7.1. Dublin City Council have not submitted a response to the grounds of appeal.

8.0 Observation

8.1. One observation was submitted by McOwen Architects. This observation was submitted on behalf of Luke Gardener Limited the registered owners of Nos. 19, 29 and 30 Mountjoy Square and No. 21 to 24 Charles Lane.

8.2. It is noted that the observers did not make any objection to the previous application on site under Reg. Ref. 2689/20 but do have concerns in relation to the additional storey. It is argued that the grounds of appeal offer “no grand architectural logic” for the addition of an extra floor. It is also stated that “just because the applicant wants to do something, this is not sufficient reason in itself for the Board to accede to this request”.

8.3. Concerns are also expressed that the proposal is very heavily weighted as a one-bedroom scheme and does not represent an appropriate mix.

8.4. It is noted that the Georgian buildings fronting onto Mountjoy Square are ostensibly two rooms incorporating double doors and therefore when the internal double doors are open, the scheme will be readily visible from the houses fronting onto Mountjoy Square East.

8.5. The sketch of models submitted in the grounds of appeal, clearly demonstrates the negative impact that the proposal will have on Mountjoy Square and it is

inappropriate to suggest that the proposal does not compete with listed terraced buildings on the east side of Mountjoy Square East. It is noted that the east and north side of the square are original buildings that contain no pastiche or reproduction, and this is all the more reason to respect their context.

- 8.6. It is the observer's judgement that the provision of an additional storey will have a significant impact on the context and settings of the buildings of Mountjoy Square and should be refused for this reason.

9.0 Planning Policy Context

9.1. National Planning Framework

- 9.1.1. One of the key overarching goals set out in the National Planning Framework is to achieve compact growth. This is sought by carefully managing the sustainable growth of compact cities, towns and villages. It is noted that the physical format of urban development in Ireland is one of the greatest national development challenges. Presently the fastest growing areas are the edges and outside our cities and towns meaning:

- A constant process of infrastructure and services catch up in building new roads, new schools, services and amenities and a struggle to bring jobs and homes together meaning that there were remarkably high levels of car dependents and that it is difficult to provide good quality transport.
- A gradual process of rundown of the city and town centre.
- Development which takes places in the form of greenfield sprawl, extends the physical footprint of the urban area, and works against the creation of attractive liveable high quality urban spaces in which people are increasingly wishing to live, work and invest.

- 9.1.2. A preferred approach would be the compact development that focuses on reusing previously developed brownfield land, building up infill sites which may not have been built on before, and reusing and redeveloping existing sites and buildings. National Policy Objective 3B seeks to deliver at least half of all new homes that are targeted in the five cities and suburbs of Dublin, Cork, Limerick and Galway within

their existing built-up footprints. National Policy Objective 13 seeks that in urban areas, planning and related standards including, and in particular building height and car parking, will be based on performance criteria that seek to achieve well designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected.

- 9.1.3. National Policy Objective 35 seeks to increase residential density in settlements, to a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

9.2. Rebuilding Ireland Action Plan for Housing and Homelessness

- 9.2.1. Pillar 3 of this national strategy seeks to build more homes by increasing the output of private housing to meet demand at affordable prices. In terms of housing supply requirements, it is noted that current completion levels must double in the next four years. It is also noted that there is a significant requirement to expand the build to rent sector which is not being catered for in the current construction levels. There is also a need to increase the level of social housing. The Rebuilding Ireland Policy emphasises the need to supply and build more homes with delivery of housing across the four Dublin Local Authorities.

9.3. Sustainable Urban Housing Design Standards for New Apartments

- 9.3.1. These guidelines note that in the short term to 2020, the Housing Agency has identified a need for at least 45,000 new homes in Ireland's five major cities, and more than 30,000 of which are required in Dublin City and suburbs. This does not include the additional pent-up demand arising from undersupply of new housing in recent years. In broader terms there is a need for an absolute minimum of 275,000 new homes in Ireland's cities up to 2040 with half of these located within built up areas. This necessitates a significant and sustained increase in housing output and apartment type development in particular. Specifically, there is a need:

- To enable a mix of apartment types that better reflects contemporary household formation and housing demand patterns and trends, particularly in urban areas.
- Make better provision for building refurbishment and small-scale urban infill schemes.
- Address the emerging build to rent and shared accommodation sectors.
- Remove requirements for car parking in certain circumstances where there are better mobility solutions to reduce costs.

9.3.2. In terms of identifying the types of locations within cities that may be suitable for apartment development the guidelines note the following:

- In central and/or accessible urban locations such locations are generally suitable for small to large scale higher density development that may wholly comprise of apartments. These include
 - sites within walking distance of the principal city centres or significant employment locations that may include hospitals and third level institutions,
 - sites within reasonable walking distance (i.e. up to 10 minutes or 800 metres to 1,000 metres) to or from high capacity urban public transport stops such as Dart or Luas, and
 - sites within easy walking distance i.e. up to five minutes to and from high frequency urban bus services.

9.4. **Urban Development and Building Heights - Guidelines for Planning Authorities**

9.4.1. These Guidelines again highlight the need for a development plan to place more focus in terms of planning policy and implementation on reusing previously developed brownfield land, building up urban infill sites. It notes that increasing building height is a significant component in making the optimum use of the capacity of sites in urban locations where transport employment, services and retail development can achieve a requisite level of intensity for sustainability. Accordingly, the development plan must include the positive disposition towards appropriate assessment criteria that will enable the proper consideration of development

proposals for increased building height linked with the achievement of greater density of development.

- 9.4.2. It is acknowledged that taller buildings will bring much needed additional housing and economic development to well-located urban areas and that they can also assist in reinforcing and contributing to a sense of place within the city or town centre.
- 9.4.3. The Guidelines note that statutory development plans have tended to be overtly restrictive in terms of maximum building heights in certain locations and crucially without the proper consideration of the wider planning potential of development sites. Such displacement presents a lost opportunity in key urban areas of high demand for new accommodation whether it is for living, working, leisure or other requirements in the built environment.
- 9.4.4. Planning policy must therefore become more proactive and more flexible in securing compact urban growth through a combination of facilitating increased densities and building heights while also being mindful of the quality of development and balancing amenity and environmental considerations. Appropriate identification and siting of areas suitable for increased densities and height will need to consider environmental sensitivities of the receiving environment as appropriate throughout the planning hierarchy.
- 9.4.5. Paragraph 2.8 notes that historic environments can be sensitive to largescale tall buildings. In that context Planning Authorities must determine if increased height buildings are appropriate in these particular settings.
- 9.4.6. Taking into account the foregoing, the specific planning policy requirement of the above guidelines under SPPR1 is
- *In accordance with government policy to support increased building height and density in locations with good public transport accessibility, particularly town/city cores, Planning Authorities shall explicitly identify through the statutory plans, areas where increased building heights will be actively pursued for both redevelopment, regeneration and infill development to secure the objectives of the National Planning Framework and Regional Spatial and Economic Strategies and shall not provide for blanket numerical limitations on building height.*

9.4.7. Special planning policy requirement SPPR2 states that in driving general increases in building heights, Planning Authorities shall also ensure appropriate mixtures of uses, such as housing, commercial and employment development, are provided for in the statutory plan context.

9.5. Development Plan Provision

- 9.5.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016-2022. The subject site is zoned Z1 '*to protect, provide and improve residential amenities*'. Residential use is a permissible use under this zoning.
- 9.5.2. The subject site is also located within a designated Architectural Conservation Area. All the dwellings fronting onto Mountjoy Square East are protected structures and are governed by the zoning objective Z8 "to protect the existing architectural and civic design character and to allow for only limited expansion consistent with the conservation objective". The Z8 zoning objective adjoins the western boundary of the site. Policy CHC1 seeks the preservation of the building heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- 9.5.3. The chapter notes that Architectural Conservation Areas and Conservation Areas have been designated in recognition of their special interest or unique, historic and architectural character and important contribution to the heritage of the city. Designated conservation areas include extensive groups of buildings or streetscapes associated with open spaces including the Georgian core. The special interest/value of these areas require special care in terms of development proposal and works by the private and public sector alike which affect the structures both protected and non-protected in these areas.
- 9.5.4. Dublin City Council will thus seek to ensure that development proposals within all Architectural Conservation Areas complement the character of the area including the setting of protected structures and comply with development standards.
- 9.5.5. In terms of Policy, Policy CH1 seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscape and the sustainable development of the city.

- 9.5.6. Chapter 5 of the development plan relates to Quality Housing.
- 9.5.7. Policy QH5 seeks to promote residential development addressing any shortfall in housing provision through active land management and co-ordinated planned approach to developing appropriately zoned lands at key locations including regeneration areas, vacant sites and underutilised sites.
- 9.5.8. Policy QH6 seeks to encourage and foster the creation of attractive mixed use, sustainable neighbourhoods which contain a variety of housing types, tenures with supporting community facilities, public realm and residential amenities which are socially mixed in order to achieve a socially inclusive city.
- 9.5.9. Policy QH7 seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.
- 9.5.10. Policy QH8 seeks to promote the sustainable development of vacant or underutilised infill sites and to favourably consider higher density proposals which respect the design of the surrounding development and character of the area.
- 9.5.11. Policy QH18 seeks to promote the provision of high quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and with each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood, in accordance with standards for residential accommodation.
- 9.5.12. Policy QH19 seeks to promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive sustainable mixed income, mixed use neighbourhoods supported by appropriate social and other infrastructure.
- 9.5.13. Section 16.7 relates to building height in a sustainable city. Dublin City Council acknowledges the intrinsic quality of Dublin as a low-rise city and its policy is that it should predominantly remain so. There was a recognised need to protect conservation areas and the architectural character of existing buildings, streets and spaces of artistic civic or historic importance. In particular, any new proposal must be sensitive to the historic city centre, the River Liffey and Quays, Trinity College, Dublin Castle, the historic squares and the canals.

- 9.5.14. It is important to protect and enhance the skyline of the inner city and to ensure that any proposals for high buildings make a positive contribution to the urban character of the city and create opportunities for place making and identity. In the case of low-rise areas (which the subject site is located) a maximum height of 28 metres may be permissible.
- 9.5.15. In terms of aspect natural lighting and sunlight penetration, the development plan notes that daylight animates the interior and makes it attractive and interesting as well as providing light to work or read by. Good daylight and sunlight contribute to making a building energy efficient, it reduces the need for electronic lighting while winter solar gain and reduce heating requirements.
- 9.5.16. The indicative plot ratio for Z1 zonings in the inner city is 0.5 to 2.0 and the indicative site coverage for sites governed by the Z1 zoning objective is 45 to 60%

10.0 EIAR Screening Determination

- 10.1. On the issue of environmental impact assessment screening, I note that the relevant classes for consideration are Class 10(b)(i) “construction of more than 500 dwelling units” and Class 10(b)(iv) “urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of the built area and 20 hectares elsewhere”. Having regard to the modest size of the site at 0.0387 hectares and the number of units to be provided at 13 which is considerably below the 500 dwelling threshold, it is considered that, having regard to the nature and scale of the proposed development, the location of the development on an urban brownfield site, together with the characteristics and likely duration of potential impacts, that the development is not likely to have significant effects on the environment and the submission of an environmental impact statement report is not required.
- 10.2. Natural Heritage Designations**
- 10.2.1. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which at its closest point is located 1.8 kilometres to the east of the subject site. The North Dublin Bay SAC (Site Code: 000206) at its closest point is located 5.1 kilometres from the subject site. The South Dublin Bay and River Tolka

Estuary SPA and SAC at their closest points are located c.3 kilometres to the south-east of the subject site.

11.0 Planning Assessment

I have read the entire contents of the file, visited the subject site and its surroundings, and have had particular regard to the Planning Authority's reason for refusal, the grounds of appeal challenging these reasons for refusal and the issues raised in the observations submitted. I consider the principle of residential development to be acceptable on the subject site having regard to the zoning provisions relating to the site and more importantly the fact that there is an extant permission on the subject site for a four storey residential apartment block containing 10 units of a scale and design similar to that currently before the Board. The principle of residential development on the subject site has therefore been established under the parent permission Reg. Ref. 2689/20. On the basis of the above I consider that the Board can restrict its deliberations as to whether or not it is appropriate to incorporate an additional fifth floor onto the proposed development. This issue is evaluated in more detail under the following headings below.

- Strategic Arguments for an Additional Storey
- Visual Impact
- Impact on Amenity
- Daylight and Sunlight Considerations
- Other Issues

11.1. Strategic Arguments for an Additional Storey

- 11.1.1. There are numerous national planning guidelines which have been adopted in recent years and, with the exception of Rebuilding Ireland, were adopted subsequent to the adoption of the Dublin City Development Plan. The Board will be cognisant of the fact that many policy statements contained in the National Planning Guidelines referred to in the previous section above would augment and in some cases supersede policy statements contained in the Dublin City Development Plan. It is clear from these guidelines that there is an increased emphasis on maximising the development potential of sites particularly in relation to residential development

within existing urban footprints. A major thrust of the National Planning Framework seeks a preferred approach to a more compact development that focuses on reusing previously developed brownfield land and building on infill sites within existing built up areas. The development plan in fact reinforces this policy with Policy QH7 which seeks to promote residential development at sustainable urban densities throughout the city in accordance with the core strategy having particular regard to the need for high standards of urban design and architecture in order to successfully integrate with the character of the surrounding area. The National Planning Framework seeks to encourage more people, jobs and activity within the footprint of existing urban areas so that high quality development can encourage more people to live and work in close proximity. The National Plan seeks to deliver at least half of all new homes to be located in the five main cities of the State and in particular Dublin. The Strategy concludes that *“it is clear that we need to build inwards and upwards rather than outwards. This means that apartments will need to become the prevalent form of housing particularly in Ireland’s cities”*. National Policy 35 seeks to increase residential density in settlements, through a range of measures including reductions in vacancy, the reuse of existing buildings, infill development schemes, area or site based regeneration including increased building heights.

- 11.1.2. Furthermore, the Apartment Guidelines referred to above also seek to highlight the need to improve higher density development in central or accessible urban locations and to identify the need to provide more than 30,000 units within Dublin and its suburbs. The need to provide more housing is also reflected in the Rebuilding Ireland Action Plan, the recently published Urban Development and Building Heights and the most recently adopted National Housing Strategy entitled “Housing for All”. These plans all highlight the need for Planning Authorities to become proactive and more flexible in securing compact sustainable growth through a combination of both facilitating increased densities and building heights subject to the need to be cognisant of any surrounding sensitive environments be them environmental or historic. It is acknowledged that the subject site is located within an Architectural Conservation Area and to the immediate rear of Mountjoy Square East, a very important and historic 18th century Georgian Square. Any determination by the Board must have regard to this fact and the Board in my considered opinion need to be satisfied that any development would not have a material or indeed disproportionate

effect on the visual amenities of this important architectural and historic conservation area. Any assessment of the proposed development therefore must have regard to qualitative safeguards in respect of protecting the historic environment of the area.

11.1.3. Notwithstanding this point and from a sustainable land use point of view, secure and compact growth in urban area as espoused in the various National Policies would significantly reduce adverse impacts on the environment by:

- Reducing the land take and preserving agricultural land and habitats outside the urban area and creating a more distinctive urban rural divide.
- Enabling the utilisation of existing infrastructure which are available to serve sites in terms of existing foul drainage, water supply, roads, footpaths, lighting and other such infrastructure.
- Incorporating residential development in close proximity to existing centres of employment which will reduce the need to travel long distances particularly by private car and therefore will reduce energy consumption and carbon emissions.
- The provision of high density residential development within urban areas improves the viability of public transport services and enables and facilitates the provision of more frequent services.
- Higher density developments proximate to city centres enhance public health by encouraging and facilitating more active lifestyles by creating more walkable and cycle friendly urban environments.

11.1.4. Strategically the subject site has many of the attributes to accommodate these strategic land use objectives and achieving such strategic objectives are in my view equally as important as any objectives to preserve the historic environment. Therefore, contrary to what is suggested in the observations submitted on file while there may be “no grand architectural logic offered for an additional floor on the building in question, there are in my view strong and emphatic strategic arguments for providing a higher quantum of development at this location subject of course to appropriate qualitative safeguards”. These qualitative safeguards are assessed in more detail below.

11.2. Visual Impact

- 11.2.1. A key consideration in refusing the proposed development relates to the height, design and bulk of the proposed development which it was argued would be out of character with the historic and sensitive context of the site. I fully concur with the Planning Authority that Mountjoy Square East as part of the overall square as conceived by Luke Gardener III in 1790. While the square was originally conceived so that each of the four sides would have a unified composition with a central grand house feature incorporating pilasters and a pediment, this grand piece of town planning and architectural design did not materialise and the square evolved similar to that of Merrion Square with individual plots being developed by a variety of owners and buildings. Much of the development of the square took place over subsequent decades including the years after the Act of Union in 1801. The square nevertheless provides an exquisite form of classical architectural, classical composition notwithstanding the fact that parts of the south-eastern and southern square incorporate pastiche Georgian style redevelopment dating from the late 1980s and early 1990s.
- 11.2.2. It is apparent however that standing in public vantage points in and around the square that the proposed development will not in any way be visible. This conclusion is predicated that the six storey element on the recently constructed residential building on the corner of Charles Street and Charles Lane is not visible from any point along the roadway at Mountjoy Square East or Mountjoy Square West. The recently constructed building at the corner of Charles Lane and Charles Street is of course visible on the approach from Mountjoy Square West but this is merely due to the fact that views are afforded from this section of the square along Charles Street. The subject site has been located centrally along Charles Lane and would not in any way be visible from vantage points in and around Mountjoy Square. Therefore, having inspected the subject site and its surroundings I do not consider that there is any proposition that a five storey building fronting onto Charles Lane to the rear of Mountjoy Square East will be visible from any vantage points within the Square. The suggestion therefore that the proposed development will in any way detract from the visual amenities of the square is in my view unfounded.
- 11.2.3. Furthermore, I consider that a precedent has been set with the intervention of a new four to six storey residential block at the corner of Charles Street and Charles Lane

which is not dissimilar in scale and design to that currently proposed before the Board. This building as already mentioned above, is more visually prominent being on a corner site fronting directly onto Charles Street than the application currently before the Board.

11.2.4. Furthermore, the Board should note that planning permission has been recently granted by Dublin City Council on the north-eastern corner of the junction of Charles Street Great and Charles Lane for the construction of two apartment blocks ranging from four to six storeys under Reg. Ref. 2017/2021¹.

11.2.5. To allow the provision of two residential apartment blocks at much more prominent locations in the context of public vantage points from Mountjoy Square and to argue that a more modest five storey apartment block which is located in a much more concealed location away from the major public thoroughfares in the surrounding area is not tenable in my view. I would agree with the appellant that views of the subject site would only be available from Charles Lane, Charles Street Great and Fitzgibbon Street. However, the views from the latter two thoroughfares would be restricted to truncated glimpses and would in no way adversely impact on the visual amenities of the area to any significant extent. I therefore do not consider it appropriate to refuse planning permission on the basis that the proposed development would have an unacceptable visual impact from vantage points in and around Mountjoy Square or indeed from vantage points in the wider vicinity.

11.3. **Impact on Amenity**

11.3.1. The Board will have regard to the fact that there is an extant planning permission for a four storey structure on the site. The impact of residential development on surrounding amenity therefore has been assessed as part of the previous application. It would be reasonable to conclude that the Planning Authority found that the impact of the four storey structure on surrounding residential amenity was acceptable. Having examined the drawings in question and visited the subject site and its surroundings I consider this conclusion to be appropriate. The provision of an additional floor incorporating a recessed balcony facing westwards towards the rear elevation of buildings onto Mountjoy Square East would incorporate a separation distance of over 55 metres between buildings. It is acknowledged that the separation

¹ This decision was the subject of a third party appeal under ABP3109310-21. However, it appears that the third party appeal was subsequently withdrawn.

distance between the rear of the proposed buildings and the rear returns of the buildings fronting onto Mountjoy Square would be somewhat less than 55 meters. However, the Board will note that the main two storey rear return to the back of No. 25 Mountjoy Square East does not incorporate any windows directly facing the subject site. Having regard to the separation distances involved, together with the fenestration arrangements on the buildings that form part of the rear return of No. 25, it is considered that the provision of an additional floor with recessed balconies would not result in any significant or material overlooking and would therefore be acceptable in terms of residential amenity.

11.3.2. I would also consider that the incorporation of blank gable walls on the northern and southern elevation of the proposed buildings is acceptable on the basis that it does not compromise the development potential of adjoining sites should these sites be developed at a later stage. I note that similar blank elevations are provided on the residential development recently constructed at the corner of Charles Lane and Charles Street Great facing the subject site. Similar fenestration arrangements including a blank gable wall was incorporated into the redevelopment of the site to the north at the corner of Fitzgibbon Street and Charles Lane (see photographs attached).

11.4. Daylight and Sunlight Considerations

11.4.1. I would again reiterate that the four-storey element of the apartment block already has the benefit of planning permission and was the subject of assessment in terms of daylight and sunlight. In this regard I refer the Board to the additional information request which specifically required a sunlight and daylight assessment and a shadow analysis to be undertaken in respect of the previous development on site. The additional floor to be provided as part of the current application before the Board incorporates two no. dual aspect units (a two bedroomed apartment and a studio apartment) neither of the units involve north facing windows. Both units incorporate east facing and west facing units which would in my view provide sufficient levels of sunlight and daylight penetration which would be acceptable from an amenity point of view for any future occupants associated with the top floor units. In terms of 'overshadowing' I do not consider that the provision of an additional storey would have any adverse impact on the amenity of adjoining properties in terms of excessive overshadowing. If the Board have any concerns on this issue, it could

prior to granting planning permission, request further information. I am satisfied however having regard to the built up nature of the surrounding area, the relatively modest increase in height amounting to an extra 3 metres that the additional increase in the level of overshadowing which would occur as a result of the proposed development would be modest.

11.5. Other Issues

11.5.1. I note from the correspondence on file that a number of prescribed bodies in internal departments of Dublin City Council raised concerns that were required to be addressed by way of a request for further information. The issues in my view are germane to the previous application which was granted planning permission by Dublin City Council and can in my view be adequately dealt with by way of condition.

11.5.2. While Irish Water notes the presence of existing water/wastewater infrastructure along the proposed development site and recommends that the applicant engage with Irish Water to assess the feasibility of a build over and/or diversion of the combined water/wastewater infrastructure beneath the site. I would consider it reasonable to conclude that this issue could be adequately dealt with by way of condition. Likewise, issues raised by the Roads, Streets and Traffic Department in respect of:

- The provision of a pedestrian pathway along the front of the site,
- Details of a traffic barrier system.
- The provision of a construction management plan.
- A residential travel plan.
- A servicing and operations plan etc.

11.5.3. I consider that all these issues can again be adequately addressed by way of condition.

11.5.4. Finally, if the Board are minded to grant planning permission, a supplementary financial contribution condition under the provisions of Section 49 should also be attached as per the TII request contained on file as the proposed development falls within the catchment area for the Luas Crosscity Line.

11.5.5. Therefore, it is considered that any issues raised by either prescribed bodies or other departments within Dublin City Council can be adequately addressed by way of standard conditions.

12.0 Appropriate Assessment

12.1. The nearest designated Natura 2000 site at its closest point is 1.8 kilometres to the east, the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024). The nearest SACs are located further away at c.5 kilometres to the east and south-east the North Dublin Bay SAC (Site Code: 000206) and the South Dublin Bay SAC (Site Code: 000210).

12.2. Having regard to the urban location of the proposed development; and the fact that Dublin City Council had granted planning permission for the previous application on site, and this extant permission had been screened for AA and it was found that significant effects are not likely to arise either alone or in combination with other plans or projects on any Natura 2000 sites; coupled with the fact that the current application before the Board merely involves the provision of an additional storey over and above that previously granted planning permission; and the lack of direct connections with regard to the source pathway receptor model; it is reasonable to conclude based on the information available, which I consider adequate in order to issue a screening determination, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European site in the wider area in view of the site's conservation objectives and therefore a Stage 2 appropriate assessment (and the submission of an NIS) is therefore not required.

13.0 Conclusions and Recommendation

Arising from my assessment above, I consider the provision of a five-storey structure on the subject site is acceptable and is in accordance with wider strategic objectives set out in various policy documents of increasing housing provisions in urban areas at sustainable urban densities. I further consider that the proposed development will not have any significant impact on the amenities of the area, and will not adversely affect the context or setting of the Architectural Conservation Area associated with

Mountjoy Square and I therefore recommend that the Board overturn the decision of Dublin City Council and grant planning permission for the proposed development, based on the reasons and considerations set out below.

14.0 Reasons and Considerations

Having regard to the Z1 zoning objective relating to the site and the policies and provisions contained in the National Planning Framework, the Sustainable Urban Housing Standards for New Apartments – Guidelines for Planning Authorities (March 2018), the Urban Development and Building Heights – Guidelines for Planning Authorities (2018) all of which seeks to provide urban development, including residential development at more compact and sustainable densities to enable people to live nearer where jobs and services are located, it is considered that the proposed development, subject to compliance with conditions set out below, would not seriously injure the visual amenities of the area or the adjoining architectural conservation area, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. For the purposes of clarity the proposed rear elevation as indicated on Drawing No. 678.1PP5 submitted to the planning authority shall incorporate Option B. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars. In default of an agreement the matters in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The requirements of the Conservation Planning Division shall be agreed in writing with the planning authority prior to the commencement of development. Details of all walls to be retained, protected, consolidated and repaired as part of the existing structure shall be agreed with, in writing with the planning authority prior to the commencement of development.

Reason: To ensure that the integrity of any remnants of walls or structures of historic and architectural value are retained as part of the development and in accordance with best conservation practice.

3. Prior to the erection of the development all external materials proposed to be used including materials, colours and textures of all external finishes to the proposed development shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. A panel of proposed finishes shall be placed on site to enable the planning authority to adjudicate on the proposals. Any proposed render finish shall be self-finished in a suitable colour and shall not require painting. Construction materials and details shall adhere to the principles of sustainability and energy efficiency and high maintenance details shall be avoided.

Reason: In the interest of orderly development and the visual amenities of the area.

4. Water supply and drainage arrangements including the attenuation and disposal of surface water and the diversion of any foul or water pipes and infrastructure beneath or contiguous to the site shall be agreed with Irish Water prior to the commencement of this development.

Reason: In the interest of orderly development.

5. The applicant or developer shall enter into a water/wastewater connection agreements with Irish Water prior to the commencement of development.

Reason: In the interest of orderly development.

6. 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.

7. The construction of the development shall be managed in accordance with a construction management plan, which will be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. This plan shall provide details of the intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

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

8. Details of proposed cycle parking shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: To provide for a satisfactory standard of development.

9. Prior to first occupation, a pedestrian footpath shall be completed along the western side of Charles Lane extending from the eastern footpath at Charles Street Great and across the front of the development at Nos. 25 – 26 Charles Lane. The footpath shall be dished accordingly and shall be provided in accordance with the requirements of the Area Engineer and the Road Maintenance Planning Division. All works in respect of the footpath shall be at the expense of the developer.

Reason: In the interest of pedestrian safety.

10. Prior to the occupation of the proposed development a residential travel plan shall be prepared, the Plan shall address mobility requirements of future residents and shall promote the use of public transport, cycling and walking and the use of car club spaces. A mobility manager for the overall

scheme shall be appointed to oversee and co-ordinate the role out of the residential traffic plan.

Reason: In the interests of sustainable transport

11. Details of the materials proposed in any public area to the front of the site shall be in accordance with the requirements of the planning authority.

Reason: In the interest of visual amenity.

12. All costs incurred by Dublin City Council including any repairs to the public road and services necessary as a result of the development shall be at the expense of the developer.

Reason: In the interest of ensuring a satisfactory standard of development.

13. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

Reason: In the interests of visual and residential amenity.

14. The areas of public open space shown on the lodged plans shall be reserved for such use. These areas shall be soiled, seeded and landscaped in accordance with a landscaping scheme to be submitted to the planning authority prior to the commencement of development. This Scheme shall be completed before any of the units are made available for occupation.

Reason: In order to ensure a satisfactory development of public open space area and their continued use for this purpose.

15. The naming and numbering of the scheme shall be agreed in writing with the planning authority prior to the occupation of the units.

Reason: In the interests of orderly street numbering.

16. Site development and construction works shall be carried out in such a manner so as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public road the said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining roadways are kept in a clean and safe condition during construction works and in the interest of orderly development.

17. Site development and building works shall be carried out only between the hours of 0700 to 1800 hours Mondays to Fridays inclusive, between 0800 hours and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviations from these times will only be permitted in exceptional circumstances where prior written approval has been received from the planning authority.

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

18. 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.

19. The developer shall pay to the planning authority a financial contribution in respect of the Luas Crosscity 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 made prior to the 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 an 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 be made under Section 49 of the Act be applied to the permission.

20. 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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge.

Paul Caprani,
Senior Planning Inspector.

15th December, 2021.