



An
Bord
Pleanála

Inspector's Report

ABP-311605-21

Development	Upgrades works and extension of the hotel, including 7 storeys of new hotel accommodation above basement level, and all associated works
Location	Conrad Hotel, Earlsfort Terrace, Dublin 2, D02 V562
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3204/21
Applicant(s)	Earlsfort Centre Hotel Proprietors Limited
Type of Application	Planning Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party Appeals
Appellant(s)	Irish Life Assurance PLC Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd
Observer(s)	None

Date of Site Inspection

16th May 2022

Inspector

Susan Clarke

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1.0 Site Location and Description

- 1.1. The site measures 0.4876ha and is located at the Conrad Hotel, Earlsfort Terrace, Dublin 2. The site fronts onto Earlsfort Terrace and Lesson Street Lower. The hotel was constructed in 1980s/1990s and formed part of a larger mixed use commercial and residential development known as the Earlsford Centre. The existing hotel is a red brick seven storey building, rising to eight storeys to the rear. There is a hard landscaped open space area to the south of the hotel, which is known as the Earlsfort Plaza.
- 1.2. The site is surrounded principally by commercial development; St. Stephen's Green House (SSGH) and Dolmen House is located to the north, the Earlsfort Centre office complex to the south, offices including Ormonde House fronting onto Lesson Street Lower to the east, and the National Concert Hall is located to the west on Earlsford Terrace.
- 1.3. There is a vehicular entrance to the north of the site, which provides access to the basement area including car parking and service access. There is a pedestrian and service access to the rear from Lesson Street Lower. The area being located in the city centre is well served by public transport.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - New façade (including a new glass and metal canopy at the main entrance) and elevational upgrade works (including glass lift on Earlsford Terrace),
 - Minor extensions to the existing footprint and internal modifications (including change of use of existing ballroom and part of basement to multi-use event space, provision of a café with service hatch on Earlsford Terrace, and wellness centre fronting Earlsford Plaza),
 - One storey extension to existing hotel (i.e. proposed Eight Floor Level)
 - Rooftop bar with terraces with awnings and a coloured glass canopy to Earlsfort Terrace at Seventh and Eighth Floor Levels,

- A new seven storey wing of hotel accommodation above the proposed event space along the northern boundary of the site,
- New pedestrian access point to Lesson Street Lower, and
- Landscaping works and associated works.

The proposed development involves an increase in the gross floor area by 6,081 sq m from 14,405 sq m to 20,486 sq m.

The total number of hotel bedrooms will increase by 88 No. from 192 No. to 280 No. Furthermore, the proposal will result in a reduction in the number of car parking spaces from 87 No. to 60 No.

2.2. Documentation Submitted with Planning Application

In addition to a Planning Application Form and Statutory Notices, the application included supporting documents (in association with architectural and engineering drawings) as follows:

- Planning Report (July 2021)
- Architectural Design Statement (19th July 2021)
- Engineering Planning Report (21st June 2021)
- Visual and Townscape Impact Assessment (15th June 2021)
- Photomontages (not dated)
- Architectural Heritage Impact Assessment (24th June 2021)
- Archaeology and Built Heritage (21st July 2021)
- Appropriate Assessment Screening (21st June 2021)
- Daylight, and Shadow Assessment (23rd June 2021)
- Energy Statement (23rd June 2021)
- Outline Construction and demolition Waste Management Plan (21st June 2021)
- Outline Travel Plan (21st June 2021)
- Site Specific Flood Risk Assessment (21st June 2021)
- Outline Construction Management Plan (21st June 2021)

- Operational Waste Management Plan for Proposed Hotel Development (19th July 2021)
- Planning Stage Noise Report (25th May 2021)
- Bat Survey (18th June 2021)

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council issued a Notification of Decision to Grant Permission on 15th September 2021, subject to 13 No. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Planner noted the planning history associated with the site, the policy and plan context for the development, the third-party submissions, and the reports received. The Officer considered that the upgrading façade would enhance the streetscape onto Earlsford Terrace and provide a greater presence onto Lesson Street. In addition, the Officer stated that given the urban context, the site's location in SDRA 18 and the uses of the adjacent buildings, the scale of the proposed development is considered to be consistent with existing and emerging trends.

In terms of daylight and sunlight, the Planning Officer stated that given the urban context and the uses of the adjacent buildings the scale of the proposed development is considered to be consistent with emerging trends.

The Officer recommended that permission be granted for the proposed development, subject to conditions.

3.2.2. Other Technical Reports

- Transportation Planning Division: No objection, subject to condition.
- Environmental Health Officer: No objection, subject to condition.
- City Archaeologist: No objection, subject to condition.

- Drainage Division: No objection, subject to condition.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland: No objection, subject to condition.
- Irish Water: No comments received.
- National Transport Authority: No comments received.
- Irish Rail: No comments received.
- The Heritage Council: No comments received.
- An Taisce: No comments received.
- Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs: No comments received.
- Failte Ireland: No comments received.
- An Chomhairle Ealaíon: No comments received.

3.4. Third Party Observations

3.4.1. Two Third-Party Observations were made to the Local Authority in respect of the application from Irish Life Assurance PLC, and Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd, respectively. The key points raised can be summarised as follows:

- Potential loss of light to Dolmen House and SSGH
- Separation distance between the proposed development, Dolmen House and SSGH
- Potential demolition/construction safety and structural impacts.

4.0 Planning History

DCC Reg. Ref. 3842/15: Dublin City Council granted permission in January 2016 for revised glazed elevation to existing entrance lobby and signage.

DCC Reg. Ref. 3048/15: Dublin City Council granted permission in September 2015 for addition of internal floor area of 86 sq m at ground floor mezzanine, signage and elevational alterations.

DCC Reg. Ref. 2511/14: Dublin City Council granted permission in July 2014 for removal of existing cooling tower to flat roof over 8th floor and two new mounted air-cooling condensers to flat roof over 1st floor.

DCC Reg. Ref. 1811/01: Dublin City Council granted permission in September 2001 for the erection of gates and railings at the rear of the Conrad Hotel.

DCC Reg. Ref. 1200/99: Dublin City Council granted permission in July 1999 for the construction of new fully glazed entranced canopy including signage at main entrance.

DCC Reg. Ref. 2216/98: Dublin City Council granted permission in November 1998 for the erection of plant at Ground Floor Level.

5.0 Policy Context

5.1. National and Regional Policy / Guidance

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, including the following:

- 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 6 aims to regenerate cities with increased housing and employment
- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.

The primary statutory objective of the **Regional Spatial and Economic Strategy for the Eastern and Midland Regional Authority 2019-2031** (RSES) is to support the implementation of the NPF. The RSES identifies regional assets, opportunities and pressures and provides policy responses in the form of Regional Policy Objectives.

The spatial strategy and the Dublin Metropolitan Area Strategic Plan support the consolidation and re-intensification of infill/brownfield sites to provide high density and people intensive uses within the existing built-up area of Dublin City.

5.1.1. Urban Development and Building Heights Guidelines for Planning Authorities, 2018

The Guidelines 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.

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.

Section 3.2 of the Guidelines (At the scale of the site/building) states:

- 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.
- Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment's '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.

5.2. Dublin City Development Plan 2016-2022

The majority of the site is zoned Z6 “*To provide for the creation and protection of enterprise and facilitate opportunities for employment creation*”, while a smaller section fronting onto Lesson Street Lower is zoned Z8 “*To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.*”

The majority of the site is located within the Strategic Development and Regeneration Area 18 – National Concert Hall Quarter. Section 15.1.1.21 of the Development Plan outlines the objectives for the SDRA which includes *inter alia*:

- To create a critical mass of employment generating land uses to utilise the investment in public transport in the area and to facilitate the delivery of additional planned public transport services.
- To promote the of development of buildings of up to 9-storeys commercial to ensure critical mass is achieved to support public transport services and ensure the most efficient use of scarce urban land, subject to preparing visual impact assessments and photomontages to verify the appropriateness of any proposed development in its city-wide and local context.
- To promote the development of vacant and under-utilised sites in the character area for high quality commercial development and other uses.
- To facilitate and deliver improved pedestrian linkages between the areas key open spaces and streets, creating a highly permeable and connected urban quarter that ensures vibrancy.

A small section of the site fronting onto Lower Lesson Street is located within a zone of archaeological interest.

Section 4.5.9 of the Plan includes policies relating to Urban Form and Architecture, including the following:

- SC7: To protect and enhance important views and view corridors into, out of and within the city, and to protect existing landmarks and their prominence;
- SC25 - To promote development which incorporates exemplary standards of high-quality, sustainable and inclusive urban design, urban form and architecture befitting the city's environment and heritage and its diverse range of locally distinctive neighbourhoods, such that they positively contribute to the city's built and natural environments. This relates to the design quality of general development across the city, with the aim of achieving excellence in the ordinary, and which includes the creation of new landmarks and public spaces where appropriate;

Section 6.5.3 of the Plan refers to 'tourism and visitors', and notes that it is important to continue to develop tourism infrastructure such as visitor accommodation of various types. Relevant policies include:

- CEE12 (i): seeks to promote & facilitate tourism as one of the key economic pillars of the city's economy & a major generator of employment & to support the provision of necessary significant increase in facilities (hotels);
- CEE13 (iii): seeks to promote and support the development of additional tourism accommodation at appropriate locations.

In terms of daylight the following policies are relevant:

- CC4: To encourage building layout and design which maximises daylight, natural ventilation, active transport and public transport use.

5.3. Natural Heritage Designations

The site is not located within or close to any European site.

5.4. EIA Screening

Having regard to the nature and scale of the proposed development on zoned and serviced lands, there is no real likelihood of significant effects on the environment

arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Two Third-Party Appeals were made to An Bord Pleanála on 8th October 2021 opposing the Local Authority's decision from Irish Life Assurance PLC, and Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd, respectively.

The Appeal from Irish Life Assurance PLC relates to potential loss of daylight to Dolmen House. The grounds of appeal can be summarised as follows:

- No evidence has been adduced in relation in relation to potential loss of light to Dolmen House arising from the development.
- A peer-review by Dr. Paul Littlefair of the Daylight Assessment submitted by the Applicant in respect of SSGH confirms that the ADF figures for the building have been incorrectly calculated and that the daylight impacts would be very significant.
- Dolmen House may be more vulnerable to a loss of light than SSGH due to its proximity and orientation in respect to the proposed development.
- It is considered that the Board does not have sufficient information to determine the potential loss of light for Dolmen House and as such requests that the Board seek additional information from the Applicant in this regard.

The Appeal from Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd relates to the loss of light to SSGH. The grounds of appeal can be summarised as follows:

- A peer-review, by Dr. Paul Littlefair of the Daylight Assessment submitted by the Applicant in respect of SSGH, states that the Assessment provided a Vertical Sky Component (VSC) per building and not on every affected window or main window of each room.

- The loss of light has been recalculated by Dr. Littlefair and the review confirms that out of 291 windows analysed, 222 would have losses of light outside the BRE guideline. 158 windows would have relative losses more than double the BRE guideline. The worst affected windows are on the lower floors and towards the western end of the façade.
- 31 out of 58 rooms analysed would have impacts on their daylight distribution outside the BRE guidelines. Most of these would experience a substantial impact, with 28 having more have double the recommended loss, and 22 losing more than two-thirds of their daylit area.
- Whilst calculating average daylight factor (ADF) is not recommended for existing buildings, Metec and Dublin City Council have used the criterion. The peer-review recalculates the ADF for the worst-case rooms on the first and second floors and confirmed that 16 of the 17 rooms analysed would have average daylight factors below the recommendation with the new development in place.
- It is not considered that the proposed extension on the boundary of Conrad Hotel and SSGH is essential to achieving the “wider planning objectives” referenced in the 2018 Building Height Guidelines.
- Requests that the Board address the peer-review with regard to the 2018 Guidelines and the wider context of proper planning and sustainable development.

6.2. Applicant Response

The Applicant submitted a response to the Third-Party Appeal to An Bord Pleanála on 8th November 2021. The key points can be summarised as follows:

- The proposed development is situated in the central business district where national and city policy, and the principles of sustainable development, mandate consolidation and compact growth and quality urban design responses to viable infill development sites.
- The development represents an opportunity to enhance a significant tourism asset in the city and deliver on the objectives of the National Concert Hall Quarter SDRA.

- The Appellant does not provide any evidence to establish that there is an established or permitted use that would be affected by any reduction in daylight.
- An updated assessment (dated 8th November 2021) prepared by Metec (attached with the First-Party Response) has assessed further buildings in the vicinity and confirms that those office uses are generally consistent with the BRE Guide, and the British Council for Offices stated guideline of ADF 2-5%, which aligns to Appendix C of the BRE Guide, (however the BRE Guide does not specify office uses), with the exception of the ground floor of SSGH which is marginally below (1.92%) due to the small window configuration at this level.
- The retained level of daylight in the buildings is appropriate to the established and permitted office uses, is typical of the levels expected, and significantly in excess of those often achieved, in a central business district.
- A clear identification of impacts arising from the development is provided and justified having regard to compensatory design measures and the achievement of wider planning objectives.
- The Appellants have not provided any justification as to why the subject offices would fall under the reference to 'some offices' in the BRE Guidelines or what is considered as a reasonable expectation of daylight. No guidance is provided in the BRE Guide as to what constitutes 'some offices', however it is clearly the exception rather than the rule.
- In addition to the updated Metec assessment, the First-Party Response also includes a Planning Appeal Response Document prepared by bkd architects which provides an explanation for the design proposal. It states that the proposed light coloured metal cladding will allow for maximum reflection of light to SSGH and Dolmen House. In addition, the removal of overlooking windows and creation of a blank boundary facing elevation allows for maximum flexibility for our neighbours in relation to potential future development of the neighbouring sites.
- Furthermore, the First-Party Response includes an Engineering Report that addresses the issues raised in the Observations submitted to the Local Authority regarding potential crane impacts and potential structural impacts.

In short, the Applicant states that it would place an unreasonable constraint on the construction of the proposed development if the lifting of construction materials were to be prohibited over adjoining surface car parking areas. However, the applicant will include within the contract documentation for the proposal a requirement to minimise the lifting of construction material over the adjoining surface car parking. With respect to potential structural impacts, the Applicant states that it will undertake an independent condition survey of Dolmen House and St. Stephen's Green prior to the commencement of the development.

6.3. Planning Authority Response

No response received.

6.4. Observations

None received.

6.5. Further Responses

Further Responses were received from the Appellants in response to the First-Party Response to Third-Party Appeals.

Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd made an Observation to the Board on 10th December 2021 focusing on the loss of light to SSGH as a result of the development. The key points raised can be summarised as follows:

- The revised assessment prepared by Metec demonstrates very significant failure rates in respect of VSC across the façade of SSGH – and in every case asserts that the Guidelines for not apply. With respect to ADF the Metec Report asserts that the outcome would be satisfactory, despite Dr. Littlefair's earlier analysis.
- Dr. Littlefair has prepared a separate assessment of the issue of Right to Light, which states: it can be concluded that if SSGH has Right to Light over the proposal site, which would be expected as the windows are over 20 years old,

these Rights to Light would definitely be infringed by the proposed development. There would be very substantial losses in daylight area. In addition, the Note states that contrary to the BRE Guidance, the impact of the new development on daylight distribution has not been analysed for any building. No analysis has been made of loss of light to Ormonde House which is close to the proposed development and has windows which would be expected to have a significant loss of light.

- The applicability of the Guidelines is a matter for the Board. Absent any clear determination of the applicability of the Guidelines to these offices, and given the conflicting expert evidence, the Board might be tempted to leave this over as a matter of private interests, amenable to law. However, it is considered that the matters for consideration are in the context of proper planning and sustainable development (reference is made to the *Boyd v An Bord Pleanála* case and *Balz v An Bord Pleanála* case).

Irish Life Assurance PLC made an Observation to the Board on 10th December 2021 focusing on the loss of light to Dolmen House as a result of the development. The key points raised can be summarised as follows:

- The revised assessment prepared by Metec demonstrates very significant failure rates in respect of VSC across the affected (east) façade of Dolmen House. Dr. Littlefair states that results for the east facade of Dolmen House would be well outside the Guidelines; although the western side would be unaffected, this building is too deep to be lit from one side only.
- Despite the very poor VSC results, the Metec report asserts that the ADF results show that the retained daylight would be adequate. Dr. Littlefair has previously questioned this aspect of the assessment and does so again in a note attached to the Observation.
- The applicability of the Guidelines is a matter for the Board. Absent any clear determination of the applicability of the Guidelines to these offices, and given the conflicting expert evidence, the Board might be tempted to leave this over as a matter of private interests, amenable to law. However, it is considered that the matters for consideration are in the context of proper planning and

sustainable development (reference is made to the Boyd v An Bord Pleanála case and Balz v An Bord Pleanála case).

7.0 Assessment

Having examined the application details and all other documentation on file, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of the Development,
- Architectural Design and Visual Amenity
- Daylight Impacts
- Structural Works
- Archaeology
- Parking, and
- Appropriate Assessment.

Each of these issues is addressed in turn below.

7.1. Principle of the Development

- 7.1.1. The principle of the proposed development and nature of use has already been established on the site. The use is consistent with the zoning objectives for the site (Z6 and Z8) and is a use compatible at this city centre location. There is no issue concerning the proposed intensity of use and increase in room number given its city centre location. The site is located with the SDRA 18 which aims to consolidate and enhance the cultural significance of the area and to facilitate and deliver improved pedestrian linkages. The proposed café and hatch service on Earlsfort Terrace, renovation works fronting Earlsford Plaza, rooftop bar and terraces, and new pedestrian link to Lower Lesson Street collectively contribute to the area's vitality both by day and night. I note that there is no residential development abutting or adjoining the site. I highlight that the Third-Parties have not objected to the principle of the development. In summary, I consider that the proposed development, subject to qualitative safeguards in respect of design and amenity, is acceptable in principle on the subject site.

7.2. Architectural Design and Visual Impact

- 7.2.1. The proposed development involves upgrade works and an extension to the hotel that was originally constructed in the 1980s/1990s. It also involves the construction of a seven storey wing along the northern boundary of the site, with a parapet height of 31.6m. The hotel currently has a parapet height of 29.6m, similar to SSGH. One of the SDRA's objectives is to promote the development of buildings of up to 9-storeys commercial to ensure critical mass is achieved to support public transport services and ensure the most efficient use of scarce urban land, subject to preparing visual impact assessments and photomontages to verify the appropriateness of any proposed development in its city-wide and local context. Within the SDRA medium rise building with a maximum of 50m are acceptable in principle. The majority of the site is located within the SDRA, with the exception of a small section fronting onto Lower Lesson Street. I note that only a small section of the proposed new wing primarily including a circulation core (lift, stairs and lobby area) are located outside the SDRA and as such the Development Plan's 28m building height limit for commercial development in the inner city is applicable to this element of the site. However, I refer the Board to the more recently adopted Ministerial Guidelines entitled Urban Development and Building Heights – Guidelines for Planning Authorities which supersede the Development Plan which notes that statutory development plans have tended to be overtly restricted in terms of maximum building heights. Having regard to the prevailing height in the area, the surrounding land uses, and the objectives of the SDRA which govern the majority of the site, I am satisfied that the terms of the Building Height Guidelines (Section 3.2) justify a grant of permission for the proposed development despite its height exceeding the prescribed 28m in the Development Plan. Having regard to the foregoing, I do not consider the proposed height to be a material contravention of the Development Plan. The proposed setbacks and the use of construction materials, particularly the quantum of glass, will ensure that the proposed development is not overbearing on Earlsford Terrace or Plaza.
- 7.2.2. In accordance with the objectives of the SDRA, the application included photomontages and VTIA which concentrates on fourteen viewpoints and compares the views of the site and the predicted visual impacts from the proposed development. A rationale is set out for the proposed development, which includes objectives of the SDRA, the location of the application site adjacent to public transport, and local policy

to promote additional height at such locations. The Assessment concludes that the proposed development will not impact on the views and vistas from the South Georgian Core. The Report states that *“visibility of the proposed development will be substantially limited to the immediate environs of the development along its Earlsford Terrace frontage where the proposed development will make a positive contribution to the architectural and built quality of the street and to the identity of the area. There will be occasional glimpse views of the development in the wider environs however these will be limited to partial glimpses of small portions of the upper roofscape elements and seen within the skyline of the intermediate roofscape”*. Having reviewed the VTIA and associated photomontages, I concur with the Applicant that Viewpoints 1-11 and 13 and 14 demonstrate that the proposal will have a minimal impact on the streetscape and visual amenity of the area due to the built-up nature of the area. I consider that View 12 of Earlsford Terrace clearly demonstrates the positive visual impact the proposal will have within the SDRA. Furthermore, View 4 highlights how the proposed development opens the site up to Lower Lesson Street, improving connectivity in the area.

7.2.3. In summary, increases in height and density are supported by national policy and guidance. The site is located in the city centre and is in close proximity to a number of major public transport modes. Whilst the site is in relatively close proximity to Protected Structures and a Conservation Area, the proposed scale, massing and contemporary architectural treatment, will ensure the integrity of these sensitive locations remain largely unchanged and unaffected by the proposal. I note that the Architectural Heritage Impact Assessment prepared by Cathal Crimmins supports these findings. In conclusion, I consider the proposed development, in terms of its overall design, massing, height and scale to be appropriate at this location and compliant with the objectives of the SDRA.

7.3. Daylight Impacts

7.3.1. The crux of this appeal case relates to the potential loss of daylight to surrounding office buildings as a result of the proposed development. In particular, the Appeals focus on the relevance of the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) and BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’ which was replaced by the updated British Standard (BS EN 17037:2018 ‘Daylight in buildings’), to the assessment of the case.

I note that Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd in its Further Response to the Board on 10th December 2021 includes a note from Dr. Littlefair in relation to Rights to Lights for SSGH. As the issue of determining rights to light is a matter for the Courts, I do not consider that the Board is in a position to draw any conclusions in relation to the matters raised. As such, my assessment below focuses on potential daylight impact losses from a town planning perspective only.

Policy Context

- 7.3.2. Whilst the Development Plan (Section 16.10) states that new residential development proposals shall be guided by the principles of the BRE Guidelines, it does not confirm that the guidance applies to the assessment of the impacts on commercial developments on existing properties. As outlined in Section 5.1.2 above, the Building Height Guidelines state that “**Appropriate and reasonable regard** should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment’s ‘Site Layout Planning for Daylight and Sunlight’ (2nd edition) or BS 8206-2: 2008 – ‘Lighting for Buildings – Part 2: Code of Practice for Daylighting’”. (Bold: my emphasis.) As highlighted by both the Applicant and Third-Parties the Building Height Guidelines state 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.
- 7.3.3. Section 2.2.2 of the BRE Guidelines state: “*The Guidelines given here are intended for use for rooms in adjoining dwellings where daylight is required, including living rooms, kitchens, and bedrooms. Windows to bathrooms, toilets, storerooms, circulation areas and garages need not be analysed. The guidelines may also be applied to any existing non-domestic building where the occupants have a reasonable expectation of daylight; this would normally include schools, hospitals, hotels and hostels, small workshops and some offices.*” It is important to note that the BRE Guidelines allow for flexibility in terms of their application as they are only one

consideration in respect of the design and delivery of residential amenity and state that: *“The guide is intended for building designers and their clients, consultants and planning officials. The advice given here is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain the designer. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout design.”* The BRE Guidelines continue: *“in historic city centre, or in an area with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings. Alternatively, where natural light is of special importance in a building, less obstruction and hence more sunlight and daylight may be deemed necessary”*.

- 7.3.4. Having regard to the principal issue of this appeal case and to the extensive evidence including quantitative analysis presented by the Applicant and the Appellants, the next sections of my Report summarise same. However, as discussed in further detail below, I consider that the impacts in terms of loss of light to the surrounding office developments in this instance to be acceptable given that they relate to commercial premises in the city centre and there are no known circumstances for these buildings to require a certain prescribed lighting standard. In short, I do not consider that the BRE Guidelines are applicable in this instance.

Assessment of Quantitative Analysis prepared by the Applicant and Appellants

- 7.3.5. The Applicant submitted a Daylight, and Shadow Assessment (dated 23rd June 2021) with the planning application to the Local Authority. In summary, this Assessment calculated a Vertical Sky Component for a “representative selection of main windows facing the proposed development” from the following buildings: Nos. 89-92 Lower Lesson Street, Nos. 86-88 Lower Lesson Street, Nos. 5 & 6 Earlsford Terrace, HRP House, SSGH, and Ardán Phort an Iarla. Only one VSC value was provided for each building with the exception of SSGH which had seven calculated values. BRE recommends that existing neighbouring properties should retain a VSC of at least 27%, or where it is less, to not be reduced by more than 0.8 times the former value (i.e. 20% of the baseline figure). This is to ensure that there is no perceptible reduction in daylight levels and that electric lighting will not be needed more of the time. In summary, the Applicant stated that all the buildings achieved 27% (27.35% - 33.59%), with the exception of SSGH. In terms of SSGH, the Applicant calculated that only the

Third to Sixth floors have existing VSC levels greater than 27% (28.98% - 37.63%), but all floor levels would fail to achieve the standard and would experience a reduction greater than 20% of the existing values as a result of the development (the percentage change from the former values range from 27% at First Floor Level to 53% at Sixth Floor Level). The Applicant undertook further analysis of the impacts on SSGH by assessing the Average Daylight Factor (ADF) to determine the level of daylight that would be achieved in the rooms the tested windows served in terms of the British Council for Offices. The Applicant highlights that whilst the BCO guide target is between 2% and 5%, the target figure of 2% also represents the highest standard required for acceptable daylight levels with supplementary lighting for a 'predominantly daylit appearance' in Appendix C of the BRE Guidelines. Furthermore, the Applicant based the calculation on an open plan layout, which is argued to be expected at letting stage. The analysis concluded that ADF values from 2.29% to 5.08% would be achievable from Ground to Sixth Floor level in SSGH and such, the Applicant stated that good daylight access would be safeguarded to these areas with the proposed development in place.

- 7.3.6. Irish Life Assurance PLC, New Ireland Assurance Company PLC and IBI Property Nominees Ltd noted the reduction in the VSC levels for SSGH and raised concerns regarding the potential need for artificial lighting during the day to the Local Authority. Irish Life Assurance PLC requested that the Applicant prepare an analysis of the potential loss of light to Dolmen House in an Observation to the Local Authority. As part of the Third-Party Appeals, the Appellant criticised Metec's methodology primarily on the basis of only providing one VSC per building, rather than on every affected window, the use of ADF to assess loss of light to existing buildings, and the assumptions regarding office layouts. In addition, BRE provided independent calculations on the loss of light to SSGH. In summary, of the 291 No. windows analysed, 222 No. would have losses of VSC outside 27%. 158 No. would have relative losses of 40% or more, 53 No. windows would lose more than two-thirds of the current VSC. The worst affected windows are on the lower floors and towards the western end of the façade. In terms of daylight distributions for SSGH, the Appellant stated that 31 No. of 58 No. rooms analysed would have impacts on their daylight distribution outside the BRE Guidelines; 28 No. having more than double the recommended loss, and 22 No. losing more than two-thirds of their daylit area.

Furthermore, whilst the Appellant criticise the use of ADF to access the loss of light to existing buildings, ADF were calculated for a sample of worst-case rooms on the First and Second Floor. The analysis states that 16 No. of 17 No. rooms analysed would have ADF below 2% in comparison to the current situation whereby there are 4 No. rooms with ADF below 2%. The Appellants suggest that the divergence between their results and the Applicant's may be due to how the floors were modelled as a single large open plan area.

- 7.3.7. On receipt of the Third-Party Appeals, the Applicant undertook additional modelling including on Dolmen House and 93-96 Leeson Street Lower as part of the First-Party Response to Third-Party Appeals. Metec on behalf of the Applicant stated that all windows in surrounding accessed buildings and in SSGH were included. The Applicant also suggests that the divergence between their results and the Appellants may be due to manual calculation which does not take account of as many factors as a computer simulation such as the reflectance's of surrounding buildings and complex geometry. The deep reveals in the SSGH façade are referenced in this respect. As such, the Applicant argues that manual calculation and computer calculation results cannot be compared fairly and accurately. In relation to the points raised by the Appellant regarding failure to assess the distribution of light, the Applicant argues that this assessment takes account of the number and size of windows to a room, but does not give and qualitative or quantitative assessment of the light in rooms, only where sky can or cannot be seen. The Applicant's revised assessment for Nos. 86-88, 89-92, 93-94, 95-96, HPRA Building, Ardán Phort an Iarla and the west façade of Dolmen House, demonstrates that the studied windows assessed will not experience a reduction of greater than 20% their original VSC values with the proposed development in place. In terms of east façade of Dolmen House, all ten of the studied windows will experience a reduction greater than 20% (31% to 55% of the former value). In terms of the SSGH, the Applicant highlights that the majority of the 94 No. will experience a reduction of greater than 20% their original VSC values with the proposed development in place. The Applicant conducted supplementary analysis of the east façade of Dolmen House and SSGH using an ADF target value of 2% using the same methodology as was applied in the original assessment (i.e. open plan floor) and reports that all floor levels (Ground to Fourth) achieve values in excess of 2% (2.26% to 7.29%). Similarly, ADF results for SSGH demonstrate that all floors except the Ground Floor, which will

achieve a level of 1.92%, exceed the 2% standard (2.07% to 3.84%). The Applicant states that “*the ground floor is also below the BCO Guideline, but with several small cellular windows and large overhang above, the original design would not appear to have been optimized for daylight throughout*”.

- 7.3.8. The Applicant states that compensatory measures are not of particular relevance to the consideration of daylight issues. Nonetheless, the First-Party includes an architectural statement that outlines how the proposed development achieves quality urban design and public realm outcomes. The Applicant argues these would otherwise come within the scope of ‘compensatory measures’ and the wider planning objectives as referenced in the Building Height Guidelines. These include the proposed use of light-coloured metal cladding on the northern façade to allow for maximum reflection of light to SSGH and Dolmen House. Furthermore, the Applicant explains that the proposed bedrooms in the new wing are orientated inwards and as such there is no glazing proposed along the northern elevation. This is to allow no overlooking from the subject site and maximum flexibility for Dolmen House and SSGH to potentially redevelop in the future.
- 7.3.9. To summarise, the above analysis demonstrates that both the Applicant and Appellants are in agreement that the proposed development will result in a loss of daylight to the surrounding office buildings including SSGH and Dolmen House. However, the level of significance is disputed. I acknowledge that the different methodologies adopted are likely to give rise to varying results as highlighted by both the Applicant and Appellant.

Applicability of the BRE Guidelines to Surrounding Office Development

- 7.3.10. In my opinion, the analysis is a beneficial indication of the potential loss of light, however as discussed further below, in my view compliance with the BRE Guidelines is not mandatory for the office development relevant to this case. In terms of SSGH and Dolmen House the impact is significant, but this must be balanced against other factors including the regeneration of the site which is located in the SDRA.
- 7.3.11. I reiterate that Section 2.2.2 of the BRE Guidelines state that they are “*intended for the use of rooms in **adjoining dwellings***”. (Bold: my emphasis.) In my view, the critical point in this case relates to the reference in the BRE Guidelines to ‘some offices’. The Guidelines do not contain a definition or provide any guidance as to what constitutes

'some offices'. Dr. Littlefair, author of the Guidelines, argues in his Note attached to the Further Response that "*office occupants would have a reasonable expectation of daylight in an office which has a shallow plan and sizable areas of clear glazing*", but no further comment is made in relation to the reference. I agree with the Applicant that it is clearly the exception rather than the rule. In my view, it indicates that there may be exceptional circumstances or characteristics associated with particular offices, due for example to the nature of work undertaken therein, that require daylight levels as outlined in the Guidelines. In my view, the number of such offices is likely to be limited, however each case must be individually assessed on its own merits. There are a variety of work undertaken in office buildings, and many buildings do not as a rule, prioritise office workers with access to daylight in general.

7.3.12. I do not consider it reasonable that standard office accommodation in a city centre location should be required to achieve the same level of amenity as a residential development. In general, commercial development is not subject to the same development standards as residential development. For example, the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (including the associated Urban Design Manual), the Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities, and various development plans and local area plans include detailed development management standards including, mix of units, dual aspect, ceiling height, room width, etc. to ensure appropriate and reasonable standards of residential amenity are achieved. On the contrary, guidance in terms of required levels of amenity for commercial development is limited in an Irish context. There is no policy specific requirement for the application of the BRE Guidelines to offices. While the Building Height Guidelines reference the BRE Guidelines, this allows discretion from the planning authority and the Board, and essentially a process of justification where there is any reduction in daylight as a consequence of a building:

*"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.

(Bold: my emphasis.)

7.3.13. Despite loss of daylight being the only grounds of appeal, no reasoning or arguments have been presented by the Appellants providing a rationale as to why daylight is of particular importance to SSGH or Dolmen House beyond occupants having a reasonable expectation of daylight in an office. In particular, I note that the ground floor windows to SSGH are set under the overhang of the upper floors (see Photo 10 attached). Furthermore, I note from my morning site visit that the majority of the blinds were pulled at Ground Floor Level on the southern elevation of SSGH. All these features suggest that light penetration through these windows is not critical to the use of the room which they serve. It may be appropriate on this basis alone to extend a degree of relief to the identified departures on this basis.

7.3.14. I note that no quantitative analysis has been conducted in respect of Ormonde House (office building). However, having regard to the above, I consider any potential impacts in terms of loss of light to be acceptable given that they relate to commercial premises in the city centre and there is no known requirement for the building to require a certain lighting standard. I note the owners or tenants made no observations in respect to the planning application.

Overshadowing

7.3.15. In addition to the daylight impact assessment, the Applicant prepared overshadowing analysis for the proposed development. In summary, the analysis demonstrates that the proposal will have an impact, however I consider it to be minor and acceptable having regard to the built-up nature of the city centre and the surrounding land uses.

Conclusion

7.3.16. In conclusion, whilst I have considered the assessments submitted by both the Applicant and Appellants including the departures referenced from the standards referenced in the BRE Guidelines, the compensatory measures proposed by the Applicant, and having regard to the requirement of the Building Height Guidelines to have appropriate and reasonable regard to the BRE Guidelines and BS 8206-2:2008, I do not consider the standards to be applicable to the surrounding office

developments in this instance. I understand that there is no residential development in the immediate vicinity.

7.4. Notwithstanding this, I note the Building Height Guidelines' aim to minimise overshadowing and loss of light and the applicability of these Guidelines to residential and non-residential development, and the loss of the daylight to the surrounding buildings resulting from the proposed development, which in my opinion is significant. However as required by the Building Height Guidelines, regard must also be had to the provisions of national and local policies and objectives with respect to urban development including increased densities and regeneration within this area of Dublin City, and in particular those relating to the SDRA. Having regard to the foregoing and acknowledging the constraints associated by the subject site in terms of its position immediately south of Dolmen House and SSGH, I consider that the potential for undue impacts on the amenities of the neighbouring premises can be reasonably discounted on the basis of them being commercial properties located in the city centre, in an area identified as urban regeneration. As such, a refusal of permission is not warranted with regard to loss of light.

7.5. **Structural Works**

7.5.1. I note the Appellants concerns in relation potential demolition/construction safety and structural impacts during the construction of the proposed development. I also note that Applicant's response stating that it would place an unreasonable constraint on the construction of the proposed development if the lifting of construction materials were to be prohibited over adjoining surface car parking areas. However, the Applicant will include within the contract documentation for the proposal a requirement to minimise the lifting of construction material over the adjoining surface car parking. I consider this to be acceptable and that the detail relating to same can be agreed with the Local Authority in Construction Management Plan. Furthermore, I note that Applicant's recommendation that an independent condition survey of Dolmen House and SSGH prior to the commencement of the development. I considered the proposal acceptable in this regard.

7.6. **Archaeology**

7.6.1. Part of the site is located within the Zone of Archaeological Constraint for the recorded Monument U018-020 (historic city) and the Zone of Archaeological Interest in the

Development Plan. The Applicant submitted a desktop archaeological assessment with the application that concludes that the proposed development will occasion no impact upon areas of archaeological potential, where the entire footprint has already been reduced by several metres into the subsoil. I am satisfied with the findings of the assessment and consider that the proposal is unlikely to adversely impact the area's archeologically significance.

7.7. Parking

- 7.7.1. The proposed development includes for a reduction in car parking from 87 No. spaces to 60 No. spaces. Having regard to the site's city centre location and proximity to various public transport modes, I consider this to be acceptable. I note that 15 No. car parking spaces are currently in use by a car rental company. As such, 45 No. will be allocated to the hotel. I concur with the Local Authority that a minimum of 10% of the car parking spaces should be fitted with electric vehicle charging facilities.
- 7.7.2. In terms bicycle parking provision, I note that there are 30 No. at basement level and as such is compliant with the Development Plan.

7.8. Appropriate Assessment

- 7.8.1. The proposed development involves an upgrade and extension to an existing hotel on a brownfield city centre site of 0.4876ha. It is proposed to connect to the existing surface water and wastewater network serving the area. The wider area is predominantly composed of artificial surfaces and is characterised by a mix of commercial, retail and residential development of varying scale.
- 7.8.2. Having regard to the minor nature of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted, subject to the conditions outlined below.

9.0 Reasons and Considerations

Having regard to the city-centre location of the site in close proximity to a wide range of public transport options and facilities, and to the provisions of the Dublin City Council Development Plan 2016-2022 including the objectives of the Strategic Development and Regeneration Area 18 – National Concert Hall Quarter; the Urban Development and Building Heights, Guidelines for Planning Authorities (2018); and the National Planning Framework, which seeks to direct new development in cities into built-up serviced areas, and having regard to the pattern and character of development in the area and the design and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an acceptable quantum and density of development in this accessible urban location, would facilitate the consolidation and compact growth of the city centre, would make a positive contribution to the visual amenity of the area and would not have any undue impact on the amenities of the property in the vicinity. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity</p>

3.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
4.	<p>No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the visual amenities of the area.</p>
5.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
6.	<p>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.</p> <p>Reason: In the interest of sustainable waste management.</p>
7.	<p>Any alterations to the public road or footpath shall be in accordance with the requirements of the planning authority and where required, all repairs to the public road and services shall be carried out to the satisfaction of the planning authority at the applicant’s expense.</p>

	Reason: In the interests of clarity, public safety and amenity.
8.	<p>The Developer shall comply with the following roads requirements of the Planning Authority as follows:</p> <p>a) Pedestrian priority crossing upgrades shall be implemented at the existing vehicular access/exit points on Earlsfort Terrace to facilitate a continuation of existing public footpath to the front of the site. Existing private street furniture namely existing flag poles and planters etc shall be removed from the public footpath. Details shall be agreed in writing with the Environment and Transportation Department prior to commencement of the development.</p> <p>b) Details of the materials proposed in public areas, pedestrian crossing and public footpath, are required and shall be in accordance with the document Construction Standards for Roads and Street Works in Dublin City Council and agreed in detail with the Road Maintenance Division.</p> <p>c) The proposed canopy shall be reduced in size to ensure that the proposed structure does not over sail the existing public footpath.</p> <p>d) Cycle parking shall be secure, conveniently located, sheltered and well lit. Electric bike charging facilities shall be provided. Shower and changing facilities shall also be provided as part of the development. Key/fob access should be required to bicycle compounds. Cycle parking design shall allow both wheel and frame to be locked.</p> <p>e) A total of 45 no. car parking spaces shall be permanently allocated to hotel use and shall be designated as such. The hotel car parking spaces shall not be sold, rented or otherwise sub-let or leased to other parties. A minimum of 10% of total hotel car parking spaces shall be fitted with electric vehicle charging facilities.</p> <p>Reason: In the interest of pedestrian and vehicular safety.</p>
9.	Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.

	Reason: In the interest of public health
10.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features which exist within the site. In this regard, the developer shall notify the planning authority in writing at least four weeks in advance of the commencement of development works on the site.</p> <p>Reason: In order to conserve the archaeological heritage of the area.</p>
11.	<p>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 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 agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>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.</p>
12.	<p>The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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</p>

or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Susan Clarke
Planning Inspector

26th May 2022