



An
Bord
Pleanála

Inspector's Report ABP-311307-21

Development	Removal of vehicular entrance gate, demolition of two-storey commercial structure and adjoining derelict two storey dwelling, construction of five-storey apartment block comprising 19 units.
Location	Site to the rear of Nos. 20-22 Fitzgibbon Street, Nos. 6-10 Emmet Street and No. 46 Charles Street Great (Protected Structure), Dublin 1.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	2427/21
Applicant(s)	Irish School of Motoring Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party vs. Condition
Appellant(s)	Irish School of Motoring Ltd.
Observer(s)	None
Date of Site Inspection	8 th March 2022
Inspector	Stephen Ward

1.0 Site Location and Description

- 1.1. The site is located in the north inner-city, at a distance of c. 1km northeast of O'Connell Bridge. It is centrally located within a block bounded by Fitzgibbon Street to the north, Emmet Street to the east, Charles Street Great to the south, and Charles Lane to the west. The North Circular Road runs c. 50m to the north of the site. The area comprises a mixture of residential, commercial and community uses, and is characterised by a wide range of building style and scale.
- 1.2. The site has an existing access directly onto Fitzgibbon Street and is bound to the north by the rear gardens of the brick-fronted 2 ½ storey residential terrace (No.'s 20-22) along that street. To the east, the site bounds onto the rear of No.'s 6-10 Emmet Street, which comprise commercial and residential uses in 1 to 2-storey terraces. To the south is the site of No. 46 Charles Street Great, which contains Protected Structures including a derelict dwelling (former Sexton's House) and a former Methodist Church now in operation as a community/training centre. To the west of the site is Fitzgibbon Street Garda Station and some undeveloped land.
- 1.3. The site itself has a stated area of 0.1067 hectares and is reasonably flat. It contains a 2-storey commercial warehouse building and an adjoining derelict former dwelling, both located in the southeast corner of the site.

2.0 Proposed Development

- 2.1. In summary, the proposed development involves the following:
 - Replacement of existing vehicular entrance gate off Fitzgibbon Street.
 - Demolition of the existing two-storey commercial building and adjoining former dwelling.
 - Construction of a five-storey building containing a total of 19 no. apartments comprising of 1 no. studio, 14 no. 1 beds, 4 no. 2 beds and ancillary facilities including concierge and residential lounge at ground level.
 - Provision of private and communal amenity space.
 - Provision of 4 no. car parking spaces, 32 no. bicycle parking spaces, and covered bin storage.
 - All associated works including landscaping and drainage.

2.2 The applicant's response to a further information request revised the scheme. The total number of apartments was reduced to 18 and the mix of units was revised to include 13 no. 1-bed units and 5 no. 2-bed units. One motorcycle space was added.

3.0 Planning Authority Decision

3.1. Decision

By order dated 9th August 2021, Dublin City Council issued notification of the decision to grant planning permission subject to 20 conditions. Condition no. 5 of the decision is as follows:

The development shall incorporate the following amendments:

a) One full storey (i.e. not the setback fourth floor level) shall be omitted from the development, resulting in a three-storey development with additional setback storey and consisting of ten one-bedroomed and four two-bedroomed apartments.

b) The design of the security gate shall be amended to be a railed rather than a solid structure, allowing for views into and out of the site.

Development shall not commence until revised plans, drawings and particulars showing the above amendment(s) have been submitted to the planning authority and written agreement obtained.

REASON: To protect the visual amenities of the surrounding area, which includes residential conservation areas.

3.2. Planning Authority Reports

Further Information

3.2.1. Following the initial consideration of the application and preparation of internal reports, a Further Information Request was issued on 18th May 2021. The issues raised can be summarised as follows:

- Due to concerns about the proposal being visually incongruous, out of character with built heritage, and injurious to residential amenity, the applicant was requested to consider a reduction in the proposed building height.

- Concerns about the high proportion of 1-bed apartments, including 4 single aspect north-facing units.
- Conservation methodologies and details regarding the protection of setts along Fitzgibbon Street, the demolition of extant structures, and existing boundary walls.
- Proposals for car-parking strategy, mobility management, and secure storage for bicycles.
- Clarification of boundary treatment to the rear of Emmet Street.

Planner's Report

3.2.2. Following the applicant's further information response on 13th July 2021, the planner's final assessment (9th August 2021) can be summarised as follows:

- The Z1 zoning of the site and the existing permission has established the principle of demolition of existing buildings and construction of a residential development.
- The proposal does not exceed the indicative Development Plan standards for plot ratio and site coverage.
- The proposed units would comply with development standards in relation to unit sizes and private/communal open space.
- The revised mix of units submitted as further information is acceptable.
- There are concerns that the height and visual impact of the development would be unduly dominant and overbearing and would detract from the streetscape. The applicant's further information response has not included any height reduction. Accordingly, the proposal would need to be reduced in height by one storey.
- Due to the proximity to the rear of Emmet St and Fitzgibbon St there are concerns about overshadowing impacts to rear gardens. However, the applicant's further information response shows that the rear gardens would comply with BRE guidelines regarding sunlight access.
- Boundary treatment along the rear of Emmet St needs to be clarified.

- The proposed gate should be revised to improve visual permeability.
- Other issues raised by the Transportation Planning Division and the Archaeology, Conservation and Heritage Section can be addressed as conditions of any permission.

3.2.3. Based on the above points, a grant of permission was recommended, subject to conditions, including condition no. 5 as previously outlined. The planner's recommendation forms the basis of the DCC notification of decision.

Other Technical Reports

3.2.4. The Conservation Officer's report (9th August 2021) can be summarised as follows:

- There are serious concerns that the proposed 5-storey height will have a serious and detrimental impact on the amenity of houses along Emmet Street, and on the setting and special architectural character of the Protected Structure. It should be reduced in height to be the same height as the previously permitted development.
- It is regrettable that all extant buildings will be demolished. It would be preferable to incorporate them sympathetically.
- The new piers and gates will have a positive impact on Fitzgibbon St.
- The historic setts along Fitzgibbon St shall be protected during construction.
- A methodology is required to ensure that the demolition of buildings will protect the adjoining lodge building.
- All historic elements of boundary walls shall be retained and repaired.
- A detailed drawing and photographic record should be made of the existing historic structures to be demolished.
- It is recommended that permission be granted subject to conditions to address the above issues.

3.2.5. The Transportation Planning Division report (22nd July 2021) notes the applicant's further information response. It contends that the car-parking strategy is inadequate to assess management and allocation of spaces, but that this matter can be

addressed by way of a condition. The revised parking proposals are acceptable. It was recommended to grant permission subject to conditions.

3.2.6. The Engineering Department – Drainage Division report stated that there was no objection subject to conditions.

3.3. **Prescribed Bodies**

TII: A Section 49 contribution may be applicable for Light Rail.

3.4. **Third-Party Observations**

Two submissions were received in relation to the application. The issues raised can be summarised as follows:

- Clarification of consent and boundary treatment to the rear of Emmet St
- Discrepancies in the drawings submitted
- Excessive height and proximity to surrounding properties
- Overlooking of properties on Emmet St and Fitzgibbon St
- Impact on views from properties on Emmet St
- Overshadowing of properties on Emmet St
- The proposal does not comply with Development Plan design principles and would be of excessive height and out of character with existing development and built heritage
- Failure to contribute to social infrastructure
- Potential damage to adjoining properties.

4.0 **Planning History**

Appeal Site

P.A. Reg. Ref. 4083/19: Permission granted (October 2020) for removal of existing vehicular entrance gate off Fitzgibbon Street and demolition of two-storey commercial structure comprising former workshop/service garage and an adjoining

derelict two-storey dwelling, and construction of a two-storey over lower ground-floor level flat-roofed apartment block comprising 4 no. two-bedroom and 4 no. three-bedroom duplex apartments.

Site to southwest (Junction of Charles Lane / Charles Street Great)

ABP Ref. PL310939-21: Current appeal case regarding the decision of DCC to grant permission for demolition of existing structures and construction of two apartment blocks consisting of 52 apartments.

ABP Ref. PL306990-20: Demand for Levy on Vacant Site confirmed (April 2021)

ABP Ref. PL301810-18: Vacant Site Entry confirmed (September 2018)

5.0 Policy and Context

5.1. National Policy / Guidance

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

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

- 5.1.2 Following the theme of ‘compact urban growth’ and NPO 13, **Urban Development and Building Heights, Guidelines for Planning Authorities (2018)** outlines the wider strategic policy considerations and a performance-driven approach to secure the strategic objectives of the NPF.
- 5.1.3 **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (DoEHLG, 2009)** sets out the key planning principles which should guide the assessment of planning applications for development in urban areas.
- 5.1.4 **Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2020)**, hereafter referred to as the ‘Apartment Guidelines’, sets out the design parameters for apartments including locational consideration; apartment mix; internal dimensions and space; aspect; circulation; external amenity space; and car parking.
- 5.2. **Development Plan**
- 5.2.1 The site is zoned ‘Z1 Sustainable Residential Neighbourhoods’ in the Dublin City Development Plan 2016-2022, the objective for which is ‘*To protect, provide and improve residential amenities.*’ Residential use is a ‘Permissible Use’ within this zoning objective.
- 5.2.2 Section 4.5.3.1 relates to urban density and promotes sustainable density, compact development, and the efficient use of urban land. Chapter 5 outlines the Council’s approach to the provision of quality housing and encourages a good mix of house types and sizes with a satisfactory level of residential amenity.
- 5.2.3 Chapter 16 sets out detailed policies and standards in respect of development proposals within the city. Section 16.2 “Design, Principles & Standards” provides design principles outlining that development should respect and enhance its context.
- 5.2.4 Section 16.2.2.2 discusses ‘Infill Development’ i.e. gap sites within existing areas of established urban form. It is particularly important that such development respects and enhances its context and is well integrated with its surroundings, ensuring a more coherent cityscape.
- 5.2.5 Section 16.10.8 deals with ‘Backland Development’ and states that the Council will allow for comprehensive backland development where the opportunity exists. It

acknowledges the potential negative impacts for surrounding properties and states that applications will be considered on their merits.

5.2.6 Section 16.7.2 includes height limits for development, including a 24m restriction for residential development in the Inner City and within 500m of rail hubs.

5.3. **Natural Heritage Designations**

At a distance of c. 1.7km to the east of the appeal site, the South Dublin Bay and River Tolka Estuary SPA (site code 004024) is the nearest Natura 2000 site. The Royal Canal (c. 250m to the north) is designated as a Proposed Natural Heritage Area.

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

5.4.1. 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:

- Construction of more than 500 dwelling units,
- 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 a residential development containing 18 dwelling units. Therefore, the number of dwellings proposed is well below the threshold of 500 dwelling units. The site has an overall area of c. 0.1067ha and is therefore well below the applicable threshold of 10 hectares (and even 2 hectares if considered a ‘business district’).

5.4.3. The site is largely surrounded by residential development and small-scale commercial uses. The introduction of a residential development will not have an adverse impact in environmental terms on surrounding land uses. The site is not located within an Architectural Conservation Area. I acknowledge that it adjoins designated conservation areas and Protected Structures to the north, east, and south. However, I am satisfied that these issues can be satisfactorily assessed through the normal planning process.

- 5.4.4. The proposed development is not likely to have a significant effect on any European Site (as outlined in Section 8.0 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).
- 5.4.5. The proposed development would not give rise to waste, pollution or nuisances that differ from that arising from other housing/mixed-use development in the area. 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 foul sewer services of Irish Water, upon which its effects would be minimal.
- 5.4.6. Having regard to the nature and scale of the proposed development and the location and nature of the subject site, together with the nature, extent, characteristics and likely duration of potential impacts, I conclude that 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

- 6.1.1. The applicant has appealed subsection (a) of Condition 5 of the DCC decision, which requires the removal of one full storey. The appeal requests that subsection (a) be removed. The grounds of appeal can be summarised as follows:
- Montage imagery compares the proposed development to that previously permitted on the site. It is contended that the proposed development poses no undue impact to the visual amenity and character of the area and the residential amenity of adjoining sites.
 - The proposal for increased height and density facilitates improved efficiency of the site with a suitable mix of units at this central/accessible location. The proposal would be consistent with national policy/guidance as set out in the NPF, NDP, and the Building Height Guidelines.

- The proposed building height does not exceed the Development Plan standards and represents an appropriate response to evolving development in the area.
- The proposal would have no undue impact on the receiving environment and would provide a high standard of accommodation for future residents.
- The proposed development satisfies the criteria set out in Section 3.2 of the Building Height Guidelines. The Guidelines have not been adequately considered in the DCC planner's report.
- The appeal suggests several precedent cases granted by the Board and DCC. It contends that these cases involve similar suburban locations, and that the decisions would support the design approach of the proposed development.

6.2. **Planning Authority Response**

None.

6.3. **Observations**

None.

6.4 **Prescribed Bodies**

None.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. This first-party appeal relates only to subsection (a) of condition no. 5 and requests its omission from the DCC decision to grant permission. The application involves the demolition of existing buildings on site and the construction of a 5-storey apartment block and associated works. The existing buildings to be demolished are not included on the current Record of Protected Structures or the National Inventory of Architectural Heritage and have not been included as proposed protected structures in the Draft Dublin City Development Plan 2022-2028. I acknowledge that some

concerns were raised about the demolition of the buildings by DCC, but I am satisfied that this has been satisfactorily addressed by the applicant and the conditions of the DCC decision (i.e. condition no. 8). Accordingly, I have no objection in principle to the demolition of the existing buildings on site.

7.1.2. The site is zoned as 'Z1' with the objective '*To protect, provide and improve residential amenities*', where residential uses are 'permissible' in accordance with the Development Plan. It is an underutilised, brownfield site in a central and accessible urban location and the redevelopment of the site would contribute towards the regeneration and consolidation of this inner-city area. The principle of the proposed development would, therefore, be consistent with local and national policies which support compact and sustainable urban development.

7.1.3. I acknowledge that other issues were raised during the course of the consideration of the application, but I am satisfied that these issues have been adequately addressed by the Planning Authority and the conditions of the permission. Accordingly, subject to the further consideration of condition no. 5 (a), I am satisfied that the development would be in accordance with the proper planning and sustainable development of the area. Therefore, the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and my assessment will be limited to the matters raised in relation to the terms of the condition, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended).

7.1.4. Having inspected the site and examined the application details and all other documentation on the appeal file, and having regard to relevant local/national policies and guidance, I consider that the main issues for assessment regarding the condition are as follows:

- The quantum of development proposed
- Visual Amenity and Built Heritage
- Daylight and Sunlight impacts
- Overlooking and overbearing impacts

7.2 Quantum of development proposed

7.2.1. At a fundamental level, the imposition of Condition 5 (a) would involve a reduction in the number of units permitted. The revised scheme submitted in response to the DCC further information request included a total of 18 no. units. Condition 5 (a) of the DCC decision would require the omission of 4 units, resulting in a reduced total of 14 units. A comparison between the proposed and permitted development in relation to development standards is outlined in the table below.

	No. of Units	Density (units per hectare)	Site Coverage	Plot Ratio
Proposed	18	168	36%	1 : 1.27
Permitted	14	131	36%	1 : 1
Development Plan Standards	N/A	Not specified	45% - 60%	0.5 – 2.0

7.2.2. It is clear that the site coverage standard would be unaffected by the omission of a floor level. And while the site coverage is lower than Development Plan guidance standards, I consider that this can be accepted and attributed to the backland nature of the site and the requirement for a long access road. The Plot Ratio would be reduced by the omission of a floor level, albeit that it would still be within the recommended range as per the Development Plan.

7.2.3. The Development Plan (section 16.4) states that sustainable residential densities will be promoted in accordance with the guidance of the 'Sustainable Residential Development Guidelines'. Section 5.6 of the Guidelines states that, in order to maximise inner city population growth, there should be no upper limit on the number of dwellings that may be provided within any city centre site, subject to design standards and safeguards. Section 5.7 promotes higher densities on 'brownfield' sites and Section 5.8 recommends that increased densities should be promoted within 500 metres walking distance of a bus stop, or within 1km of a rail stop/station (minimum 50 per hectare, with highest densities at rail/bus stops). The '*Urban Development and Building Heights Guidelines*' also supports increased building

height and density in locations with good transport accessibility, particularly city cores, and prohibits blanket numerical limitations on building height.

- 7.2.4. The Apartments Guidelines (2020) recommend that 'Central and /or Accessible Urban Locations' are suitable for higher density apartment development and states that such locations would include sites within walking distance (up to 15 mins or 1000-1500 metres) of principal city centres or employment locations; sites within reasonable walking distance (up to 10 mins or 800-1000 metres) to/from high-capacity urban public transport stops; and site within easy walking distance (up to 5 mins or 400-500 metres) to/from high-frequency urban bus services.
- 7.2.5. This inner-city site is located within 15 mins walking distance of the city centre and several significant employment locations including hospitals at The Mater, The Rotunda and Temple Street. There are numerous bus-stops and routes within 400m of the site and it is within 1km walking distance of the Parnell stop on the LUAS Green line. Accordingly, I consider that the appeal site is within a central/accessible urban location and is suitable for higher densities in accordance with the provisions of national policy guidance as outlined above.
- 7.2.6. I am satisfied that both the proposed scheme (168 units per ha) and permitted scheme (131 units per ha) would provide an appropriately increased density at this location. And while higher density should generally be encouraged, I would accept that the limited scale of the subject site means that the reduction imposed by condition 5 (a) would result in a nett loss of only 4 units and that it would not materially affect the mix of unit types. Therefore, I do not consider that the quantum of development should be a significant or determining factor in the decision to attach or omit the condition in this case.

7.3 Visual amenity and built heritage

- 7.3.1. In terms of the visual impact of the development on the character and built heritage of the area, it is clear that the concerns of the planning authority relate solely to building height. This forms the rationale for the imposition of condition 5 (a) requiring a reduction in building height of one storey (3 metres).
- 7.3.2. Section 3 of the Building Height 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. In this case, I note that the surrounding area contains a mixture of building heights, with 1 to 2 ½ storey terraces to the east and north, as well as larger scale development to the west (four-storey over basement Garda Station) and the former church building to the south. The proposed building height (c. 15 metres) would be below the height of both the Garda Station and former church buildings and would be significantly less than the Development Plan height restriction of 24 metres for residential development in the Inner City. Therefore, I am not relying on the provisions of SPPR 3 of the Building Height Guidelines regarding the contravention of Development Plan height objectives. Nonetheless, I will consider the relevant provisions of Section 3 of the Guidelines in order to ensure a comprehensive assessment.

- 7.3.3. Section 3.1 of the Guidelines relates to broad principles and compliance with the objectives of the NPF and local statutory plans. I have previously outlined my opinion that the subject site is suitable for higher densities and compact urban development in accordance with the relevant national and local policies and I have no objection in this regard.
- 7.3.4. Section 3.2 outlines development management criteria for various scales. *At the scale of the city/town*, I again confirm that 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. However, the appeal site is small in scale and does not offer the opportunity to significantly contribute to place-making through the incorporation of new streets/spaces or otherwise.
- 7.3.5. The Guidelines also highlight the importance of successful integration with the character and public realm of the area, particularly in architecturally sensitive areas, as well as the inclusion of sufficient variety in scale and form to respond to the scale of adjoining developments and create visual interest in the streetscape. In this context, I am conscious of the location of the appeal site relevant to the former church and associated dwelling to the south of the site (both Protected Structures), as well as the surrounding terraces along Emmet Street and Fitzgibbon Street which are zoned as 'Z2 conservation areas'. Tyrell Place to the southwest is included within the Mountjoy Square Architectural Conservation Area and the Garda Station to the northwest is rated as 'regional' importance in the NIAH.

- 7.3.6. The application includes a photomontage booklet which illustrates the visual impact of the development from 3 surrounding vantage points. Based on these images, the applicant's original Planning Report contends that the site is not prominent within the hierarchy of local spaces and that the proposed development would represent a visual improvement. The applicant also compares the photomontage imagery of the proposed development with that already permitted under P.A. Ref. Reg. 4083/19 and contends that the proposed height increase of c. 3 metres would not represent a significant departure in terms of scale and visual impact.
- 7.3.7. Having inspected the site and the drawings and details on file, I note that the backland nature of the site means that it is largely enclosed by surrounding development of varying height and scale. Of the viewpoints selected by the applicant, I consider that the proposed development is most prominent in 'View 1' along Charles Street Great. This is largely due to the limited height and scale of development on the site to the south at the corner of Charles Street Great and Charles Lane. However, the Board should note that this site is the subject of a current appeal (ABP Ref. 310939-21) relating to the DCC decision to grant permission for the construction of 52 no. apartments in 2 no. 3 to 6-storey blocks. The development of this site would effectively screen the proposed development in View 1.
- 7.3.8. Nonetheless, the proposal must be considered in the current context, and I accept that the proposed development would be visible in View 1 to the rear of the former church and the adjoining Sexton's House (both protected structures). However, I consider that the former church building would comfortably retain its prominence and setting at this location and that the proposed development would appear subsidiary with a significantly lower height and scale in the rear distance. And while existing development on the site adjoins the southern site boundary and the Sexton's house, the proposed development would provide an improved setback from the protected structures, which would enhance their setting when viewed from the rear (north).
- 7.3.9. View 2 illustrates the impact of the development to the rear of the Emmet Street terrace (Z2 Conservation area) and the former church (protected structure). Again, I am satisfied that the proposed development would be significantly lower and appropriately distanced in relation to the former church, and that it would not adversely impact on its character or setting. I acknowledge that the upper 2 floors of

the proposed development would be visible over and above the ridge level of the Emmet Street terrace. However, having regard to the limited scale of the development and its location at a significant distance to the rear of this terrace, I do not consider that the increased height would result in a dominating visual impact that would detract from the character of this terrace or the wider Z2 conservation area.

7.3.10. View 3 illustrates the impact of the development in the context of the Fitzgibbon Street foreground and the former church in the background. It shows that the distant height of the proposed 5-storey building would generally be consistent with the 2 to 2 ½ storey development along the Fitzgibbon Street foreground and would be significantly lower than the Garda Station building to the west. I accept that the proposed development would effectively screen any view of the rear of the former church, but I do not consider that any such views are significant at this location.

7.3.11. *At the scale of the district/neighbourhood/street*, I would highlight that the site is of limited scale and effectively comprises an enclosed, self-contained space which lacks any prominent frontage. Accordingly, it does not have significant potential to contribute to the urban neighbourhood or streetscape. It has no direct relationship with significant public spaces or key thoroughfares and there is no realistic opportunity to improve the legibility of the area. However, it must be acknowledged that the proposed development would facilitate the redevelopment of an underutilised, brownfield site and would enhance the urban design context for the subject site and the wider surrounding area. The proposed design is not monolithic, and I do not consider that the removal of one storey would significantly enhance the appearance of the proposed building or its impact on the surrounding context. Having regard to the visual assessment outlined in previous paragraphs of this report, I am satisfied that the proposed development would integrate with the wider urban area in a cohesive manner.

7.3.12. In conclusion, I consider that the height, scale and design of the proposed development is acceptable at this location and would not detract from the character of existing development. Accordingly, I do not consider that the removal of one storey would be justified on grounds of visual amenity or built heritage.

7.4. Daylight and Sunlight

Policy

- 7.4.1. Although the proposal does not rely on SPPR 3 of the Urban Development and Building Height Guidelines (2018) for the contravention of Development Plan 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.
- 7.4.2. The Sustainable Urban Housing Design Standards for New Apartments Guidelines (2020) also highlight the importance of provision of acceptable levels of natural light in new apartment developments, which should be weighed up in the context of the overall quality of the design and layout of the scheme and the need to ensure an appropriate scale of urban residential development. It states that planning authorities '*should have regard*' to these BRE or BS standards when quantitative performance approaches are undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision. Again, where an applicant cannot fully meet these daylight provisions, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting.
- 7.4.3. 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 the scheme put in place where appropriate.

- 7.4.4. 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 and Assessment

- 7.4.5. The application includes a 'Daylight Analysis and Overshadowing' report which was updated in the further information response. The report has been prepared by 'Heffernan 3D' and refers to the standards outlined in the BRE Guide. 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 submissions which have raised concerns in relation to daylight and sunlight.

Neighbouring gardens

- 7.4.6. The applicant's report outlines an overshadowing study based on 3 times (10am, 12pm and 2pm) on 4 days of the year (21st of March, June, September & December) and investigates whether 50% the neighbouring garden amenity areas would achieve at least 2 hours of sunlight on 21st March as per the recommendations of the BRE Guide. The updated further information response examines the cumulative area

of all gardens to the east and north of the appeal site. It concludes that 64% of the garden areas would receive at least 2 hours of sunlight on 21st March and that this would exceed the minimum BRE guidance standards.

- 7.4.7. I acknowledge the cumulative approach taken by the applicant towards the amenity areas and that this would exceed the BRE target standards of 50%. At an individual level, I also note that the applicant's analysis would indicate that the gardens to the rear of No.'s 8 & 9 Emmet Street and No. 21 Fitzgibbon Street would not comply with the 50% standard. However, for no's 8 & 9 Emmet Street it should be noted that the applicant's overshadowing model does not fully reflect the extent of existing development within these rear garden spaces. No. 8 Emmet Street is almost completely covered by outbuildings/canopies and no. 9 includes a significant rear extension. The size of garden areas affected by the proposed development is, therefore, significantly less than that which is indicated in the applicant's assessment.
- 7.4.8. Having reviewed the applicant's overshadowing study for the 21st of March, I note that the proposed development would not result in any significant additional overshadowing of the rear garden to no. 21 Fitzgibbon Street. The lack of sunlight to this space is already caused by the full-length rear extensions to no. 21 and 20 and this situation would not be exacerbated by the proposed development. I acknowledge that there would be additional overshadowing to the rear of No. 9 Emmet Street (at 12pm and 2pm) and to 8 Emmet Street at 2pm. However, as previously outlined, I consider that these spaces are limited in size and the subsequent impacts would be similarly limited.
- 7.4.9. In conclusion, I am satisfied that more than 50% of the cumulative garden areas would exceed the BRE standard of receiving at least 2 hours of sunlight on the 21st of March. And while the proposed development may contribute to the rear gardens of no.'s 8 and 9 Emmet Street not meeting this standard, I consider that a refusal of permission or a removal of one storey would not be warranted in this case given the limited extent of space affected and the limited magnitude of the effects.

Neighbouring windows

- 7.4.10. 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. With regard to sunlight, 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 Annual Probable Sunlight Hours (APSH) or less than 5% of annual probable sunlight hours for the winter period (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. However, the application does not include any assessment of the impact of the proposed development on the daylight/sunlight to surrounding windows.

- 7.4.11. As an initial check the BRE Guide recommends that daylight and sunlight in existing buildings may be affected if any part of the new building, measured in a vertical section perpendicular to a main window wall of an existing building, from the centre of the lowest window, subtends an angle of more than 25° to the horizontal. In this case I note that the only residential windows which face the proposed development are those to the rear of Emmet Street and Fitzgibbon Street.
- 7.4.12. The ground floor rear windows in Fitzgibbon Street would be c. 29 metres from the 4th floor level of the proposed development (excluding lift shaft) and I estimate that the maximum height of the proposed building would be c. 13m above the centre point of these windows. In accordance with the BRE guidance, this would result in a subtended angle of 24°. Accordingly, I am satisfied that the daylight and sunlight to these windows is unlikely to be affected and no further assessment is required.
- 7.4.13. In relation to the Emmet Street properties, I note that No.'s 8A & 9A are commercial units which would not be overly sensitive to daylight/sunlight loss. I am also satisfied that the properties located further north along Emmet Street are significantly distanced and the windows within these properties do not directly face the proposed development. Accordingly, I consider that the windows to the rear of no.'s 6-8 Emmet Street are the only ones with potential to be significantly affected by the proposed development.

- 7.4.14. As previously outlined, the rear of No. 8 is largely developed and it would not appear to have any significant windows at ground floor level facing the proposed development. No.'s 6 & 7 also have rear extensions but would appear to have one existing window each at ground floor level, albeit that the window in no. 6 would not directly face the proposed development. The rear ground floor window in no. 7 would be distanced c. 13 metres from the main north-eastern façade wall, which would extend c. 12 metres above the level of the window centreline. In accordance with the BRE guidance methodology, this would result in a subtended angle of c. 42°. No.'s 6-8 all have first floor rear windows, and it could reasonably be estimated that the north-eastern façade wall would extend c. 10 metres above the centreline of these windows, thereby resulting in a subtended angle of c. 37°.
- 7.4.15. I accept that these angles of obstruction exceed the 25° standard suggested in the BRE Guide, which may result in adverse impacts for daylight and sunlight. However, it should also be noted that the BRE Guide (Appendix F) suggests that an alternative target value for sunlight and daylight access could incorporate an obstruction angle of 40°. It suggests that this could be applied to mews type developments in historic centres, and I consider that it could be reasonably applied to this restricted backland site and its surrounding historic context. And while the ground floor windows would still exceed this alternative target, I consider that the exceedance would be marginal, and the extent of windows involved would be minimal.
- 7.4.16. Furthermore, I would highlight that the relationship between the proposed development and the existing dwellings along Emmet Street would be similar to that of the former church building to the south of the site, which itself forms an estimated obstruction angle of c. 44° in relation to the rear ground floor windows serving No.'s 1-3 Emmet Street. Accordingly, I am satisfied that the sunlight/daylight impacts of the proposed development on existing windows would be consistent with established conditions in this urban context and would not result in any unacceptable impacts. Therefore, a refusal of permission or a removal of one storey would not be warranted on these grounds.

Standards within the proposed development

- 7.4.17. The applicant has not carried out any assessment of daylight and sunlight standards for the units and spaces within the proposed development. However, in the context

of the relevant appeal question, i.e. the removal of one storey, I do not consider that its omission or inclusion would have a significant effect on the daylight and sunlight standards within the proposed development. Accordingly, I am satisfied that no further assessment is required in this regard.

Conclusions on Daylight/Sunlight

- 7.4.18. I note that the applicant has included an assessment of impacts on neighbouring garden spaces only. However, having regard to the provisions of the Development Plan and the Section 28 guidance outlined previously in this section, I do not consider that a daylight/sunlight assessment of the proposal is a mandatory requirement in this case. The application does not rely on the 'material contravention' provisions in SPPR 3 of the Building Height Guidelines and, accordingly, there is no mandatory requirement to demonstrate compliance with the BRE or BS standards. I acknowledge that the Apartments Guidelines recommend consideration of the standards when undertaken by development proposers, but do not require that assessments must be undertaken. Furthermore, the Development Plan states only that a sunlight/daylight analysis of the different units may be required, but not that it is mandatory. Consistent with that approach, the BRE guide itself further highlights the need for flexible interpretation of its recommendations in the context of many other design factors.
- 7.4.19. In this assessment I have outlined that the proposed development is likely to have some impact on the availability of daylight and sunlight to neighbouring gardens and windows along Emmet St to the east. However, I consider that the extent of spaces and windows that may be affected is quite limited, and I am satisfied that the impacts would not be excessive or inconsistent with the existing conditions in this urban environment.
- 7.4.20. The appeal site is located in a well-connected inner-city area and 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 the removal of one storey would not be justified by reason of daylight or sunlight impacts.

7.5 Overlooking and Overbearing impacts

- 7.5.1. The appeal site is bounded by community and institutional uses to the south and west, and I am satisfied that these properties would not be overly sensitive to any overlooking or overbearing impacts associated with the development. However, the impacts on the properties along Emmet Street and Fitzgibbon Street require further assessment.
- 7.5.2. The proposed development includes windows and balconies on the northern elevation which face towards the rear of the Fitzgibbon Street properties. However, the proposed northern façade would be at least 13 metres from the rear garden boundaries and 25 metres from any opposing windows in the rear elevations. I consider that this provides a sufficient separation distance to ensure that the proposed development would not have any unacceptable overlooking or overbearing impacts on the Fitzgibbon Street properties.
- 7.5.3. Regarding the Emmet Street properties, I note that the proposed development includes windows and balconies/terraces on the eastern elevation. In order to address overlooking issues, the applicant has included 1.8m high privacy screening along the proposed balconies and roof terrace. Furthermore, the proposed kitchen/bathroom windows on this eastern gable elevation are shown to comprise opaque glazing. Accordingly, I am satisfied that these measures would prevent any unacceptable overlooking impacts of the Emmet Street properties to the east.
- 7.5.4. In assessing the overbearing impacts on the Emmet Street properties, I acknowledge that any such impacts can be generally attributed to the relationship between the height and scale of a proposed development and its proximity to existing properties. In many ways the assessment criteria are similar to those used in daylight assessment. In this regard, I have already outlined that the eastern façade of the proposed development would be c. 13 metres from the main rear facades of the Emmet Street properties and its height would extend c. 12 metres above an assumed eye level (i.e. 1.5m above ground level), thereby resulting in a visual obstruction angle of c. 42°. The width of the main eastern façade wall is quite limited at c. 13m, which directly opposes the rear gardens at no's 8 & 8A, as well as part of the rear garden at no. 7.

- 7.5.5. As previously outlined, no. 8A is a commercial property which is completely developed at ground level to the rear. No. 8 is also substantially covered to the rear and has only a limited outlook towards the proposed development. And while no. 7 includes a more substantial rear garden space, it would be only partially opposed by the main eastern façade wall and would still avail of a relatively unobstructed outlook to the south. Having regard to these factors, I consider that the proposed development would not have excessive overbearing impacts on the Emmet Street properties to the east. Furthermore, I do not consider that the impact of the development would be any more overbearing than the existing impact of the former church building to the south. The proposed development would, therefore, be consistent with existing conditions within this urban environment.
- 7.5.6. In conclusion, I do not consider that the proposed development would have any unacceptable overlooking or overbearing impacts on surrounding properties. Accordingly, the removal of one storey would not be justified on these grounds.

8.0 Appropriate Assessment

- 8.1. The nearest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (approximately 1.7km to the east). There are several other Natura 2000 sites in the inner Dublin Bay area to the east, including South Dublin Bay SAC, North Bull Island SPA and North Dublin Bay SAC. The site is not, therefore, located within or adjoining any Natura 2000 Sites, and there are no direct pathways between the site and the Natura 2000 network.
- 8.2. I am aware that there are potential indirect connections to the Natura 2000 sites within Dublin Bay via watercourses, groundwater discharge, and the wider drainage network. There is also an indirect connection via the wastewater network which outfalls to Dublin Bay via the Ringsend WWTP. However, the existence of these potential pathways does not necessarily mean that potential significant impacts will arise.
- 8.3. There are no surface watercourses in the immediate vicinity of the site that would provide a pathway to the Natura 2000 network. I note that surface water will be collected, attenuated, and discharged to the combined sewer system at this location and will not discharge to groundwater. The combined storm/foul water emissions

from the development would result in an increased loading on the Ringsend WWTP. However, there is known potential for the waters in Dublin Bay to rapidly mix and assimilate pollutants. Therefore, 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 capacity of the Ringsend WWTP; I am satisfied that there is no possibility that the additional loading resulting from the development will result in significant effects on European sites within Dublin Bay.

- 8.4. GSI mapping indicates that groundwater vulnerability is low at this location, and I am satisfied that any excavation or ground disturbance would not be likely to impact on the quality of groundwater. Furthermore, there is a significant separation distance between the appeal site and the nearest Natura 2000 sites, which would provide significant dilution capacity in the unlikely event of any such impacts on groundwater quality.
- 8.5. 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

I consider that the determination by the Board of the application as if it had been made to it in the first instance would not be warranted and that assessment should be limited to the matters raised in relation to the terms of the condition, pursuant to the provisions of section 139 of the Planning and Development Act 2000 (as amended). I recommend that the Planning Authority be directed to REMOVE subsection (a) of Condition no. 5 for the reasons and considerations set out hereunder.

10.0 Reasons and Considerations

Having regard to the height, scale and design of the proposed development, the central and accessible location of the site, and the pattern and character of surrounding development, it is considered that the proposed development would provide an acceptable quantum of development at this location, would not detract from the character or built heritage value of the area, and would not detract from the amenity value of surrounding properties. Accordingly, it is considered that subsection (a) of Condition no. 5 of the Planning Authority's decision, requiring the omission of one full storey, is not warranted in this case.

Stephen Ward
Senior Planning Inspector
1st April 2022