



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313572-22

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<b>Development</b>	Extension to the previously granted Reg. Ref. 4296/19, to extend the ground floor by an additional 68 sq m and minor elevational alterations to the North West, North East and South West elevations.
<b>Location</b>	Merrion Building (Morrissey's), Merrion Street Lower, Dublin 2, D02 X27
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3115/22
<b>Applicant(s)</b>	Blue and White Diamond Ltd
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party Appeal
<b>Appellant(s)</b>	Minoa Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> March 2023
<b>Inspector</b>	Susan Clarke

## 1.0 Site Location and Description

- 1.1. The site is located at Merrion Street Lower in Dublin City Centre. It is located on the eastern side of the street between Clare Street and Lincoln Place. It is situated between the Davenport Hotel and No. 1 Merrion Square North, which backs onto the subject site. The Mont Clare Hotel, on the western side of Merrion Street Lower, is located directly opposite the site. The site accommodates a wayleave vehicular access between the office block and the adjoining Davenport Hotel to the north. This provides access to the rear of Nos. 1-4 Merrion Square adjacent to the southern boundary of the site.
- 1.2. Both the Davenport Hotel and the adjacent buildings facing onto Merrion Square North are all designated Protected Structures. The building fronting onto Merion Square North are in institutional/educational use. The site is also located in a Conservation Area and a zone of archaeological interest.
- 1.3. At the time of my site visit, construction works were ongoing in relation to development comprising the demolition of the former Merrion Building (Morrissey's) and construction of a new five storey office development on the subject site.
- 1.4. A set of photographs of the site and its environs taken during the course of my site inspection is attached to this Report.

## 2.0 Proposed Development

- 2.1. The proposed development consists of amendments to previously permitted Reg. Ref. 4296/19, which in turn facilitated amendments to Reg. Ref. 3725/18; ABP Ref. PL29S.303676, comprising
  - Increase in floor area by 68 sq m at ground floor to provide for staff shower facilities, drying rooms and break room;
  - Revised covered cycle parking area and plant room; and
  - Elevational alterations to the north-west, north-east, and south-west elevations.

The proposed development will result in the omission of three car parking spaces.

2.2. Following a Request for Further Information (RFI), the proposed bicycle parking was relocated within the site to maintain a clear vehicular wayleave to the rear of Nos. 1-4 Merrion Square.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Dublin City Council issued a Notification to Decision to Grant Planning Permission on 19<sup>th</sup> April 2022 subject to 13 No. standard conditions.

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports (15<sup>th</sup> March 2022 and 19<sup>th</sup> April 2022)

Subsequent to receiving a response to a RFI in relation to obstruction of the vehicular wayleave to neighbouring sites, and confirmation that sufficient legal interest exists to develop the proposal, the Planning Officer concluded that, *the proposed development will upgrade one of the most prominent locations in the City, contribute to the animation of the area, will allow for the construction of striking and innovative contemporary/modern building in an inner city location proximate to public transport and other amenities. The proposal exhibits a distinctive contemporary design which will make a positive contribution to the subject site and Dublin's urban fabric.* The Officer recommended that permission be granted in accordance with the conditions attached to the Notification to Decision to Grant Planning Permission.

##### 3.2.2. Other Technical Reports

Drainage Division (28<sup>th</sup> January 2022): No objection, subject to condition.

Transportation Planning (7<sup>th</sup> March 2022 and 12<sup>th</sup> April 2022): No objection, subject to condition.

City Archaeologist (7<sup>th</sup> March 2022): No objection, subject to condition.

### 3.3. Prescribed Bodies

TII (7<sup>th</sup> February 2022): Requests that Section 49 levies are applied if permission is granted for the proposed development.

Irish Water: No comments received.

Irish Rail: No comments received.

National Transport Authority: No comments received.

Department of Housing, Local Government and Heritage: No comments received.

### 3.4. Third Party Observations

One Third-Party Observation from the owners of Nos. 2-3 Merion Square was received by the Local Authority opposing the development. The key points raised are similar to those raised in the Third-Party Appeal, which are summarised in Section 6.0 below.

## 4.0 Planning History

**DCC Reg. Ref. 3725/18; ABP 29S.303676:** An Bord Pleanála granted planning permission in June 2019 for the demolition of the Merrion Building and the construction of a five-storey office building, subject to 14 No. conditions.

**DCC Reg. Ref. 4296/19:** The Local Authority granted permission in August 2020 for amendments and alterations to the previously approved scheme under DCC Reg. Ref. 3725/18 and ABP Reg. Ref. PL29S.303676 to provide for; (i) An increase of 178 sqm in total floor area across the ground, first, second, third and fourth floor levels to provide for an office development with a total gross floor area of c.1,410 sqm; (ii) An increase in the permitted building height from 17.83m to 18.38m; (iii) Minor elevational changes to include glazing on the eastern facade; (iv) Reconfiguration of the approved ground floor level to include a reception area, breakroom, WC & shower facilities, circulation areas and services; and, (v) An increase in the total number of bicycle parking spaces to be provided on site from 20 No. spaces to 30 No. spaces.

## 5.0 Policy Context

### 5.1. Dublin City Development Plan 2022-2028

- 5.1.1. Since the Local Authority issued a Notification of Decision to Grant Permission for the proposed development, a new development plan has been prepared and adopted for the City. The relevant development plan to this assessment is the Dublin City Development Plan 2022-2028, which was adopted on 2<sup>nd</sup> November 2022 and came into effect on 14<sup>th</sup> December 2022.
- 5.1.2. The site is zoned Z8 'Georgian Conservation Areas' which aims: *To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.*
- 5.1.3. The site is located within a Conservation Area and all sites contiguous to the subject site, including the building fronting onto Merrion Square North and the Davenport Hotel, are Protected Structures.
- 5.1.4. The site is also located within a zone of archaeological interest.
- 5.1.5. Chapter 11 of the Development Plan relates to Built Heritage and Archaeology.

### 5.2. Natural Heritage Designations

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

### 5.3. EIA Screening

- 5.3.1. Having regard to the modest nature of the development comprising of a minor extension (68 sq m) and elevational alterations to a permitted scheme on a site area of c.0.0544 hectares located within a city centre environment, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.2. A Third-Party Appeal by Minoa Limited, owners of Nos. 2-3 Merrion Square, was lodged to the Board on 13<sup>th</sup> May 2022 opposing the Local Authority's decision. The grounds of appeal can be summarised as follows:

- A trapezoidal portion of the site is not owned by the Applicant and a letter of consent has not been issued by the neighbouring owner to include it within the planning application. As such, the application should have been invalidated by the Local Authority. Request the Board to deem the application invalid or refuse permission on this basis.
- The proposed office development over sails the right of way and will impede vehicular access to the rear of Nos. 2-3 Merrion Square, including emergency vehicles, fire tender and other servicing parties, including the adjoining hotel which uses this location for delivery access. Permission should be refused on this basis.
- The first floor clearance provided above the right of way is not sufficient (no service zone is provided to the soffit of the above level) for the safe and efficient use for vehicles accessing the rear of the properties on Merrion Square.
- The bike racks shown on the ground floor plan are not illustrated on Section A-A.
- No auto track analysis has been lodged and therefore there is no ability to assess if there is provision for the safe access and egress of vehicles from the proposed development let alone for any emergency, fire tender or delivery vehicle access.
- The proposal will significantly impede the maintenance and repair of Nos. 2-3 Merrion Square.
- The revised southwest façade amends the permitted plans under Reg. Ref. 4296/19, which provided for the windows (facing 1-4 Merrion Square) to be side viewing only with pop out design to ensure that 1) the privacy of 1-4 Merrion Square many be maintained and 2) that the development potential of the lands

to the rear of Nos. 1-4 are not unduly impacted upon by the proposed development. No attempt has been made to mitigate against any impact upon the privacy/overlooking to properties on Merrion Square. In addition, there is further potential for overlooking from the 3<sup>rd</sup> and 4<sup>th</sup> floors where no details of the proposed glazing system/manifestations has been provided.

- The proposed development does not protect the existing character of the area and will have a detrimental impact on surrounding Protected Structures.
- It is unclear how the shower and staff facilities will be accessed. It is not appropriate to have them isolated from the primary office core.
- There is no sufficient provision for ESB emergency access to the substation.
- No provision has been made to mitigate visual and noise related impacts assorted with the plant area located directly to the rear façade of No. 4 Merrion Square.
- There is no transport report or mobility management plan with the application to justify the omission of three car parking spaces.
- The application is deficient in the non-provision of: AA screening assessment, mobility or transport plan, services or civil engineering information, and a design statement or any supporting documentation relating to the proposed changes.

### **6.3. First-Party Response to Third-Party Appeal**

6.3.1. The Applicant submitted a response to the Third-Party Appeal to the Board on 27<sup>th</sup> May 2022. The key points raised can be summarised as follows:

- The RFI Response demonstrates that the Applicant has sufficient legal interest in the site.
- A fire safety certificate has been issued by DCC. Dublin Fire Brigade and its Fire Officer are satisfied that there is no risk to the proposed building or any other building on Merrion Square. None of the other properties at Merrion Square have unfettered access to the rear gardens. Dublin Fire Bridge broadly relies upon fire tender access from the front.

- The right of way and 3-metre clearance issue is moot and has no bearing on any aspect of the planning application. This is covered in the Right of Way Agreement. The bike racks do not impinge any third party rights.
- Disagree that the bikes area is poorly situated for safe use in that the entire rear yard is a shared surface for pedestrians, bikes and cars and this has been the case for over 20 years.
- The amendments to the bay windows on the southern elevation do not form part of the subject application and has been previously adjudicated and approved under Reg. Reg. 3725/18 and 4296/19.
- The Applicant and ESB are satisfied with the position of the substation.
- In relation to plant and associated services, the Applicant is satisfied that there will be no nuisance from a visual or noise respect on the plant area.

#### 6.4. **Planning Authority Response**

None.

#### 6.5. **Observations**

None.

#### 6.6. **Further Responses**

None.

### 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:

- Ownership and Right of Way Issues
- Separate Legal Codes
- Elevational Alterations



- Planning Application Documentation
- Appropriate Assessment.

Each of these issues is addressed in turn below.

#### 7.1.1. **Ownership and Right of Way Issues**

7.1.2. The Appellant states that the trapezoidal portion of the site, as highlighted in the Third-Party Appeal, is not owned by the Applicant, and that a letter of consent has not been issued by the neighbouring owner to include it within the planning application.

7.1.3. The second item of the Local Authority's RFI required the Applicant to "*demonstrate sufficient legal right to develop on the subject lands*". In response (dated 23<sup>rd</sup> March 2022), the Applicant advised that there was sufficient legal interest to develop the site and enclosed relevant folios. The Applicant stated that "*the building does not sit within or oversail the trapezoidal portion identified by the adjoining owner land owner, so would not impact on the legal entitlement to build in any event.*"

7.1.4. The Development Management Guidelines for Planning Authorities (2007) state "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts*". These Guidelines advise that where a third party raises doubts as to the sufficiency of an applicant's legal interest in a site, further information may have to be sought under Article 33 of the Planning and Development Regulations, 2001 (as amended). If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. The Guidelines further advise that, only where it is clear from the response that the applicant does not have sufficient legal interest, should planning permission be refused.

7.1.5. Having regard to the foregoing and acknowledging the Development Management Guidelines for Planning Authorities (2007), I do not recommend that permission is refused on this basis. As highlighted by the Guidelines and the Local Authority, Section 34(13) of the *Planning and Development Act 2000 (as amended)* states: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development.*" As such, should the Board be minded to grant permission for the development, it is the Applicant's responsibility to ensure sufficient legal interest exists

to implement the permission. Notwithstanding this, as highlighted by the Applicant there are no works proposed at this location.

- 7.1.6. Similar conclusions in my view can be reached in respect of any issues regarding the impingement or curtailment of the right of way through the site to the rear of Nos. 2-3 Merrion Square. The drawings indicated that access to the rear of the said properties will be maintained through the undercroft area at ground floor level. Permission has already been secured for the undercroft area and development above at First to Fourth Floor Levels on the site as per Reg. Ref. 3725/18; ABP Ref. 303676 and 4296/19.

## 7.2. **Separate Legal Codes**

- 7.2.1. Issues relating to compliance with non-planning regulations, including *inter alia* Building Regulations, Fire Safety Certificate, etc. will be evaluated under separate legal codes, and as such in my opinion, need not concern the Board for the purposes of this Appeal. Notwithstanding this, I note that the Applicant has advised that a fire safety certificate has been issued by DCC in respect of the proposed development. Furthermore, I highlighted that permission for development over the wayleave has been already secured under Reg. Ref. 3725/18; ABP Ref. 303676 and 4296/19 and as such, is now not for determination before the Board. Therefore, issues raised in relation to the undercroft clearance distance above the wayleave are not relevant to this case.
- 7.2.2. Separately, in relation to the Appellant's comments regarding how staff will access the shower and staff facilities, as highlighted by the Applicant the rear yard is a shared surface for pedestrians, bikes and cars. There is no mandatory planning requirement with regards to the location of shower facilities for offices.

## 7.3. **Elevational Alterations**

- 7.3.1. The proposed development includes for a number of alterations to the north-west, north-east, and south-west elevations. This includes omitting the previously permitted projecting windows on the southwest elevation and replacement with windows flush to the façade. In addition, the windows' configuration will be altered slightly. As highlighted by the Applicant planning permission has already been secured for windows on this façade. The proposal will not result in a significant increase of overlooking of the neighbouring properties beyond what is already permitted. Furthermore, having regard to the minor nature of the proposed development,

including the elevational alterations proposed, I do not consider that it would have any visual impact on the surrounding area including the Protected Structures.

#### **7.4. Planning Application Documentation**

- 7.4.1. The Appellant states that there is no transport report or mobility management plan with the application to justify the omission of three car parking spaces. Having regard to the scale of the proposed development and its location within the site, in close proximity to various modes of public transport, there is no requirement for a transport report or mobility management plan. The omission of the three car parking spaces will encourage sustainable travel reducing the volume of cars in the city centre and as such is in accordance with the proper planning and sustainable development of the area. Furthermore, there is no mandatory requirement to submit an AA screening assessment. This matter is discussed in further detail in Section 7.4 below. I am satisfied that the planning application contains sufficient information to assess the potential impacts from same and make a determination.
- 7.4.2. As highlighted by the Appellant the bike racks shown at the ground floor plan were not illustrated on Section A-A. However, as outlined above, these bicycle spaces were subsequently relocated at RFI stage. I do not consider that this matter has any material bearing on the determination of the case. I highlight that there are no changes proposed to the number of bicycle parking spaces provided on the site (i.e. 30 permitted).

#### **7.5. Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed 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 Z8 zoning objective relating to the site as per the Dublin City Development Plan 2022-2028 where office development is a permissible use, it is considered that the size and scale of the proposed development, subject to conditions set out below, would not seriously injure the amenities of the area or properties in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 23<sup>rd</sup> March 2022, 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>Save for the amendments granted on foot of this permission, the development shall otherwise be carried out in strict accordance with the terms and conditions under planning register reference number 4296/19 and appeal reference number PL29S.303676 (planning register reference number 3725/18), except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity and the proper planning and sustainable development of the area.</p>
3.	<p>Details of the materials, colours and textures of the external finishes of the proposed structures and enclosing fencing shall be submitted to and agreed in writing with the planning authority prior to commencement of development.</p>

	Reason: In the interests of the visual amenities of the area.
4.	<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>
5.	<p>Wate 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.</p> <p>Reason: In the interest of public health.</p>
6.	<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>
7.	The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City in accordance with the terms of the

	<p>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 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 Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
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Susan Clarke  
Planning Inspector

3<sup>rd</sup> March 2023