



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318559-23

#### Development

Demolition of the existing one and two storey buildings at 13 and 13A Merrion Row & 12A and 12B Merrion Court. The construction of a part 4 and 5 storey mixed-used development, refurbishment, restoration and part change of use of existing buildings at 12C, 12D & 5 Merrion Court and all plant and all associated site development works.

#### Location

Site (c. 0.067 ha) at 13 & 13A Merrion Row and 12A, 12B, 12C, 12D and 5 Merrion Court, Dublin 2.

#### Planning Authority

Dublin City Council South

#### Planning Authority Reg. Ref.

4432/23

#### Applicant

Aviva Life and Pensions Ireland DAC.

#### Type of Application

Permission.

#### Planning Authority Decision

Refuse

#### Type of Appeal

First Party

<b>Appellant</b>	Aviva Life and Pensions DAC.
<b>Observers</b>	Gina Murphy Simon Broadhead
<b>Date of Site Inspection</b>	7 <sup>th</sup> June 2024.
<b>Inspector</b>	Terence McLellan

## **1.0 Site Location and Description**

- 1.1. The appeal site measures approximately 0.94 hectares and is broadly rectangular in shape, with a principal frontage onto Merrion Row and a secondary frontage onto Merrion Court, comprising nos. 13 and 13A Merrion Row and nos. 12A-D, and 5 Merrion Court. The buildings on site are primarily two storeys in height, with the exception of the northern section of 13A Merrion Row which is single storey in nature.
- 1.2. The majority of buildings on the site are vacant, with only an Estate Agent operating from the site currently. The other buildings have previously been in a range of uses including restaurant (the former Unicorn restaurant), public house, wine bar, office, and residential. Part of the site is in Third Party ownership (Dublin City Council) and a Letter of Consent has been provided.
- 1.3. Merrion Court is a narrow cul de sac lane providing service entrances to the existing buildings in addition to a vehicular entrance to the small carparking area at the rear of the Boston College premises at Nos 42 and 43 St Stephen's Green. There is a four-storey building facing onto Merrion Row on the corner to the west side of Merrion Court which is occupied by "Bang" restaurant at ground floor level. Buildings in the immediate area range in height from three to five storeys with the adjacent Department of Finance building rising to a total of six storeys.
- 1.4. Merrion Court originally existed as a stable lane, with dual access from Merrion Row and Hume Street providing access to stable buildings to the rear of the properties on St Stephen's Green. The surrounding street hierarchy, layout, and urban grain was established during the Georgian period and is substantially intact in the block formed by Ely Place to the east, Hume Street to the south, St Stephen's Green to the west, and Merrion Row to the north.
- 1.5. No buildings on site are designated as Protected Structures, nor are they listed on the NIAH, however, many of the surrounding buildings are Protected Structures. The site is designated as a Conservation Area, with the southern portion of the site being within a Georgian Conservation Area.
- 1.6. Merrion Row has been narrowed in recent years to a one-way single carriageway in order to provide wider pavements and outdoor seating areas on foot of pandemic

measures. Centrally located just off St Stephen's Green, the site benefits from high accessibility to a range of public transport options.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the demolition of Nos. 13/13A Merrion Row and 12A/12B Merrion Court and redevelopment of the site to provide a part five/part four storey office led mixed use development incorporating retail/restaurant use. The ground floor would accommodate the retail/restaurant unit in addition to the office reception, bike store and changing facilities. All upper levels would comprise office accommodation. The development would also include the refurbishment, restoration, and part change of use of 12C, 12D, and 5 Merrion Court to provide 3 no. two storey residential townhouses.
- 2.2. A separate storage unit providing a refuse store serving the office & restaurant/retail use (22sqm) and residential refuse store (8sqm) would be provided adjacent to the development on the west side of Merrion Court.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Notification of the Decision to Refuse Permission was issued by Dublin City Council on 31<sup>st</sup> October 2023 based on the following two reasons for refusal:
  1. Taking into account the prominent and sensitive location of the subject site, within a Conservation Area, and having regard to the urban form of the surrounding historic context, it is considered that the proposed new building would constitute a visually obtrusive and insensitive form of development. The proposed development would therefore seriously injure the urban character and visual amenities of the historic city core, will create a precedent for similar type undesirable development, would devalue property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

2. Taking into account the subject site has planning permission for approx. 19 no. short term let apartments at first to fourth floor levels as part of Reg. Ref.: 2464/20, it is considered that the proposed office use at upper floor levels would result in potential residential uses being lost to the residential housing system, meaning less long-term and secure accommodation will be available to the growing number of people who need it. As such the proposal is contrary to Policies QHSN6, QHSN7, QHSN38 and Section 5.1 of the Dublin City Development Plan 2022-2028 which seek to promote a mixed-use land policy in the city centre including the provision of high quality, sustainable residential development. The proposed development would, therefore, be contrary to the 2022-2028 Dublin City Development Plan, would set an undesirable precedent for similar development and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. The Planner's Report contains the following points of note:**

- The previous permission granted by the Board is noted.
- It is considered that the demolition of the existing building is justified and that the building is not capable of being refurbished to meet modern day office standards.
- The proposed uses are permissible in the Z5 land use zoning.
- Principle of increased height, density, mass is acceptable however, it is considered that the impact of the proposed height, scale and massing would have a serious negative impact on the Merrion Row and Merrion Court streetscape, on the nearby protected structures and on the wider conservation area. This is evident from the Verified Views, notably views V4, V5, V6, V9, and V10.
- Based on the drawings and verified views, the building appears to sit proud on the streetscape and the scale and mass of the five storey structure appears excessive and out of character with the streetscape and surrounding context.
- Architectural quality is not considered to be of a high enough standard, taking account of the location within a Conservation Area and the urban form of the

surrounding historic context. The development would be a visually obtrusive and insensitive form of development.

- The proposed materials are considered uncomplimentary and fail to create a harmonious and pleasant urban experience. They do not provide the necessary visual or aesthetic balance on what is a prominent city centre site.
- The lack of open space provision for the proposed housing is considered acceptable due to site constraints and the location of the site in an accessible location close to St Stephen's Green, Iveagh Gardens, and Merrion Square.
- There are concerns regarding using part of the main site frontage for cycle parking, these should ideally be placed towards the rear of the property.
- The previous permission is noted, it was never enacted, there is now a greater demand for city centre housing and the existing building would ideally be converted into a residential development.
- The proposal would result in the loss of potential residential uses being lost, meaning less long-term and secure accommodation will be available to the growing number of people who need it.
- Policy QHSN7 aims to resist and where the opportunity arises, to reverse the loss of residential use on upper floors. Whilst it is acknowledged that the existing permission is for short term lets, it is considered a residential use and there is a significant concern that the current proposal for office use at upper floor levels would be inconsistent with the essence of this policy in the City Development Plan.
- The proposed office use at upper floor levels would not be considered an appropriate use of the building and could result in an undesirable precedent for similar type development in the area which may then result in the further unacceptable loss of potential long term residential properties in the locality.
- Daylight and Sunlight impacts are considered, and the report notes that the subject site is currently underutilised and in a prominent city centre location and the proposal is considered acceptable in this instance.

### **3.2.2. Other Technical Reports**

- 3.2.3. Air Quality Monitoring and Noise Control:** Recommends a condition securing a Construction Management Plan.

- 3.2.4. **Archaeology Section (23.10.2023):** Recommend conditions regarding preparation of a Historic Buildings Survey prior to demolition and compliance with the archaeological requirements of the Planning Authority, including preparation of an Archaeological Assessment and Impact Assessment.
- 3.2.5. **Drainage Division (14.09.2023):** Recommends standard conditions.
- 3.2.6. **Transportation Planning (13.10.2023):** Further information requested regarding the following:
- Auto track drawings to demonstrate adequate emergency and fire tender access to residential units.
  - Submission of revised drawings to include a setback of the proposed retail/restaurant unit at ground floor to mitigate constrained footpath widths on Merrion Row.
  - Design details and dimensions for proposed visitor cycle parking to demonstrate that it can be provided without impeding vehicular access on Merrion Court.
  - Submission of drawings to clarify the provision of dedicated cycle parking serving each proposed dwelling.

### 3.3. **Prescribed Bodies**

- 3.3.1. **Transport Infrastructure Ireland (25.09.2023):** Recommends a Section 49 supplementary development contribution condition, if applicable, should permission be granted

### 3.4. **Third Party Observations**

- 3.4.1. A total of five observations were received by Dublin City Council in response to the planning application. The issues raised are generally reflected in the observations made on the appeal and set out in detail at Section 6.4. Additional points raised include:
- Provision of long term housing welcome.

- Removal of short term lets is welcomed but the switch to offices is unwise and the preference would be for long term residential.
- Building could be stepped at the back to give more space to the buildings on Hume Street.
- If approved, a core outcome should be long term residential.
- The laneway is a right of way, used daily and in the charge of the Council.
- Adjoining property owners have a legal interest in any application submitted by the applicant.

## 4.0 Planning History

- 4.1.1. **ABP Reference. 309549/Planning Authority Ref. 2464/20:** Permission was granted by the Board in September 2021 for the demolition of existing buildings and construction of a four, five and six storey mixed use development (restaurant/retail at ground level, short-term letting residential units. (24 No) at first to fifth floors).
- 4.1.2. Condition 4 of this permission required the omission of the entirety of the fifth floor, effectively reducing the height of the approved building to five storeys. This condition was subject to a First Party Appeal and the decision to apply the condition was upheld by the Board.
- 4.1.3. **Planning Authority Reference 3206/18:** Permission was granted for the installation of new fascia boards, signage and down lighting on the front facade together with the infill of the courtyard to the front (south) of 13B providing 30square metres m of additional area at ground floor and additional 30sqm open-air terrace dining at first floor, all with ancillary works.
- 4.1.4. **Planning Authority Reference 052/14:** Permission granted for alterations to existing two storey licensed restaurant to omit first floor kitchen and ancillary areas and to block up the existing ope in the separating wall between 13a & 13b at first floor level and to construct a new kitchen and toilets at first floor rear and to extend the terrace at first floor.
- 4.1.5. **Planning Authority Reference 4088/09:** Permission was granted for the change of use of the existing building from the established travel agent/travel shop use to



financial services with a stated floor area of 106.3 square metres, with the services being provided principally to visiting members of the public.

- 4.1.6. **Planning Authority Reference 5437/08:** Permission granted for demolition of all existing buildings and the construction of a part 3, part 4, and part 5 storey building over basement, subject to twenty conditions. The uses comprised restaurant including private dining and retail at ground level, basement level storage, conference rooms at first floor level, and en-suite apart hotel rooms at second floor level, a cookery school at third floor level, an auditorium, club and outdoor seating at fourth floor level and at fifth level, a landscaped roof terrace and a sedum roof.

## 5.0 Policy Context

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

- 5.1.1. The site is Z5, the objective of which is “To consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design, character, and dignity.” The aim of the zoning objective is ‘to sustain life within the centre of the city through intensive mixed-use development’ and ‘to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. The zoning objective states that, ideally, the mix of uses should occur both vertically through the floors of the building and horizontally along the street frontage. A general mix of uses including residential is desirable; however, retail should be the predominant use at ground floor level on principal shopping streets.
- 5.1.2. The lands to the immediate south and west, comprising houses on St Stephen’s Green and on Hume Street, as well as sections of the Merrion Court laneway, are subject to zoning objective Z8, the stated objective of which is “To protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective.”
- 5.1.3. Chapter 3: Climate Action contains the Council’s policies and objectives for addressing the challenges of climate change through mitigation and adaptation. The relevant policies from this section include:
- CA3: Climate Resilient Settlement Patterns, Urban Forms and Mobility

- CA8: Climate Mitigation Actions in the Built Environment
- CA9: Climate Adaptation Actions in the Built Environment
- CA24: Waste Management Plans for Construction and Demolition Projects
- CA27: Flood Risk Assessment and Adaptation

5.1.4. Chapter 4: Shape and Structure of the City, sets out the Council's strategy to guide the future sustainable development of the city. The objective is to ensure that growth is directed to, and prioritised in, the right locations to enable continued targeted investment in infrastructure and services and the optimal use of public transport. The relevant policies from this chapter are:

- SC5: Urban Design and Architectural Principles
- SC10: Urban Density
- SC11: Compact Growth
- SC13: Green Infrastructure
- SC14: Building Height Strategy
- SC15: Building Height Uses
- SC16: Building Height Locations
- SC19: High Quality Architecture
- SC20: Urban Design
- SC21: Architectural Design

5.1.5. Chapter 5: Quality Housing and Sustainable Neighbourhoods, seeks the provision of quality, adaptable homes in sustainable locations that meet the needs of communities and the changing dynamics of the city. The delivery of quality homes and sustainable communities in the compact city is a key issue for citizens and ensuring that Dublin remains competitive as a place to live and invest in. The relevant policies from this chapter include:

- QHSN1: National and Regional Policy
- QHSN2: National Guidelines
- QHSN6: Urban Consolidation
- QHSN7: Upper Floors

- QHSN10: Urban Density
- QHSN17: Sustainable Neighbourhoods
- QHSN22: Adaptable and Flexible Housing
- QHSN34: Social, Affordable Purchase and Cost Rental Housing
- QHSN35: Diversity of Housing Type and Tenure
- QHSN36: High Quality Apartment Development
- QHSN37: Homes and Apartments
- QHSN38: Housing and Apartment Mix
- QHSN39: Management
- QHSN48: Community and Social Audit
- QHSNO11: Universal Design

5.1.6. Chapter 6: City and Enterprise is of relevance. This chapter recognises that Dublin is an international city and gateway to the European Union for many businesses. The city region contributes significantly to Ireland's economy and is a major economic driver for the country. The relevant policies from this chapter are:

- CEE1: Dublin's Role as the National Economic Engine
- CEE2: Positive Approach to the Economic Impact of Applications
- CEE3: Promoting and Facilitating Foreign Direct Investment
- CEE7 Strategic and Targeted Employment Growth
- CEE21: Supply of Commercial Space and Redevelopment of Office Stock

5.1.7. Chapter 7: The City Centre, Urban Villages, and Retail, notes that Dublin's village and neighbourhood centres are the heart of their local communities, providing a focus for local activities, allowing sustainable urban living and allowing people access to local shops, services, employment and facilities. The relevant policies of this chapter include:

- CCU23: Active Uses
- CCUV30: Cafes/Restaurants
- CCUV32: Outdoor Dining

- 5.1.8. Chapter 8: Sustainable Movement and Transport, seeks to promote ease of movement within and around the city and an increased shift towards sustainable modes of travel and an increased focus on public realm and healthy placemaking, while tackling congestion and reducing transport related CO2 emissions.
- 5.1.9. Chapter 9: Sustainable Environmental Infrastructure and Flood Risk, aims to address a broad range of supporting infrastructure and services including water, waste, energy, digital connectivity, and flood risk/surface water management. The relevant policies of this section are:
- SI14: Strategic Flood Risk Assessment
  - SI15: Site Specific Flood Risk Assessment
- 5.1.10. Chapter 11: Built Heritage and Archaeology, recognises that the city's heritage contributes significantly to the collective memory of its communities and to the richness and diversity of its urban fabric. It is key to the city's character, identity and authenticity and is a vital social, cultural, and economic asset for the development of the city. The Development Plan plays a key role in valuing and safeguarding built heritage and archaeology for future generations. The plan guides decision-making through policies and objectives and the implementation of national legislation to conserve, protect and enhance our built heritage and archaeology. The relevant policies of this section include:
- BHA4: Ministerial Recommendations
  - BHA9: Conservation Areas
- 5.1.11. Chapter 15: Development Standards contains the Council's Development Management policies and criteria to be considered in the development management process so that development proposals can be assessed, both in terms of how they contribute to the achievement of the core strategy and related policies and objectives. Relevant sections of Chapter 15 include (but are not limited to):
- 15.4: Key Design Principles
  - 15.5: Site Characteristics and Design Parameters
  - 15.6: Green Infrastructure and Landscaping

- 15.8: Residential Development
- 15.14.4: Office
- 15.15.1: Archaeology
- 15.15.2: Built Heritage
- 15.18: Environmental Management

5.1.12. Relevant Appendices include:

- Appendix 3: Achieving Sustainable Growth sets out the height strategy for the city, with criteria for assessing higher buildings and provides indicative standards for density, plot ratio and site coverage.
- Appendix 16: Sunlight and Daylight provides direction on the technical approach for daylight and sunlight assessments.

## 5.2. Regional Policy

### **Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031 (RSES)**

- 5.2.1. The primary statutory objective of the Strategy is to support implementation of Project Ireland 2040 - which links planning and investment through the National Planning Framework (NPF) and ten year National Development Plan (NDP) - and the economic and climate policies of the Government by providing a long-term strategic planning and economic framework for the Region. The RSES seeks to promote compact urban growth by making better use of under-used land and buildings within the existing built-up urban footprint and to drive the delivery of quality housing and employment choice for the Region's citizens. The RSES seeks to build a resilient economic base and promote innovation and entrepreneurship ecosystems that support smart specialisation, cluster development and sustained economic growth.

## 5.3. National Policy and Guidance

### **Project Ireland 2040, National Planning Framework (2018) (NPF)**

5.3.1. The NPF addresses the issue of ‘making stronger urban places’ and sets out a range of objectives which it considers would support the creation of high quality urban places. Relevant Policy Objectives include:

- National Policy Objective 2a: A target of half (50%) of future population and employment growth will be focused in the existing five cities and their suburbs.
- National Policy Objective 6: Regenerate and rejuvenate cities, towns and villages of all types and scale as environmental assets, that can accommodate changing roles and functions, increased residential population and employment activity and enhanced levels of amenity and design quality, in order to sustainably influence and support their surrounding area.
- National Policy Objective 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.
- Objective 33 seeks to prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location. Objective 35 is to increase residential density in settlements through a range of measures including restrictions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

## **Section 28 Ministerial Guidelines**

5.3.2. Having considered the nature of the proposal, I consider that the directly relevant section 28 Ministerial Guidelines and other national policy documents are:

- Sustainable Residential Development and Compact Settlement - Guidelines for Planning Authorities (2024). The guidelines allow greater flexibility in residential design standards and cover issues such as open space, car and cycle parking, and separation distances.
- Urban Development and Building Heights, Guidelines for Planning Authorities (2018). The Building Heights Guidelines state that increased building height and density will have a critical role to play in addressing the delivery of more

compact growth in urban areas and should not only be facilitated, but actively sought out and brought forward by our planning processes, in particular by Local Authorities and An Bord Pleanála. These Guidelines caution that due regard must be given to the locational context and to the availability of public transport services and other associated infrastructure required to underpin sustainable residential communities.

- Architectural Heritage Protection – Guidelines for Planning Authorities (2011) - This guidance is a material consideration in the determination of applications and sets out comprehensive guidance for development in conservation areas and affecting protected structures. It promotes the principle of minimum intervention (Para.7.7.1) and emphasises that additions and other interventions to protected structures should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term (7.2.2).

#### **5.4. Natural Heritage Designations**

5.4.1. The site is an urban brownfield site and is not located within any designated site. The nearest European Sites are as follows:

- South Dublin Bay and River Tolka Estuary SPA (site code 004024), 2.7km.
- South Dublin Bay SAC (site code 00210), 2.7km.
- North Dublin Bay SAC (Site Code 000206), 5.4km.
- North Bull Island SPA (Site Code 004006), 5.4km.

#### **5.5. EIA Screening**

##### Introduction

5.5.1. The application addresses the issue of EIA within an EIA Screening Report prepared by AWN Consulting Limited (dated 20<sup>th</sup> July 2023), which seeks to demonstrate that there is no requirement for the preparation of an Environmental Impact Assessment Report for the proposed development. Section 1.2 of the report relates to the screening methodology and confirms that the report has had regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 as amended (the 2001

Regs), and to the requirements under Schedule 7A of the 2001 Regs. This section also confirms that the assessment has had regard to EIA Directive 2011/92/EU and 214/52/EU, and follows the format recommended by the EPA Guidelines.

- 5.5.2. Where an application is made for subthreshold development and Schedule 7A information is submitted, the Board must carry out a screening determination in line with the requirements of Article 109(2B)(a) of the Planning and Development Regulations 2001 (as amended), therefore, it cannot screen out the need for EIA at preliminary examination.

#### Mandatory Thresholds

- 5.5.3. This proposed development is of a class of development included in Schedule 5 to the Planning Regulations. Schedule 5 to Part 2 of the Planning Regulations provides that mandatory EIA is required for the following classes of development that are of relevance to the proposal:

- Class 10(b)(i) – Construction of more than 500 dwelling units.
- Class 10(b)(iv) - Urban development, which would involve an area greater than 2 ha in the case of a business district\*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. \*a 'business district' means a district within a city or town in which the predominant land use is retail or commercial use.

- 5.5.4. The proposal would be significantly below the threshold of 500 homes. In terms of urban development (Class 10(b)(iv)), I consider that the site is within a business district where the 2ha threshold would apply. The application site has a total area of 0.067ha and is therefore significantly below the applicable threshold. A mandatory EIA is therefore not required.

#### Sub Threshold Development

- 5.5.5. Item (15)(b) of Part 2, Schedule 5 of the Regulations provides that EIA will be required for 'Any project listed in this Part which does not exceed a quantity, area, or other limit specified in this Part in respect of the relevant class of development, but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7'.
- 5.5.6. Environmental Impact Assessment is required for development proposals of a class specified in Part 1 or 2 of Schedule 5 that are sub-threshold where the Board



determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.

5.5.7. The Appellant's Screening Report provides the necessary information for screening this sub-threshold development for Environmental Impact Assessment and I am satisfied that the report and the other information submitted with the application includes the information specified in Schedule 7A of the Regulations, and that the information has been compiled taking into account the relevant criteria set out in Schedule 7 of the Regulations.

5.5.8. The reports submitted with the application address a variety of environmental issues and the environmental impacts of the proposed development, including assessing the potential for cumulative impacts from other nearby permitted developments. The reports demonstrate that, subject to the various recommended construction and design-related mitigation measures, the proposed development would not have a significant impact on the environment. I have had regard to the characteristics of the site, the location of the proposed development, and the type and characteristics of the potential impacts. Having regard to the Schedule 7A information, I have examined the sub-criteria and all submissions, and I have considered all information that accompanied the application and appeal, including the following:

- Appropriate Assessment Screening Report (August 2023)
- Archaeology and Cultural Heritage (July 2023)
- Architectural Heritage Impact Assessment (July 2023)
- Bat Fauna Survey (August 2023)
- Construction and Demolition Waste Management Plan (August 2023)
- Daylight and Sunlight Analysis Report (July 2023)
- Design Statement (April 2023)
- Energy Statement/Sustainability Report (July 2023)

- Engineering Service Report (August 2023)
- Flood Risk Assessment (August 2023)
- Landscape and Visual Impact Assessment (July 2023)
- Operational Waste Management Plan (July 2023)
- Outline Construction management Plan (August 2023)
- Planning Report (August 2023)
- Preliminary Servicing Management Plan (July 2023)
- Preliminary Travel Plan (July 2023)
- Site Lighting Report (July 2023)
- Site Utilities (April 2023)
- Structural Demolition Justification Report (August 2023)
- Verified Views (April 2023)

5.5.9. I have completed an EIA screening assessment of the proposed development with respect to all relevant considerations, as set out in Appendix 2 to this report. Having regard to:

- The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;
- The location of the proposed development on zoned lands where the proposed uses are either permissible and the results of the Strategic Environmental Assessment of the Dublin City Development Plan;
- The nature of the existing site and the developed nature of the surrounding area;
- The availability of mains water and wastewater services to serve the proposed development;
- The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised;

- The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;
- The features and measures proposed by the Appellant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment.

5.5.10. I am satisfied that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A First Party Appeal has been submitted by John Spain Associates of 39 Fitzwilliam Place, Dublin 2, for and on behalf of the Appellant, Aviva Life and Pensions Ireland Designated Activity Company, Building 12, Cherrywood Business Park, Loughlinstown, Dublin 18. The submission includes a detailed response by ALTU Architects which is incorporated below in the summarised grounds of appeal:

#### Reason for Refusal 1

##### *Extant Permission and Pre-application*

- There is an existing permission on the site for a five storey mixed use development, granted by the Council and the Board on appeal. This has directly informed the proposed development in terms of height, architectural design, and material finish, in addition to feedback at pre-application stage.
- The Planner's Report states that the building sits proud on the streetscape. Minutes from the pre-application enquiry note that the proposed building line is the "same as existing / approved". No change to the building line is proposed

from the permitted scheme and the proposed building follows the existing building line.

### *Height, Scale, and Massing*

- National policy supports increased building heights to deliver compact growth. The CDP supports consideration of a default height of six storeys in the city centre and the development would be below this as well as being below the height of the adjacent Department of Finance building. Heights also increase westwards towards St Stephen's Green. The development integrates successfully with the surrounding building heights.
- The Planner's Report states that height, scale, and massing would have negative impacts, but also states that the site is underutilised, and that the development will have a positive impact on the subject site and wider streetscape. This is contradictory and at odds with the previous permission where height, scale, and massing were considered acceptable by both the Council and the Board.
- Massing is considerably lower than the adjacent Department of Finance building which rises to six storeys.
- The proposal is one storey higher than the prevailing height on Merrion Row South and steps up to the corner, responding also to the north side of Merrion Row and Ely Place, Hume Street, and St Stephen's Green, which are all of a similar or taller scale. The additional storey is therefore considered appropriate.

### *Conservation*

- The site is in a Conservation Area but there are no Protected Structures or NIAH listed structures on site. There are a number of Protected Structures on Merrion Row, many extend above the heights proposed on site.
- The proposed height is aligned to the previous decision to grant permission.
- The visual impacts of the proposal are largely restricted to the immediate streetscape and local environment.

### *Visual Impact*

- A Visual Impact Assessment has been submitted. The appearance of the proposed building is significantly mitigated by other buildings and architectural features (chimney stacks) and the proposed materials provide a lighter appearance and a reduced mass.
- The proposal is considerably less visible than the previous originally submitted scheme.

#### *Design and Architectural Quality*

- The Planner's comments on architecture are not accepted, the architectural design and finish have been directly informed by the existing permission on the site. The proposal reflects the rhythm of the original blocks and placement of windows, providing continuity to the established character of the streetscape.
- The proposed building is subservient to the Georgian buildings on the Hume Street backdrop and the height and design responds to the surrounding streets.
- The materials are context appropriate and in keeping with Merrion Row and a number of other local examples where brick and stone create a high quality architectural solution in the South Georgian Core. Examples include The Shelbourne Hotel, The Bank of Ireland, and the ESB headquarters.
- Proposed window openings and plot widths relate to those established on the site and in keeping with the street.

#### *Devaluation of Property*

- No issues of property devaluation were raised under the previous permission. The proposed uses are permissible under the zoning objective with the addition of long term residential accommodation.
- The proposal will enhance the appearance of the streetscape with a high quality design and finish that is consistent with the previous planning approval and a range of uses that will contribute to the city centre economy and the surrounding area. The proposal will benefit the immediate surroundings.

#### *Plot Ratio and Site Coverage*

- The assessment and conclusion of the Planning Authority in respect of visual impact, scale, and siting of the proposal is at odds with the acceptance of the

scheme in terms of plot ratio, site coverage, and acknowledgment that the site is appropriately located to provide for a development of increased density, height and mass.

#### *Daylight and Sunlight*

- The positive assessment of the Council relating to daylight and sunlight highlights the appropriateness of the height, scale and massing of the proposed development in the context of its surroundings, urban fabric and setting within a conservation area and proximate to protected structures.

#### *Amended Scheme*

- Should the Board not support the proposed height, scale, and massing, then an amended top floor proposal is included for consideration. This reduces the five storey corner element to four storeys, with the fifth storey set back. This amendment could be secured by condition.

#### Reason for Refusal 2

- The permission granted by the Board included 19 no. short-term let tourist accommodation units on the upper levels of the permitted building. This permission has not been implemented. The existing uses on site are an Estate Agent and vacant premises having most recently been used for restaurant, wine bar, back of house, storage and residential on upper floors.
- As the previous permission has not been implemented due to viability/market conditions, no short-term let accommodation currently exists on site. The development would therefore not result in the loss of any residential.
- Office represents a more viable use, and the development will offer office floor plates that are suitable for companies who may be downsizing as an effect of the Covid-19 pandemic and firms who may be seeking smaller, high-quality space in the city centre.
- All of the proposed uses are listed as permissible on the Z5 zoning objective and will introduce a greater mix of uses to the site. Office use is appropriately located and consistent with national, regional, and local policy.

- The development plan supports office use in the city centre and the Council have overlooked this.
- All uses are welcomed by the Planning Authority except the offices. The Planner's Report alludes to the "existing building" and that this "would ideally be converted into standard residential given the city centre location. It is unclear if the Planning Authority are referring to the existing buildings on site or the permitted development that has not been implemented.
- The Planning Authority's position contradicts the CDP and Z5 zoning objective, as each of the proposed uses are permissible.
- It is unreasonable and unsound to use an extant permission for short-term let tourist accommodation as a tie to long term residential accommodation.
- The view that the proposal would result in potential residential use being lost would equally apply to the permitted short-term let use on the site and which the Council have rejected as an alternative to long term residential accommodation.
- The town houses are not apartments and should not be assessed as such.
- The proposed offices will appeal to smaller companies and can be adapted to multiple tenants. It will also promote employment creation, footfall and increased activity at a city centre location.
- The scheme proposes three long term residential units, which the extant scheme did not provide for. Refusal of the current application will only serve to exacerbate the identified housing demand by preventing these units being implemented and the refurbishment of mews buildings taking place.
- The Planning Authority's approach would result in a total embargo on offices within the city centre, regardless of compliance with zoning or other policy.
- The development would be in accordance with QHSN6 by re-use and adaptation of existing mews for residential. The development complies with QHSN7 as there would be no loss of residential on site at upper floors as no residential exists. The proposal would also comply with QHSN8 (reduction of Vacancy) and QHSN 38 (Housing and Apartment Mix).

- The Council's stance on short term lets is inconsistent with decisions on other sites where this has been proposed and the view was taken that short term lets would contribute to long term residential being removed from the market, with permission refused. Precedent examples are provided.

## **6.2. Planning Authority Response**

6.2.1. Request that the Board uphold the decision to refuse permission. Should permission be granted, it is requested that the following conditions be applied:

- Payment of Section 48 and 49 Contributions.
- Payment of a Bond.
- Payment in lieu of open space.
- Social housing.

## **6.3. Observations**

6.3.1. Observation from Gina Murphy, leaseholder of Hugo's Restaurant, 6 Merrion Row, Dublin 2.

- Fully support the Council's decision to refuse permission.
- Merrion Row is the cultural corridor of the city. The development would reduce the retail and cultural value of the area and would undermine the vibrancy and diversity of the street.
- There is an abundance of empty and unused office space following the pandemic and introduction of hybrid working. This has affected trade for small businesses. A balance between different uses is essential for a thriving urban environment.
- The size of the restaurant has been reduced. Active retail frontage on the street would also be reduced.
- The building is too tall and would be at odds with the street and its character. The parapet height along the street should be preserved to maintain historical and aesthetic integrity.



- There would be diminished sunlight to the front of Hugo's Restaurant.
- The applicant has owned the property for several years and has allowed the property to fall into a state of disrepair and dereliction.
- Having tourist stay in the city is essential for business, the previous permission was for short stay rental which frees up regular housing stock, there is no need for the change. It's imperative to bring residential use back into the city.
- If approved, construction should be restricted during lunchtime trading hours to reduce disturbance of the lunch trade and to reduce impacts on the outdoor seating/public realm.

6.3.2. Observation from Simon Broadhead, owner of 6 Merrion Row, Dublin 2.

- Some changes to the previous permission are welcomed, such as the façade materials, plot ratio and site coverage, but do not support the change from short term residential to office space.
- The change to offices is financially driven rather than the need of the (conservation) area.
- The size of the retail frontage has been diminished to accommodate bicycle stores and the office entrance, leading to blank frontages which affect the vibrancy of the street. The bicycle access/parking could be located more appropriately to the side.
- The restaurant has been significantly reduced in size. Retail space and active frontages on Merrion Row should be maintained.
- Do not support the potential increased parapet height. The Applicant has still to confirm if the height is actually increasing.
- If permission is given for a fourth office floor, then the setback from the parapet should be at least 5 metres. Ideally this floor would be omitted.
- There would daylight and sunlight impacts to 6 Merrion Row, with dramatic overshadowing in the winter/shoulder months.
- There would be adverse visual impacts associated with the development as detailed in the verified views from St Stephen's Green (east and west).

- Stringent conditions should be applied to minimise disturbance during construction.
- If permission is granted then major changes should be made to adapt the building to visually fit with the tone and character of the area and a definite street frontage parapet height should be stipulated, confirmed by full drawings.

#### **6.4. Further Responses**

6.4.1. None.

### **7.0 Assessment**

7.1. At the outset the Board should be advised that the Appellant proposes an amendment to the scheme, should be the Board not be minded to grant permission to the development as originally submitted. This amendment details a set back to the top (fourth) floor, to reduce the impacts on visual amenity. I will address the amendment where relevant in my assessment below.

7.2. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues to be considered in this appeal are as follows:

- Design, Visual Impact, and Heritage
- Land Use
- Amenity
- Other Matters

#### **7.3. Design/Scale and Heritage**

7.3.1. The Planning Authority consider that the subject site is in a prominent and sensitive location within a Conservation Area and that the proposed building would be a visually intrusive and insensitive form of development that is not of sufficient architectural quality. It is stated in the Planner's Report that whilst the principle of increased height, density, and mass is acceptable, the proposed height, scale and massing would have

a serious negative impact on the Merrion Row and Merrion Court streetscape and on the nearby Protected Structures. Concerns are raised regarding the building sitting proud on Merrion Row.

- 7.3.2. Observations made on the appeal raise concerns regarding the height and visual impact of the development, particularly in views from St Stephen's Green. In terms of layout, observations on the appeal state that the amount active frontage has been reduced and that this would have negative impacts on the street.
- 7.3.3. The Appellant points to the previous permission and the inherent similarities between the two schemes, noting that the permitted scheme has informed the current proposal, and that the building line on Merrion Row would be the same as both existing and as previously approved. The Appellant considers the development to be in compliance with national policy which seeks to deliver compact growth through increased building heights and notes that the CDP has a default height of six storeys in the city centre.
- 7.3.4. Surrounding buildings vary in height but generally range from three to five storeys, the exception being the Department of Finance building that sits adjacent to the appeal site and rises to the equivalent of six storeys. The CDP Building Height Strategy (Appendix 3) sets a default height for city centre development of six storeys. In my opinion the site is suitable for a building of increased scale and density, and this principle has been established by the previous permission as well as being supported by policy.

#### *Height and Visual Impact*

- 7.3.5. Under the previous permission, Condition 4 was applied in order to remove the fifth floor, effectively reducing the building to five storeys. This was required to remove the building from the backdrop of parapets and chimney stacks of the Protected Structures on St Stephen's Green East. It was considered that the development would adversely affect the integrity of character and the setting of these buildings and the Conservation Area, and as such the amending condition to reduce the height was considered necessary.
- 7.3.6. Whilst undoubtedly similar to the previously approved scheme, I would note that the proposal is taller than what was ultimately approved previously. Whilst of the same number of storeys, the increased height derives from the current proposal being commercial in nature as opposed to short term lets. With the resultant increased

commercial floor to ceiling heights, the proposed building is increasingly prominent in some important local views.

7.3.7. The Appellant has submitted a Landscape and Visual Impact Assessment (LVIA) which is accompanied by a suite of verified views. I have considered all of the views in my assessment. Whilst the majority of the views are acceptable, I would draw the Board's attention to the following views where I consider that the height and massing of the proposed development would have an injurious impact on amenity:

- VVM6: From St Stephen's Green North/Kildare Street looking southeast.
- VVM7: From St Stephen's Green North/Kildare Street junction (from road).
- VVM8: From St Stephen's Green North (from the road on the park side).
- VVM9: From St Stephen's Green North/Dawson Street looking southeast.

7.3.8. I accept that the views eastwards along St Stephen's Green towards Merrion Row are not formally protected views within the CDP. However, they are important and worthy of preservation due to the significance of St Stephen's Green within the Georgian Core, the city centre location and the various heritage designations including Conservation Areas and Protected Structures.

7.3.9. The LVIA classifies the sensitivity of each of these views as High and the magnitude of change as Negligible (VVM7), Low (VVM6, VVM8), and Medium (VVM9). In my opinion, the views demonstrate that the proposed development would be excessive in height and massing for its specific location. In VVM 6 and VVM7, the scale and prominence of the proposed building interferes with the parapet of the Protected Structure on the corner of St Stephen's Green (Bank of Ireland) and in my view this directly reduces the legibility and prominence of the Protected Structure.

7.3.10. In views VVM8 and VVM9, the proposed development rises stridently above the parapet and chimneys of the Protected Structure, demonstrating a more intense impact than VVM6/VVM7 and compromising the historic setting and the important views from St Stephen's Green North. I would therefore agree with the Planning Authority that the development as originally submitted would constitute a visually obtrusive and insensitive form of development that would injure the character and visual amenity of the historic city core.

7.3.11. However, the issues identified above could be satisfactorily addressed by way of an amending condition. Whilst I note the Appellant's proposed amendment that sets the fourth floor back from the building edge on Merrion Row, I do not consider that this would suitably address the issue, particularly regarding VVM8 and VVM9 where the majority of the set-back floor would still be prominent above the parapets and chimneys. In my opinion the entirety of the fourth floor should be removed and this can be secured by way of condition.

#### *Building Line*

7.3.12. I note the concerns of the Planning Authority and observations on the appeal regarding the building line onto Merrion Row. As noted by the Appellant, the proposed building follows the existing building line and retains the building line approved on the previous permission. I have considered whether a set back would be beneficial, given the increased number of people that would be accommodated in an office building compared to the previously approved short term lets. However, in my opinion, given the widened pavement on this section of Merrion Row, in addition to modern flexible working practices that allow people to arrive and leave at different time throughout the day, I am satisfied that the proposed/existing building line on Merrion Row is acceptable, that there is sufficient room on the pavement to accommodate occupiers, and that a condition requiring it to be set back would not be fully justified in this instance.

#### *Ground Floor/Street Frontages*

7.3.13. Concerns have been raised in the observations that there would be a lack of active frontage onto the street. A large section of the ground floor frontage onto Merrion Row is taken up by the office bicycle store access. I agree with the observers that this is not a suitable use of frontage onto Merrion Row, however, I am of the view that the ground floor could be reconfigured to provide the bicycle store to the rear of the ground floor and accessed from Merrion Court, this would be a more appropriate location and would also minimise the risk of cyclist/pedestrian conflict. In my opinion, this largely internal change would not be material and can be secured by condition.

#### *Facades/Architectural Quality*

7.3.14. I note the concerns of the Planning Authority with regards to architectural quality. In my opinion the proposed facades are acceptable and engaging, with deep reveals, an

appropriate solid to void ratio, and materials that suitably contextualise with the surrounding built form. Subject to a standard materials condition, I am satisfied that the facades would be of an acceptable quality for the location.

7.3.15. I am mindful of the mainly blank facades to the south and east. These are blank largely to prevent amenity issues and to preserve the development potential of adjacent sites. Given the location of the southern facade away from public areas and main thoroughfares and the party wall nature of the east facade, I am satisfied that they would be acceptable on balance. The removal of the fourth floor would further reduce their prominence. However, if considered necessary, the Board could apply a condition seeking additional brickwork detailing to provide additional visual interest and reduce the perception of mass.

7.3.16. Subject to a condition to secure amendments to the development to remove the fourth floor, I am satisfied that the proposed building would be acceptable in terms of scale, massing, detailed design, and heritage, and for that reason I recommend that the first reason for refusal be set aside.

#### **7.4. Land Use**

7.4.1. The Planning Authority have refused permission on the basis that there is an extant permission for 19 no. short term let apartments and it is considered that the proposed office use would result in potential residential uses being lost, with the result being that less long-term and secure accommodation will be available. On that basis, the Planning Authority consider the development to be contrary to Policies QHSN6, QHSN7, QHSN38 and Section 5.1 of the Dublin City Development Plan 2022-2028 which seek to promote a mixed-use land policy in the city centre.

7.4.2. The Appellant argues that the previous permission has not been implemented and as such no short term let accommodation exist on the site. It is stated in the appeal that the proposed uses are consistent with the zoning objective and that the development plan supports office use in the city centre. Furthermore, it is argued that the Planning Authority's position on short term lets is inconsistent with decisions on other sites where it was considered that short term lets would contribute to long term residential being removed from the market, with permission refused.

7.4.3. The site is zoned Z5: City Centre, the objective of which is "To consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen

and protect its civic design, character, and dignity.” The aim of the zoning objective is ‘to sustain life within the centre of the city through intensive mixed-use development’ and ‘to provide a dynamic mix of which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. The zoning objective states that, ideally, the mix of uses should occur both vertically through the floors of the building and horizontally along the street frontage. A general mix of uses including residential is desirable; however, retail should be the predominant use at ground floor level on principal shopping streets.

- 7.4.4. The lands to the immediate south, and west comprising houses on St Stephen’s Green and on Hume Street, as well as sections of the Merrion Court laneway, are subject to zoning objective Z8: Georgian Conservation Areas, the stated objective of which is “To protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective.”
- 7.4.5. The development proposes office space, housing, and retail/restaurant, all of which are permissible uses under the zoning objective. The zoning objective seeks a general mix of uses, including residential. In my opinion this has been achieved. I do not agree with the Planning Authority’s position that the existing permission for short term lets means that a new permission for offices would result in potential residential uses being lost. As set out by the Appellant, the Planning Authority commonly take the view that short term lets/visitor accommodation does not contribute to residential accommodation and that the provision of short term lets/visitor accommodation can impact on the supply of long term residential accommodation. It is unclear why the Planning Authority have changed their position on the matter in the assessment of this application.
- 7.4.6. The development would provide three long term, standard residential accommodation units through the conversion of 12C, 12D, and 5 Merrion Court. This is more than the previous permission (which was limited solely to short term lets) and is compliant with the zoning objective, as well as satisfying the aims of Policy QHSN6: Urban Consolidation.
- 7.4.7. I note the Planning Authority’s view that residential should be provided at upper floors, in line with Policy QHSN7: Upper Floors. However, in my opinion, it is clear that Policy QHSN7 relates to existing, retained, or refurbished buildings rather than the provision

of residential on the upper floors of new buildings. The existing Merrion Row fronting buildings would be demolished to make way for the new mixed use building and as such QHSN7 would not apply. In any event, there is no active existing residential use on the upper floors of the existing buildings and there would therefore be no loss of accommodation. Whilst I accept that there has previously been a residential unit on this site, any loss would be compensated by the provision of the three new residential units on Merrion Court.

- 7.4.8. I note that observations made on the appeal raise concerns with the proposed office use on the basis that there is a lot of vacant office space in the city and that tourists and tourist accommodation/short term lets is essential for business and frees up other housing stock. In my opinion, office workers also contribute to the local economy through spending in local businesses and this can have a positive impact on the city economy.
- 7.4.9. Having regard to the Z5 zoning objective, the planning history of the site, and the character and range of uses in the immediate and surrounding area, I am fully satisfied that the proposed development is acceptable in terms of land use and on that basis the second reason for refusal should be set aside.

## **7.5. Amenity**

- 7.5.1. The Planning Authority consider that the development would lead to the devaluation of property in the vicinity. Observations on the appeal are that the development would have daylight and sunlight impacts for businesses on the north side of Merrion Row (specifically No. 6 Merrion Row) and that the development would lead to increased disturbance during construction, with a request that should permission be granted, construction works be restricted during lunchtime so as not to impact on lunchtime trade.
- 7.5.2. The Appellant states that no issues of property devaluation were raised under the previous permission and that the proposal will benefit the immediate surroundings by enhancing the appearance of the streetscape with a high quality design and finish that is consistent with the previous planning approval and a range of uses that will contribute to the city centre economy and the surrounding area.
- 7.5.3. The proposed development shares many similarities with the previously permitted scheme. Where the scheme differs from the previously approved scheme, I do not



consider the differences to be so significant that they would lead to a devaluation of property in the area, particularly when combined with the recommended amending condition which would reduce the impact of the development on the visual amenity of the area.

7.5.4. In terms of daylight and sunlight, I have reviewed the Appellant's Daylight and Sunlight Assessment. This considers the impacts on the windows of adjacent properties (both commercial and residential) using the Vertical Sky Component (VSC) test, with the results confirming that all windows would remain compliant with the BRE targets. The proposal will enhance the appearance of the streetscape with a high quality design and finish that is consistent with the previous planning approval and a range of uses that will contribute to the city centre economy and the surrounding area. The proposal will benefit the immediate surroundings.

7.5.5. The DSA also considers sunlight to external spaces including the residential amenity spaces at 13 and 14 Hume Street and well as the outdoor seating area at 6 Merrion Row, as referred to in the observations. Again, the DSA confirms that all spaces would remain compliant with the BRE, with no reductions exceeding 20% (or 0.8 times the former value). Whilst I am of the view that the standards of the BRE should not be strictly applied to commercial premises, the report does indicate that no significant impacts would be experienced.

7.5.6. I note concerns raised in the observations regarding disturbance during construction and a request that construction works be restricted during lunchtime. All developments entail a degree of disturbance during the construction process, this is somewhat inevitable in order to allow developments to come forward. I am satisfied that the majority of effects can be reduced and suitably mitigated by way of conditions such as to secure a Construction Management Plan. I do not support the inclusion of a condition restricting construction works during lunchtime. In my view this would be an unreasonable condition to apply and would only serve to unnecessarily prolong the length of the build programme and any associated disturbances.

## **7.6. Other Matters**

7.6.1. I have considered the three proposed housing units at 12C, 12 D and 5 Merrion Court. In my opinion the layout of the dwellings would be acceptable, and I consider that they would provide a satisfactory standard of accommodation. I note that they would not be

furnished with external amenity space. In this instance I consider this to be acceptable given the refurbishment/change of use nature of the housing and the large amenity spaces available in the vicinity. I do however agree with the Planning Authority request that a contribution be sought in lieu of the provision of open space.

- 7.6.2. Various transport related matters were recommended as Further Information which was not sought due to the Planning Authority's decision to refuse permission. In my opinion, the items of Further Information are not determinative and can be suitably addressed by condition.

## **8.0 AA Screening**

- 8.1.1. The Appellant has submitted an Appropriate Assessment Screening Report. (dated 29<sup>th</sup> August 2023). The Screening Assessment identifies the relevant European Sites. The nearest European Sites are as follows:

- South Dublin Bay and River Tolka Estuary SPA (site code 004024), 2.7km.
- South Dublin Bay SAC (site code 00210), 2.7km.
- North Dublin Bay SAC (Site Code 000206), 5.4km.
- North Bull Island SPA (Site Code 004006), 5.4km.

- 8.1.2. The Screening Report concludes that there are no direct pathways between the appeal site and the European Sites. There are some indirect hydrological links via the surface and wastewater drainage to Dublin Bay however these waters are treated at the Ringsend Waste Water Treatment Plant.

- 8.1.3. Having regard to the ongoing upgrade works at Ringsend WWTP to increase capacity, the insignificant additional loading proposed by the development, the distance between the subject site and the European sites of Dublin Bay, and the dilution and dispersal levels of Dublin Bay, I am satisfied that, there is no likelihood that pollutants arising from the proposed development either during construction or operation could reach the designated sites in sufficient concentrations to have any likely significant effects on the designated sites in view of their qualifying interests and conservation objectives.

- 8.1.4. In combination effects are addressed in Page 29 of the Screening Report. It takes into consideration a number of plans and projects in the vicinity. It concludes that there will not be any in combination effects on the European Sites discussed.

#### *Mitigation Measures*

- 8.1.5. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise. The measures to be employed at construction stage are standard practices for urban sites and would be required for a development on any urban site in order to protect local receiving waters, irrespective of any potential hydrological connection to Natura 2000 sites.

#### *Screening Determination*

- 8.1.6. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually or in combination with other plans or projects, would not be likely to give rise to significant effects on European Site Nos. 000210, 004024, 000206, 004006 or any other European site, in view of the sites' Conservation Objectives and Stage II Appropriate Assessment (and submission of a NIS) is not, therefore, required.

## **9.0 Recommendation**

- 9.1.1. I recommend that the Board grant permission to the proposed development, subject to the conditions set out below.

## **10.0 Reasons and Considerations**

Having regard to the Z5 Zoning Objective of the site which seeks to consolidate and facilitate the development of the central area, and to identify, reinforce and strengthen and protect its civic design character and dignity, as well as the site location on a currently underutilised, serviced site in the city centre, it is considered that subject to compliance with the conditions set below, the proposed development would not seriously injure the visual, commercial, residential or heritage amenities of the area and would not harm the integrity, character, or setting of the Protected Structures and

Conservation Area. The development would integrate into the surrounding streetscape, would provide appropriate uses within the city centre and would be acceptable in terms of vehicular and pedestrian safety, convenience, and amenity, and would 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, as amended by the further plans and particulars received by the planning authority on the 6<sup>th</sup> day of September 2023, 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 proposed development shall be amended as follows:

(a) The fourth floor shall be omitted in its entirety.

(b) The ground floor shall be reconfigured to relocate the bicycle store and associated access to the rear of the building. The resulting additional frontage on Merrion Row shall be given over to the proposed restaurant/retail unit.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of visual and commercial amenity.

3. Details including samples of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to, (or displayed on the site for inspection), and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of the visual amenities of the area.

4. Water supply and drainage arrangements, including the attenuation and 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. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

6. The developer shall engage a suitably qualified (license eligible) archaeologist to carry out an Archaeological Impact Assessment (AIA) (following consultation with the Local Authority Archaeologist) in advance of any site preparation works and groundworks, including site investigation works/topsoil stripping/site clearance/dredging and/or demolition/construction works. The AIA shall involve an examination of all development layout/design drawings, completion of documentary/cartographic/ photographic research and fieldwork, the latter to include, where applicable - geophysical survey, metal detection survey, and archaeological testing (consent/licensed as required under the National Monuments Acts), building survey/ analysis, photographic record externally and internally of existing buildings, and visual impact assessment. The archaeologist shall prepare a comprehensive report, including an archaeological impact statement and mitigation strategy, to be submitted for the written agreement of the planning authority in advance of any site preparation

works, groundworks and/or construction works. Where archaeological remains are shown to be present, preservation in-situ, establishment of 'buffer zones', preservation by record (archaeological excavation) or archaeological monitoring may be required and mitigatory measures to ensure the preservation and/or recording of archaeological remains shall be included in the AIA. Any further archaeological mitigation requirements specified by the Local Authority Archaeologist, following consultation with the National Monuments Service, shall be complied with by the developer. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation [either in situ or by record] of places, sites, features or other objects of archaeological interest.

7. 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:
  - (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) Location of areas for construction site offices and staff facilities;
  - (c) Details of site security fencing and hoardings;
  - (d) Details of on-site car parking facilities for site workers during the course of construction;
  - (e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
  - (f) Measures to obviate queuing of construction traffic on the adjoining road network;

- (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (i) Provision of parking for existing properties at [specify locations] during the construction period;
- (j) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (n) A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority;

**Reason:** In the interest of amenities, public health and safety and environmental protection.

8. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of reducing waste and encouraging recycling.

9. Site development and building works shall be carried out between the hours of 07:00 to 18:00 Mondays to Fridays inclusive, between 08:00 to 14:00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

**Reason:** To safeguard the amenity of property in the vicinity.

10. 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.

**Reason:** To protect the residential amenities of property in the vicinity and the visual amenities of the area.

11. Prior to commencement of development, the developer shall lodge with the planning authority, a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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 Cross City project 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.

14. The developer shall pay a financial contribution to the planning authority as a special contribution under Section 48(2)(c) of the Planning and Development Act 2000, as amended, in lieu of the provision of open space. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as may be agreed prior to the commencement of the development, and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details

of the terms of payment of this financial contribution shall be agreed in writing between the planning authority and the developer.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority in respect of public services, which are not covered in the Development Contribution Scheme or the Supplementary Development Contribution Scheme and which will benefit the proposed development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Terence McLellan  
Senior Planning Inspector

30<sup>th</sup> August 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-318559-23		
<b>Proposed Development Summary</b>	Demolition of the existing one and two storey buildings at 13 and 13A Merrion Row & 12A and 12B Merrion Court. The construction of a part 4 and 5 storey mixed-used development, refurbishment, restoration and part change of use of existing buildings at 12C, 12D & 5 Merrion Court and all plant and all associated site development works.		
<b>Development Address</b>	Site (c. 0.067 ha) at 13 & 13A Merrion Row and 12A, 12B, 12C, 12D and 5 Merrion Court, Dublin 2.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required

<b>Yes</b>	X	<p>Class 10(b)(i) – Construction of more than 500 dwelling units.</p> <p>Class 10(b)(iv) - Urban development, which would involve an area greater than 2 ha in the case of a business district*, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. *a ‘business district’ means a district within a city or town in which the predominant land use is retail or commercial use.</p>		Proceed to Q.4
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4. Has Schedule 7A information been submitted?		
<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>	X	<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix 2 – EIA Screening

A. CASE DETAILS		
<b>An Bord Pleanála Case Reference</b>	ABP-318559-23	
<b>Development Summary</b>	Demolition of the existing one and two storey buildings at 13 and 13A Merrion Row & 12A and 12B Merrion Court. The construction of a part 4 and 5 storey mixed-used development, refurbishment, restoration and part change of use of existing buildings at 12C, 12D & 5 Merrion Court and all plant and all associated site development works.	
	Yes / No / N/A	
<b>1. Was a Screening Determination carried out by the PA?</b>	Yes	On the basis of the information submitted on the file, which the Planning Authority considered adequate in order to issue a screening determination, the Planning Authority consider it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.
<b>2. Is an IED/ IPC or Waste Licence (or review of licence) required from the EPA? If YES has the EPA commented on the need for an EIAR?</b>	No	
<b>3. Has Schedule 7A information been submitted?</b>	Yes	The applicant has submitted Schedule 7A information in the Environmental Impact Assessment Screening Report (July 2023).
<b>4. Has an AA screening report or NIS been submitted?</b>	Yes	An Appropriate Assessment Screening Report has been submitted with the application.

5. Have any other relevant assessments of the effects on the environment which have a significant bearing on the project been carried out pursuant to other relevant Directives – for example SEA	Yes	SEA and AA were undertaken in respect of Dublin City Development Plan 2022-2028. Additionally, a Bat Fauna Survey has been submitted.	
<b>B. EXAMINATION</b>		<p><b>Where relevant, briefly describe the characteristics of impacts ( ie the nature and extent) and any Mitigation Measures proposed to avoid or prevent a significant effect</b></p> <p>(having regard to the probability, magnitude (including population size affected), complexity, duration, frequency, intensity, and reversibility of impact)</p>	<p><b>Is this likely to result in significant effects on the environment?</b></p> <p><b>Yes/ No/ Uncertain</b></p>
<b>1. Characteristics of proposed development</b> (including demolition, construction, operation, or decommissioning)			
<b>1.1</b> Is the project significantly different in character or scale to the existing surrounding or environment?		There is a clear consistency in the nature and scale of development in the surrounding area, primarily comprising three to six storey buildings in a range of commercial, civic and residential use typical of city centre locations. The proposal would provide an office led mixed use development in a built up urban location and whilst there would be impacts in terms of visual impacts when viewed from St Stephen's Green/Merrion Row, it is not regarded as being of a scale or character that would warrant the submission of an Environmental Impact Assessment.	<b>No</b>

<b>1.2</b> Will construction, operation, decommissioning or demolition works causing physical changes to the locality (topography, land use, waterbodies)?	Demolition works would be required, however, these would be demolishing fairly low rise buildings and would not result in significant physical changes to the locality.	<b>No</b>
<b>1.3</b> Will construction or operation of the project use natural resources such as land, soil, water, materials/minerals or energy, especially resources which are non-renewable or in short supply?	Construction materials will be typical for an urban development of this nature and scale. Impacts on natural resources are not anticipated.	<b>No</b>
<b>1.4</b> Will the project involve the use, storage, transport, handling or production of substance which would be harmful to human health or the environment?	Construction activities will require the use of potentially harmful materials, such as fuels and other such substances which are typical for construction sites. Any impacts would be local and temporary in nature and the implementation of the construction practice measures outlined in the Construction Management Plan and Operational Waste Management Plan would satisfactorily mitigate potential impacts. No significant operational impacts in this regard are anticipated.	<b>No</b>
<b>1.5</b> Will the project produce solid waste, release pollutants or any hazardous / toxic / noxious substances?	Construction activities will require the use of potentially harmful materials, such as fuels and other similar substances and give rise to waste for disposal. The use of these materials would be typical for construction sites. Noise and dust emissions during construction are likely. Such construction impacts would be local and temporary in nature, and the implementation of measures outlined in the Construction Management Plan and Operational Waste Management Plan would satisfactorily mitigate the potential impacts. Operational waste would be managed through an Operational Waste Management	<b>No</b>

	Plan. Other operational impacts in this regard are not anticipated to be significant.	
<b>1.6</b> Will the project lead to risks of contamination of land or water from releases of pollutants onto the ground or into surface waters, groundwater, coastal waters or the sea?	No significant risk identified. Operation of the best practice as well as measures listed in the Construction Management Plan would satisfactorily mitigate emissions from spillages during construction and operation. The operational development will connect to mains services. Surface water drainage will be separate to foul services within the site as required by Dublin City Council.	<b>No</b>
<b>1.7</b> Will the project cause noise and vibration or release of light, heat, energy or electromagnetic radiation?	There is potential for construction activity to give rise to noise and vibration emissions. Such emissions will be localised and short term in nature, and their impacts could be suitably mitigated by the operation of measures listed in a Construction Management Plan.	<b>No</b>
<b>1.8</b> Will there be any risks to human health, for example due to water contamination or air pollution?	Construction activity is likely to give rise to dust emissions. Such construction impacts would be temporary and localised in nature and the application of measures within a Construction Management Plan would satisfactorily address potential risks on human health, including dust monitoring, suppression, and abatement. No significant operational impacts are anticipated for the piped water supplies in the area.	<b>No</b>
<b>1.9</b> Will there be any risk of major accidents that could affect human health or the environment?	No significant risk is predicted having regard to the nature and scale of the development. Any risk arising from demolition and construction will be localised and temporary in nature. The site is not at risk of flooding.	<b>No</b>



<b>1.10</b> Will the project affect the social environment (population, employment)	Development of this site would result in a modest increase in the population in this area both in terms of residents and workers.	<b>No</b>
<b>1.11</b> Is the project part of a wider large scale change that could result in cumulative effects on the environment?	Cumulative impacts have been considered, including permitted schemes in the area. No significant cumulative impacts are anticipated.	<b>No</b>
<b>2. Location of proposed development</b>		
<b>2.1</b> Is the proposed development located on, in, adjoining or have the potential to impact on any of the following: a) European site (SAC/ SPA/ pSAC/ pSPA) b) NHA/ pNHA c) Designated Nature Reserve d) Designated refuge for flora or fauna e) Place, site or feature of ecological interest, the preservation/conservation/ protection of which is an objective of a development plan/ LAP/ draft plan or variation of a plan	The nearest European sites are the South Dublin Bay SAC (000210) and South Dublin Bay and River Tolka Estuary SPA (004024) both 2.7km to the east, the North Bull Island SPA (004006) approximately 5.4km to the north east, and the North Dublin Bay SAC (000206), approximately 5.4km to the north East. The proposed development would not result in significant impacts to any protected sites, including those downstream.	<b>No</b>
<b>2.2</b> Could any protected, important or sensitive species of flora or fauna which use areas on or around the site, for example: for breeding, nesting, foraging, resting, over-wintering, or migration, be significantly affected by the project?	The proposed development would not result in significant impacts to protected, important or sensitive species.	<b>No</b>
<b>2.3</b> Are there any other features of landscape, historic, archaeological, or cultural importance that could be affected?	The site is within a Conservation Area, adjacent to a Georgian Conservation Area and there are various Protected Structures nearby. Subject to the amendments secured by the conditions no significant effects are anticipated.	<b>No</b>

<b>2.4</b> Are there any areas on/around the location which contain important, high quality or scarce resources which could be affected by the project, for example: forestry, agriculture, water/coastal, fisheries, minerals?	No such features are in this suburban urban location, with the site separated from agricultural areas by intervening urban lands and road infrastructure.	<b>No</b>
<b>2.5</b> Are there any water resources including surface waters, for example: rivers, lakes/ponds, coastal or groundwaters which could be affected by the project, particularly in terms of their volume and flood risk?	The development would use the existing municipal services and would not increase risk of flooding to downstream areas.	<b>No</b>
<b>2.6</b> Is the location susceptible to subsidence, landslides or erosion?	<b>No</b>	<b>No</b>
<b>2.7</b> Are there any key transport routes(eg National primary Roads) on or around the location which are susceptible to congestion or which cause environmental problems, which could be affected by the project?	The site is served by a local road network. There are sustainable transport options available for future employees. No significant contribution to traffic congestion is anticipated to arise from the proposed development.	<b>No</b>
<b>2.8</b> Are there existing sensitive land uses or community facilities (such as hospitals, schools etc) which could be significantly affected by the project?	No negative impact anticipated as a result of the proposal.	<b>No</b>
<b>3. Any other factors that should be considered which could lead to environmental impacts</b>		
<b>3.1 Cumulative Effects:</b> Could this project together with existing and/or approved development result in cumulative effects during the construction/ operation phase?	No existing or permitted developments have been identified in the immediate vicinity that would give rise to significant cumulative environmental effects with the subject project.	<b>No</b>
<b>3.2 Transboundary Effects:</b> Is the project likely to lead to transboundary effects?	<b>No</b>	<b>No</b>
<b>3.3</b> Are there any other relevant considerations?	<b>No</b>	<b>No</b>

C. CONCLUSION			
No real likelihood of significant effects on the environment.	Agreed	Yes	EIAR Not Required
Real likelihood of significant effects on the environment.			
D. MAIN REASONS AND CONSIDERATIONS			
<p>Having regard to</p> <ul style="list-style-type: none"> <li>• The nature and scale of the proposed development, which is below the threshold in respect of classes 10(b)(i)(iv) and 14 of Part 2 to Schedule 5 of the Planning and Development Regulations 2001-2022;</li> <li>• The location of the proposed development on zoned lands where the proposed uses are either permitted in principle or open for consideration the results of the Strategic Environmental Assessment of the Dublin City Development Plan 2022-2028;</li> <li>• The nature of the existing site and the developed nature of the surrounding area;</li> <li>• The availability of mains water and wastewater services to serve the proposed development;</li> <li>• The location of the development outside of any sensitive location specified in Article 109(4)(a)(v)(I-VII) of the Planning and Development Regulations 2001, as revised;</li> <li>• The guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development', issued by the Department of the Environment, Heritage and Local Government (2003);</li> <li>• The criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as revised, and;</li> <li>• The features and measures proposed by the applicant that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including the identified mitigation measures in the supporting documentation.</li> </ul>			

Inspector \_\_\_\_\_

Date \_\_\_\_\_