



An
Bord
Pleanála

Inspector's Report

ABP-312829-22

Development

Demolition of warehouse and construction of 3 Storey live-work unit with office space at ground and first floor level and a studio apartment at the second-floor level. Including all associated site works.

Location

Site at the corner of Macken Street and Pearse Street, Dublin 2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

3938/21

Applicant(s)

Atria Living Ltd

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party vs. Grant

Appellant(s)

Naoise Cunningham

Observer(s)

Hugh Murray

Date of Site Inspection

10th October 2022

Inspector

Stephen Ward

1.0 Site Location and Description

- 1.1. The appeal site is located at the northwest corner of the junction between Macken Street and Pearse Street, approximately 400 metres east of Pearse Street rail station. It contains a single storey warehouse building, stated to have been previously used as a blacksmith forge. The site itself is relatively flat and has a stated area of 107m².
- 1.2. The site is bounded to the east by Pearse Street and its adjoining large-scale mixed-use development. To the north (Macken St) and west (Pearse Square) of the site is terraced housing consisting of 2-storey and 2-storey-over basement properties. Part of the site bounds onto Pearse Street to the south and adjoins small commercial properties consisting of a take-away and hair salon.

2.0 Proposed Development

- 2.1. In summary, the proposed development consists of the demolition of the existing warehouse and the construction of a new live-work unit. It is intended that the office will be used by an architect with principal living accommodation in the studio apartment.
- 2.2. The existing warehouse has a stated floor area of 96m². The live-work unit consists of office space at ground and 1st floor level (total of 114.9m²) and a 2nd floor studio unit of 48.6m². The building would have a maximum height of c.11 metres (above adjoining street level) and includes a rooftop balcony space. The design proposes a contemporary geometric form which aims to provide a strong, active street front while respecting neighbouring properties. It includes a mural on the western elevation.
- 2.3. It is proposed to construct a new surface water attenuation tank at ground floor level. Surface water will outfall to a hydro brake manhole and then to the public system. Wastewater will be discharged to the existing combined sewer on Macken Street. Water supply will be via the existing pipe along the roadside perimeter.

3.0 Planning Authority Decision

3.1. Decision

By order dated 28th January 2022, Dublin City Council (DCC) issued notification of the decision to grant permission subject to generally standard conditions. Condition 5 requires agreement of the proposed mural artwork and limits the duration of its permission to a period of 3 years.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report can be summarised as follows:

- The proposed live-work unit is acceptable in accordance with the Z2 zoning.
- The design of the building will result in minimal impacts on adjoining properties.
- The design has reduced the potential for overlooking of adjoining properties.
- It is acknowledged that there will be some daylight and sunlight impacts on surrounding properties. However, it is considered that this would be expected given the context of the site. The proposal is considered acceptable given the underutilised nature of the site and the positive impacts of the development.
- The proposal will not significantly alter the setting of protected structures on Pearse Square.

3.2.2. Other Technical Reports

- Drainage Division: No objections subject to conditions.
- Transportation Planning Division: No objections subject to conditions including proposals for a Construction Management Plan and cycle parking.

3.3. Prescribed Bodies

Transport Infrastructure Ireland: Section 49 Supplementary Development Contribution Scheme applies and LUAS rail line to be protected.

3.4. Submissions / observations

Several third-party submissions were received. The issues raised are largely covered in the appeal and observations (see Section 6 of this report). Additional issues include the following:

- Impact on the health of residents
- Removal of the original party wall
- Potential construction damage to adjoining trees and garden
- Devaluation of property
- The planning history of the area.

4.0 Planning History

There would not appear to be any recent planning history relating to the site.

5.0 Policy Context

5.1. National Policy/Guidance

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

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

- NPO 13 promotes a shift towards performance criteria in terms of standards for building height and car parking.

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

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

5.2. Development Plan

5.2.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as ‘Z2’, the objective for which is ‘*To protect and/or improve the amenities of residential conservation areas*’. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

5.2.2 The principal land-use in residential conservation areas is housing but can include a limited range of other uses. In considering other uses, the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area.

5.2.3 Proposals for live/work units at an appropriate scale with discreet signage will be considered on the basis that the proposal would not detract from or alter the physical character and fabric of the streetscape.

5.2.4 Chapter 11 of the Plan deals with Built Heritage and Culture and section 11.1.4 outlines a strategic approach to protecting and enhancing built heritage based on the existing and ongoing review of Protected Structures, ACA’s, Conservation Areas and Conservation Zoning Objective Areas. The site is located within the Pearse Square Conservation Area and the Pearse Square properties to the west of the appeal site

are designated as Protected Structures. In summary, relevant policies of the current plan include:

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

CHC2 Ensure that protected structures and their curtilage is protected.

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

CHC30: Provide for the building and the development of live/work artist studio spaces and also build for artist workspaces/studios.

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

5.3 **Natural Heritage Designations**

The Grand Canal Proposed Natural Heritage Area is located c. 200m to the east of the site. The nearest Natura 2000 sites are the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC, both located in Dublin Bay at a distance of c. 2km from the site.

5.4. **EIA Screening**

Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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

The decision of DCC to grant permission is the subject of a Third-Party appeal by Naoise Cunningham of No. 56 Pearse Square. The appeal has been prepared by Farry Town Planning Ltd. The grounds of appeal can be summarised under the following headings.

General principles

- There is no objection to the principle of redevelopment, including the demolition of the existing building, the proposed design concept, and the proposed mix of uses.
- The third level element of the proposed building is unacceptable and should be omitted. This would address the appellant's concerns, subject to the redesign of fenestration to prevent overlooking.
- This approach would be consistent with the decision of the Board in another case at 32i Macken Street (ABP Ref. PL29S.248306).
- The DCC assessment fails to consider the planning history of the area and the impact of the building on Macken St and the 'conservation area'.

Impact on the Streetscape

- The DCC analysis overlooks the impact of the development on the setting of Pearse Square when viewed from the east and the character of buildings along the western side of Macken Street.
- The proposal would be materially inconsistent with the character and scale of buildings along the western side of Macken St and would adversely affect the character of the conservation area.
- There are striking similarities with the proposal under ABP PL29S.248306 and the Board should reach the same conclusion to refuse permission.
- These views have been reinforced by the impact of the dwelling subsequently constructed at 32i Macken Street (P.A. Reg. 2128/12) and by the incongruous

appearance of the proposed building as depicted in the applicant's photomontage.

- It is inappropriate to reference the scale and character of development on the eastern side of Macken Street, which is within a Strategic Development Regeneration Area, not a conservation area. This was recognised in the Inspector's report for ABP PL29S.248306.

Residential Amenity

- The protection of residential amenity must be a principal consideration in accordance with the Z2 zoning objective.
- The height, scale, and proximity of the building to the properties on Pearse Square would have an overbearing impact which would adversely affect their amenity value and attractiveness. Similar concerns were raised in the Inspector's report for ABP PL29S.248306.
- There will be a negative impact on amenity and privacy levels as a result of overlooking. The proposed mitigation measures have not successfully addressed this concern.
- Daylight and sunlight penetration to the gardens and windows of Pearse Square properties will be significantly reduced to an unacceptable degree. The removal of the third floor would lessen this impact.

Overdevelopment

- The proposal would be at the maximum threshold of plot ratio for the area and would be almost double the maximum site coverage stipulation.
- Similar concerns were raised in the Inspector's report for ABP PL29S.248306 and the proposed development exceeds those previously refused.
- The omission of the third floor would result in a proposal which accords with Development Plan standards.

6.2. Observations

The Board has received one observation on the appeal from Hugh Murray of No. 57 Pearse Square. It includes a copy of his original submission to the planning

authority, prepared by Hughes Planning and Development Consultants. The issues raised are largely covered in the grounds of appeal. The following additional issues are included:

- The observer is a permanent resident who works from home.
- Support for the replacement of the existing building but highlights further concerns about the height of the proposed building and the daylight/sunlight impacts on his property.
- Overlooking to the rear of his back garden.
- Basement excavation works may have an impact on the already precarious drainage system in the area.
- The proposed development would be incongruous with the rest of the street.

6.3 Applicant Response

The applicant's response to the appeal can be summarised under the following headings.

ABP Ref. PL29S.248306 (32i Macken Street)

- The repeated references to this previously refused development are inaccurate and inappropriate.
- The sites are different, and the assessment will be different. The response highlights the differences with respect to the more prominent position of the appeal site and its strong potential for redevelopment.

Streetscape

- The height of existing development should not be used to define the height/scale of development that can be achieved. This would be contrary to local, regional, and national policy.
- The design approach has been clearly outlined in the 'Design and Access Statement' and seeks to deliver a contemporary design while contrasting and synergising with existing development.

- The site primarily relates to Macken Street and its junction with Pearse Street, where there is an eclectic and undefined mix of architectural styles.
- The contemporary approach will contribute positively to the local character and residential amenity of the area by way of its bold and intriguing design and the replacement of the existing structure.
- The proposed height is an appropriate and gradual increase which respects the scale and amenity of existing development. It facilitates a more efficient use of the site, is an appropriate arrangement for a live-work unit, and creates an attractive architectural feature at this prominent corner location.
- The design is respectful of the architectural setting/heritage of Pearse Square and will fall 'behind' the existing built form when viewed from within the Square.
- The appellant downplays the height of the Gallery Quay building on the eastern side of Macken Street, which dictates the scale and massing in the environs of Pearse Square.

Residential Amenity

- To prevent overbearance of properties, a 'chamfered form' with fenestration is proposed to the rear to reduce the perceived scale and mass.
- Openings to the rear have been designed to face upward and outward and will not adversely impact on the privacy and residential amenity of the adjoining properties.
- A detailed Daylight & Sunlight Assessment has been carried out which acknowledges the low scoring criteria for properties 56 & 57 at Pearse Square, where there is already low infiltration of daylight and sunlight.
- Sunlight in the amenity space of no. 56 already fails to meet BRE Guidelines regardless of the proposed development.
- The single window to the rear of no. 57 which does not meet BRE standards for Annual Probable Sunlight Hours serves only the return of a stairs. The occupants of no. 57 did not lodge an objection to the proposed development.

- The Design & Access Statement drawings illustrate the massing and scale of the larger Gallery Quay building and demonstrate that the proposal would have minimal impact on the infiltration of daylight and sunlight.
- A pragmatic approach must be taken which tolerates minor daylight/sunlight impacts to facilitate the redevelopment of urban sites.

Overdevelopment

- The Development Plan standards for plot ratio and site coverage are indicative only and the Plan includes criteria which can be used to facilitate increases throughout the city.
- The proposed development complies with the indicative plot ratio standard.
- The existing site coverage is 100%, which establishes a precedent to markedly exceed the indicative standard. In accordance with Development Plan criteria the site is also well served by bus/rail routes and is currently underutilised and detrimental to the streetscape.

Precedent Cases

- The response suggests a series of precedent cases to demonstrate how additional height and contemporary design can be achieved adjacent to structures of lower height and those with architectural heritage protection.

6.4 Planning Authority Response

None.

7.0 Assessment

7.1. Introduction

- 7.1.1. I am satisfied that the existing building is of no architectural or heritage merit. The nature of the proposed development and mix of uses is acceptable in accordance with the Development Plan Z2 zoning objective. Accordingly, I have no objection regarding the principle of the development.

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

- The quantum of development proposed
- Visual Amenity and Built Heritage
- Residential Amenity.

7.2. **The quantum of development proposed**

7.2.1. It is proposed to provide a gross floor area of 216.4m² on a stated site area of 107m². The Development Plan outlines that 'plot ratio' is a tool to help control the bulk and mass of buildings. It states that 'site coverage' is a control for the purpose of preventing the adverse effects of over-development.

7.2.2. For the Z2 zone, the Plan outlines an indicative plot ratio standard of 0.5 – 2.0. The proposed development would result in a plot ratio of 2.0, which would be consistent with the upper threshold of the indicative standard.

7.2.3. In terms of site coverage, the Plan outlines an indicative standard of 45% for Z2 areas. I note that the applicant indicates a site coverage of c. 80% based on the internal ground floor area. The figure would be c. 96% if the total building footprint is considered. In any case, I acknowledge that the site coverage significantly exceeds the indicative Development Plan standard.

7.2.4. However, the Plan states that a higher site coverage standard may be permitted in certain suggested circumstances. Regarding transport accessibility, I would accept that the site is well served by existing and proposed bus services including the Busconnects C-Spine along Pearse Street and the Orbital Route along Macken Street. It is also located in close proximity to the major Pearse Street rail station. The site would facilitate the redevelopment of the site which is in need of urban renewal. Furthermore, it should be noted that the site already has the benefit of a 100% site coverage.

7.2.5. Having regard to the foregoing, I am satisfied that a higher site coverage can be considered in accordance with the criteria outlined in section 16.6 of the Development Plan. This approach would also be consistent with national policy

which seeks to achieve compact, sustainable development on brownfield sites and in accessible locations well served by public transport. The suitability of the proposal will be considered further in terms of impacts on visual amenity, built heritage, and residential amenity.

7.3. Visual Amenity and Built Heritage

- 7.3.1. The site is located at the interface of the Pearse Square Conservation Area (including protected structures) and the Docklands Strategic Development Regeneration Area. On the southern side of Pearse Street is a mix of modern development and the St Andrew's Resource Centre (protected structure). In this transitional context, and in accordance with the policy context outlined in this report, I acknowledge that there is a need to achieve an appropriate balance between increased density of development and the protection of built heritage.
- 7.3.2. I consider that the character of development immediately bounding the Pearse St / Macken St junction is generally modern and would not be sensitive to the nature and scale of the proposed development. I acknowledge that the adjoining development along Macken Street consists of terraced 2-storey properties of a mixed character/vintage. However, I do not consider that the terrace is of any significant heritage value.
- 7.3.3. The proposal aims to integrate with the adjoining Macken Street terrace through an initial height increase consisting of a pitched roof form. Although this represents an increased height and a more contemporary form and character, I consider that it provides an appropriate transition between old and new development.
- 7.3.4. The Macken Street frontage rises further to 3 storeys (plus roof area) at the junction. This element appears as a simple, slender form with an active street frontage at this prominent corner. It would provide a strong presence which I consider to be appropriate to 'bookend' the Macken Street terrace. It comprises simple contemporary elevations with an attractive mix of finishes including glazing, concrete panels, and metal louvres. I consider that the proposed development would have a positive impact on the streetscape at this location and that the scale and character of the proposal would not detract from setting of existing development along Macken Street and its junction with Pearse Street.

- 7.3.5. To the rear of the building, a pitched, chamfered roof form gradually rises away from the rear of the Pearse Square properties to the west. It includes a series of large openings which help to reduce the massing of this form. I acknowledge that this would form a unique feature in the context of surrounding development. However, together with the proposed artwork to the rear of the building, I consider that it would form a distinctive and striking feature at this prominent corner and would successfully assist in the transition of building height between the Macken Street and Pearse Square.
- 7.3.6. When viewed from further west, particularly within Pearse Square itself, I am satisfied that the proposed development will be effectively screened by the existing properties along the eastern side of the square. Furthermore, the substantial scale of the Gallery Quay building on the east side of Macken Street dominates the skyline at this location and the proposed development will not significantly affect these existing conditions.
- 7.3.7. In conclusion, I acknowledge that the proposed contemporary design is of a scale, height, and character which differs to some surrounding properties. However, notwithstanding its location within a Conservation Area and the proximity of surrounding Protected Structures, I consider that the proposed scale, height, and design character is appropriate for this prominent position and would positively impact on the character of the area. I do not consider that it would detract from the setting or character of the conservation area or any of the protected structures.
- 7.3.8. I note that the appeal references the planning history of the area and particularly the previous Board decision to refuse permission for a 3-storey dwelling at 32i Macken Street (ABP Ref. PL29S.248306). I have considered this case and the other cases referenced by the parties to this appeal. However, as with all cases, I consider that the current case should be assessed on its merits having regard to its particular site characteristics comprising an underutilised brownfield site at a prominent corner location. Accordingly, I do not consider that there are grounds for the Board to refuse the proposed development based on planning history precedent. The Board should also note that the policy context has changed significantly since the decision to refuse ABP Ref. PL29S.248306 (August 2017), including the introduction of the NPF and the Building Height Guidelines.

7.4. Residential Amenity

Daylight/Sunlight

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

- 7.4.4. I would also acknowledge the publication of a new (3rd) edition of the BRE Guide in June 2022 and the updated British Standard (BS EN 17037:2018 'Daylight in Buildings), which replaced the 2008 BS in May 2019 (in the UK). However, I am satisfied that the relevant guidance documents remain those referred to in the Urban Development and Building Heights Guidelines. The application included a 'Site Planning for Daylight & Sunlight' report prepared by JVT consultants. The report states that the study follows the guidance outlined in the BRE guide (2011) and BS 8206-2:2008.
- 7.4.5. In general, Vertical Sky Component (VSC) is a measure of the amount of sky visible from a given point (usually the centre of a window) within a structure. The BRE guidelines state that a VSC greater than 27% should provide enough skylight and that any reduction below this level should be kept to a minimum. If the VSC, with the new development in place, is both less than 27% and less than 0.8 times its former value, occupants of the existing building would notice the reduction in the amount of skylight.
- 7.4.6. The applicant's VSC assessment covers a total of 18 windows in the surrounding properties of 55-57 Pearse Square, 112 Pearse Street, and the Gallery Quay building. It demonstrates that all of these windows would retain a VSC of 27% or 0.8 times their former value, which would be in accordance with BRE standards.
- 7.4.7. The applicant has included a sunlight analysis for windows using measurements of annual probable sunlight hours (APSH) and annual probable sunlight hours for the winter period (WPSH). The BRE guide states that living room windows facing within 90° of due south may be adversely affected if the centre of the window receives less than 25% of APSH or less than 5% of WPSH; and receives less than 0.8 times its former sunlight hours during either period; and has a reduction in sunlight received over the whole year greater than 4% of APSH.
- 7.4.8. Based on BRE guidance that the assessment applies only to windows facing the development with an aspect within 90° of due south, the applicant's analysis has focused on the 7 no. windows to the rear of 55-57 Pearse Square. With the proposed development in place, the assessment finds that 6 of the 7 windows would comply with the APSH (25%) and WPSH (4%) standards or would not result in a reduction of more than 20% compared to the existing standards.

- 7.4.9. One window in No. 57 Pearse Square (window 1) would have an APSH of 6.18% and a WPSH of 0.01%. Although these values would be significantly below the BRE standards, it should be noted that the existing values (8.22% APSH and 1.47% WPSH) are already significantly deficient as a result of the adjoining commercial building to the south along Pearse Street. From a review of P.A. Reg. Ref. 3443/15, I would also accept that this window serves only a staircase area which is not a living/habitable room. Accordingly, I have no objection to the sunlight impacts on this window.
- 7.4.10. The applicant has carried out a shadow/sunlight assessment for the gardens of surrounding properties at 55-57 Pearse Square and 1 Macken Street. The BRE guide recommends that for it to appear adequately sunlit throughout the year, at least half of the space should receive at least 2 hours of sunshine on 21st March. If as a result of new development this cannot be met, and the area which can comply is less than 0.8 times its former value, then loss of sunlight is likely to be noticeable.
- 7.4.11. The applicant's analysis shows that none of these spaces currently meet the requirement for half of the space to receive at least 2 hours of sunshine on 21st March. However, the impact of the development would not reduce the extent of sunlight by more than 20% in the case of 1 Macken Street and no.'s 55 and 57 Pearse Square. No. 56 Pearse Square has an existing substandard compliance rate of 20%, which would be significantly reduced to 6% as a result of the proposed development. A further study has been carried out for no. 56 which shows that the impact will not result in a reduction of more than 20% on the 21st June. Having regard to the existing low levels of sunlight to this space, its urban location and the need to facilitate increased height and density of development, I consider that the sunlight impacts are acceptable in this case.
- 7.4.12. I have considered the issues raised by 3rd parties in carrying out this daylight/sunlight assessment. I again highlight that the mandatory application of the BRE standards is not required in this case by the Development Plan or by Section 28 Ministerial guidelines. Consistent with that approach, the BRE guide itself highlights further the need for flexible interpretation in the context of many other design factors.
- 7.4.13. I am satisfied that the applicant has carried out an assessment of impacts on neighbouring properties and that it has been competently prepared in accordance

with the BRE / BS guidance and methodology. While the impacts of the proposed development are generally in accordance with the recommended standards, I acknowledge that sunlight levels to one window and one garden space will be less than BRE standard recommendations. However, I am satisfied that these constitute marginal shortfalls in the wider context of the overall assessment and that the BRE guidance allows sufficient flexibility in the application of standards.

- 7.4.14. The appeal site is located in a well-connected inner-city area and as previously outlined, increased height and density should be encouraged at such locations in order to achieve wider NPF planning objectives relating to compact development and brownfield redevelopment. Accordingly, I am satisfied that the proposed development is acceptable at this location and that it will not excessively detract from the amenities of surrounding properties by reason of daylight/sunlight impacts.

Overlooking

- 7.4.15. I note that third-party concerns have been raised in relation to overlooking and privacy impacts on the Pearse Square properties to the rear of the site. However, I consider that the rear façade of the proposed development has been designed to ensure that views through openings are directed upwards and outwards. Therefore, I am satisfied that there will be no unacceptable overlooking of the adjoining windows or amenity spaces.

Overbearing

- 7.4.16. On the question of overbearing impacts, I would highlight that the proposed form and massing has been designed to provide a gradual and consistent separation from adjoining properties to the rear as the building height increases. The rear façade has also been articulated and detailed in an effort to reduce the appearance of mass and scale.
- 7.4.17. Similar to daylight/sunlight impacts, overbearing impacts are generally dictated by the height, scale, and proximity of a development to an existing receptor. In this regard, I am satisfied that the proposed design is conscious of this impact and the proposed height has been limited accordingly. The applicant's Design and Access Statement (section 4.4) demonstrates that the proposed building height is consistent with the existing lines of visual obstruction between the rear of the Pearse Street properties and the top of the Gallery Quay building on the east side of Macken

Street. Accordingly, I am satisfied that the proposed design provides suitable separation in a graduated approach to height, which ensures that there would be no unacceptable overbearing impacts on surrounding properties.

Conclusion

7.4.18. Having regard to the foregoing, I do not consider that the proposed development would result in any unacceptable impacts on surrounding properties relating to daylight/sunlight, overlooking, overbearing, or otherwise. Similarly, while the third-party concerns about the devaluation of property are noted, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

7.5. Other Issues

7.5.1. The application does not propose any new vehicular entrance or parking arrangements. Therefore, I am satisfied that it appropriately depends on sustainable transportation at this accessible urban location. The planning authority has not raised any objection to the proposed development on grounds of traffic or parking, subject to the clarification and agreement of minor issues by condition. I would concur that the proposed development is not likely to have any significant impacts on existing traffic and parking arrangements in the area, and I am satisfied that any outstanding details, including construction-related traffic issues, can be satisfactorily addressed by condition.

7.5.2. The owners of adjoining properties have raised concerns about the potential for damage of party walls and trees. The drawings submitted propose to retain and protect the surrounding party walls and there are no proposals to remove trees on adjoining property. It will be the developer's responsibility to protect any adjoining property and any disputes in this regard would be a civil matter for resolution between the relevant parties.

7.5.3. Concerns have also been raised about the precarious state of the existing drainage system and the potential for further damage during construction. I am satisfied that these assets will be appropriately protected by DCC/Irish Water as part of the further service connection agreements required.

8.0 Appropriate Assessment

- 8.1.1. The application includes an 'Appropriate Assessment Screening' report prepared by Enviroguide Consulting. It concludes that the possibility of the proposed development having a significant impact on any European Sites can be excluded.
- 8.1.2. I note that the nearest Natura 2000 sites are in the Dublin Bay area and include the South Dublin Bay and River Tolka Estuary SPA and the South Dublin Bay SAC (both c. 2km from the appeal site). I acknowledge that there are several other Natura 2000 sites in the wider surrounding area, including more distant sites within Dublin Bay as identified in the applicant's AA Screening Report. There are no direct pathways between the appeal site and any of these Natura 2000 sites, although I acknowledge that there are indirect connections via surface water and foul water drainage.
- 8.1.3. 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.
- 8.1.4. The proposed development is of limited scale. It is significantly distanced from Natura 2000 sites and there is only minimal potential for indirect connections. Accordingly, I am satisfied that no Appropriate Assessment issues arise, and I do not consider that the proposed development, either individually or in combination with other plans or projects, would be likely to have a significant effect on a European site. Accordingly, a Stage 2 Appropriate Assessment is not required.

9.0 Recommendation

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

10.0 Reasons and Considerations

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

11.0 Conditions

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

Reason: In the interest of clarity.

2. The development is hereby permitted as a self-contained live/work unit. It shall not be subdivided unless otherwise authorised by a further grant of planning permission.

Reason: In the interest of clarity and orderly development.

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

Reason: In the interest of visual amenity.

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

Reason: In the interest of public health.

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

Reason: In the interest of public health.

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

Reason: To protect the visual amenities of the area.

7. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400

hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

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

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, management measures for noise, dust and dirt, and construction traffic management proposals.

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

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

Reason: In the interest of sustainable waste management.

10. Details, including samples of the materials, colours and textures of the proposed mural shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any subsequent changes to the mural design shall not be implemented unless otherwise submitted to and agreed in writing with the planning authority prior to carrying out any works.

Reason: In the interest of visual amenity.

11. The proposed cycle parking/storage proposals shall comply with the standards outlined in the Dublin City Development Plan 2016-2022 and details of same shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

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

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

13. The developer shall pay to the planning authority a financial contribution in respect of the Luas Red Line Docklands Extension scheme (Luas C1), in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

Stephen Ward
Senior Planning Inspector

4th November 2022