



An
Bord
Pleanála

Inspector's Report ABP-319034-24

Development

PROTECTED STRUCTURE:

Redevelopment of a protected structure along with demolition of the existing workshop for the construction of 7 storey apartment building comprising of 15 residential units and all associated site works.

Location

134 James's Street, Dublin 8, D08 YV6H

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

3912/23

Applicant(s)

Sumberry Limited

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

First Party

Appellant(s)

Sumberry Limited

Observer(s)

Transport Infrastructure Ireland

Date of Site Inspection

9th October 2024

Inspector

Joe Bonner

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1.0 Site Location and Description

- 1.1. The subject site is located at the corner of James's Street/Bow Lane and Steeven's Lane c350m south of the main entrance to Heuston Station and c35m south of the nearest part of the Guinness brewery complex. St. Patrick's University Hospital lies immediately opposite, on the western side of Steeven's Lane, along which the Red LUAS line runs. The nearest LUAS stops to the site are at St. James's Hospital, approximately 280m southwest and at Heuston Station c350m to the north.
- 1.2. The site consists of two buildings, with an existing four storey end of terrace building facing south onto James's Street/Bow Lane. Its current use is as a recording / rehearsal space known as the jam factory. It is a protected structure (No. 4056) and is described in the NIAH as a formerly terraced two bay four-storey house built c1750, now an end-of-terrace. It is also a Recorded Monument.
- 1.3. The terrace that the protected structure forms part of is c82m in length. The front and side façades are rendered. In contrast the modern Pearse Lyons Distillery building, which is located at the eastern end of the terrace, has a glass and stone façade, while all of the other buildings on the terrace are finished in red brick.
- 1.4. There are no windows on the four storey side elevation that faces onto Steeven's Lane. There are a number of windows in the flat roofed two-storey annex at the side/rear, which are protected by metal grills. The road at the corner of the site is curved, so the flat roofed two storey annex steps out from the side elevation in two steps towards Steeven's Lane, with the second stepped element aligning with the street edge, which is marked by a narrow footpath and high walls, predominantly defining the westernmost boundary of the Guinness brewery complex.
- 1.5. The ground level falls downhill and northwards from the front building towards Heuston Station and the River Liffey. A building of similar height to the rear annex is located to the north along Steeven's Lane but is separated from the site by metal gate that provides a right of way access to the rear of the site and buildings to the immediate north and east of the site.
- 1.6. The site has a stated area of 268sqm. The existing buildings have a floor area of 484.92sqm with 269sqm to be retained and 258sqm of floor is to be demolished. The total floor area of the proposed development would be 1219sqm.

2.0 Proposed Development

2.1. The site of the proposed development at 134 James's Street, Dublin 8, includes a protected structure (RPS 4056), a formerly terraced two bay four-storey house built c1750. The application will include works to the protected structure.

2.2. Initial application

2.2.1. In summary, planning permission was sought for the redevelopment, conservation, refurbishment and change of use of No. 134 James's Street and construction of an annex building/extension to rear to provide 15 no. residential units (1 no. studio, 9 no. one-bed units and 5 no. two- bed units).

Protected Structure

2.2.2. The proposed works to the protected structure would include:

- Internal and external modifications including removal of non-original doors, partitions and features across all floors, to change the use from recording/rehearsal use to 1 no. studio and 3 no. one-bed units.
- Lower the lower ground floor level to accommodate plant and apartment storage.

Front elevation

- Lobby and entrance door to be removed and replaced with new hardwood door.
- Non original ground floor elevation window to be removed and replaced.
- Replace sash windows with new thin double glazed sliding sash timber windows.

All building

- Remove existing render and replacement with lime render to all elevations.
- New natural slate roof to replace Asbestos tiles, existing ridge tiles to be reused.

Rear Elevation

- New painted hardwood fixed window to replace existing non-original/modern door at second floor level.

New works

2.2.3. Planning permission is also sought at the rear of the protected structure for:

- Demolition of the existing two-storey workshop/music rehearsal space building to the rear and construction of a seven-storey over lower ground floor annex building/extension connected to protected structure via link at upper ground floor.
- The proposed annex/extension provides for 11 no. residential units (6 no. one-bed units and 5 no. two-bed units) each with a private balcony or terrace.
- Bin store at lower ground floor.
- 12 no. bicycle spaces at upper ground floor level;
- Site and infrastructural works inclusive of SuDS, landscaping, boundary treatments, and all associated site development works necessary to facilitate the development.

2.2.4. In addition to the standard contents including architectural and engineering drawings, the application was accompanied by the following technical reports (some with appendices:

- Planning Report – Sets the site in its local context, describes how the development addresses and overcomes concerns raised in previous applications regarding overlooking, height and residential amenity, in particular the most recent refusal on P.A. Reg. Ref. 5005/22. The removal of 2 floors seeks to address height concerns, the redesign and reduction of 2 apartments addresses overdevelopment and impacts on the protected structure and it is also compliant with the requirements of the apartment guidelines.
- Conservation Report, Historic Appraisal and Photographic Record – Traces the site's development through historic maps. Modifications to the building have generally been detrimental, with the stairs and some windows the only elements deserving retention and preservation. The proposal would have as much reduced impact on the protected structure compared to the previous proposal in P.A. Reg. Ref. 5005/22. The removal of the structures at the rear will enhance the character of the building and the new building will stand as a clearly separate building. While taller than the original building, it recalls similar tall structures in the area, like the Guinness factory, chimneys and tall industrial buildings associated with distilleries and brew-making, which puncture the standard 3-4 storey buildings. The proposed taller building will act as a landmark on the entry to the city.

- Comparison Plans, Section and Elevations Booklet – It compares the proposed development to the previously refused application P.A. Reg. Ref. 5005/22, which would have had a height of 11.35m above the ridge of the existing protected structure, whereas the proposed development would be 6.315m above the existing ridge, and would be 5.035m below that of 5005/22.
- Photomontage Images – Shows five existing views and views of the proposed building, with the outline of the previously refused 5005/22 also shown for comparative purposes.
- Engineering Report No 1 - Drainage Proposal and Flood Risk Analysis – The foul and water connections on James Street will avoid any potential interference with the Luas tracks. The site is entirely built upon and has no existing attenuation, so, a 4m³ attenuation tank is proposed at lower ground level, to significantly improve the current situation. A spur will be provided at the surface water manhole to connect to a dedicated surface water system, should one be built. The site will not be subject to flooding. Irish Water confirmed feasibility of water and wastewater connections, without need for upgrades.
- Engineering Report No 2 - Structural Impact Assessment – Proximity to the LUAS will affect access and craneage. It is anticipated augur piles will be used for the new foundations. Existing floors will be strengthened and the basement of the existing building will be underpinned to increase the floor to ceiling height and should prevent any further settlement, to the benefit of the Luas.
- Engineering Report No 3 – Preliminary Construction and Environmental Management Plan – Addresses construction duration, compound locations, working hours, noise controls as well as details of the likely waste type to be produced and how they would be handled on and off site.
- Daylight Analysis and Overshadowing – It includes a 3D model and an analysis of Average Daylight Factor (ADF), Vertical Sky Component (VSC) in respect of the neighbouring buildings to the east, a daylight assessment of four times on the 21st of March, June, September and December, and a study of sunlight in the amenity space of the lower ground floor apartment.

2.3. Further Information

In response to the request for further information the applicant submitted:

- Planning Report (see 2.3.1 – 2.3.3 below).
- Architects response (see 2.3.4 below) and revised architectural drawings.
- Photomontages.
- Engineering Report 1 – Drainage Proposal and Flood Risk Analysis.
- Engineering Report 3 – Preliminary Construction and Environmental Management Plan.
- Acoustic Design Statement.
- Archaeological Impact Assessment.
- Daylight and Overshadowing Analysis.

2.3.1. The applicant's planning report, submitted in response to the request for further information addressed each of the eleven individual items and in response to item 1, which requested that the applicant reduce the height of the proposed development, from a proposed height of 24.7m, the applicant offered two alternative Options A and B. Option A was set out in the form of a full set of revised plans, elevations and sections, while Option B was illustrated in an A3 booklet prepared by the applicants architects.

2.3.2. Option A would reduce the main parapet height by 1.2m from that originally proposed, which would be achieved by lowering the height of 6 floors by 0.2m. The applicant was of the opinion that this fully addressed item 1. Option A would result in no loss of apartment units. Option A would provide a stepped flat roof to the building that extend mainly 1.9m and partially 2.9m above the ridge height of the building permitted under P.A. Reg. Ref. 2410/20 (ABP-309208).

2.3.3. Option B would reduce the parapet height by to 21.7m, 3m below the height of the original proposal, by reducing the number of floors from 7 to 6. This Option would result in the loss of 2 apartments. The main roof height of the building would be reflective of the building height permitted under P.A. Reg. Ref. 2410/20 (ABP-309208), while a small part of the roof would 1.1m above the previously permitted height.

2.3.4. The applicant's planning report indicated that they considered that Option A was most suitable, due to the accessible nature of the site, design interventions and considerations which have gone into the proposal.

- 2.3.5. The applicants architect's response to item 1 of the RFI, which included elevation of the original proposal and options A and B, for comparison purposes, stated that both options are appropriate, but that Option A is superior as it would not result in any reduction in the number of proposed units. All three elevations also showed the height of the previously permitted hotel development granted under P.A. Reg. Ref. 2410/20, which was subject to an appeal in respect of one condition (**ABP-309208**) where the board directed the planning authority to remove a condition requiring the removal of a floor from the building. The separation distance between the permitted and proposed developments was also shown.
- 2.3.6. Despite showing Options A and B in the architects response in the form of an A3 booklet, the revised scaled drawings submitted to the planning authority were of Option A only, which proposed a 0.2m reduced from each of 6 floors to reduce the height by 1.2m.

2.4. Clarification of Further Information

In response to the request for further information the applicant submitted:

- A Planning report.
- Architectural drawings.
- Archaeological Impact Assessment.

- 2.4.1. Item 1(b) of the CFI required that the previously permitted separation distance (from P.A. Ref. Ref. 2410/20) between the existing and proposed buildings be retained, which resulted in a reduction in the number of units from 15 to 14 (by increasing the separation distance at third floor only and change from 2 x 1 bed unit to 1 no 2 bed unit).
- 2.4.2. In response to Item 1(c), which stated that the planning authority supported the removal of one floor as per Option B, the applicant stated that they were of the opinion that Option A submitted as further information was a more appropriate proposal. The applicant's justification for supporting Option A is 'due to the site's central location, proximity to services, amenities and public transport. Option A reflects the emerging pattern of development in the city centre, where carefully considered infill development can provide for high-quality residential proposals in keeping with conservation principles where it is sought to protect the architecture and heritage of the city whilst also providing for compact development'. They also

cite as support, that the planning officer stated, 'a building with a more slender profile could be more acceptable at the site at the height proposed in Option A'.

- 2.4.3. The Architects considered that Option A was more elegant while Option B was more squat and lacks refinement and proportionality.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority issued a decision to grant permission on the 15th of January 2024 subject to the attachment of 21 conditions, including condition No. 4, which stated: -

4 The development shall be revised as follows:

a) The development shall be 6 storeys over lower ground floor as per the height proposed in 'Option B' submitted with the Further Information response on 5th October 2023, with building height above ground being as per the 'Option B' elevations and sections on pages 2 – 6 of the 'Further Information Response' document prepared by Lawrence and Long Architects.

b) The separation distance between the protected structure, No. 134 James's Street, and the new annex structure, shall be no less than 2.25m above ground floor level. The cantilevering element on the southern side of the new annex structure on upper floors is omitted from the scheme.

c) The third, fourth and fifth floor of the annex building shall each accommodate 1 no. 2-bedroom apartment. The permission is for 11 no. apartment units as follows: 1 no. studio unit, 3 no. 1-bed units, and 7 no. 2-bed units.

d) No part of the development shall encroach upon the public realm. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In the interests of orderly development and visual amenity.

Parts (a) (b) and (c) of condition no 4 are the only subject matter of this appeal.

3.2. Planning Authority Reports

3.2.1. Planning Officer's Report on initial application

- The planning officer recommended eleven separate items of further information with the first being a reduction in height of the building in order to respect the historic building on the site and the historic streetscape and a reconfiguration of the layout. The exact nature of the request differed somewhat from the requests of the Conservation Officer and the Archaeology Section with regard to height (See 2.3.2 below).
- Other issues included:
 - Proposed windows in a recessed section of the northern elevation could affect the development of the lands to the immediate north.
 - Clarify, augment and revisit the sunlight/daylight assessment including hypothetical provision of a mirrored building to the immediate north.
 - Confirm the ground floor studio is legally habitable.
 - A section drawing of the mezzanine of the ground floor studio apartment.
 - An assessment of inward noise.
- The request also addressed the further information matters requested by the Conservation Officer, Archaeological Section, Drainage Division, EHO and Transportation Department (see section 3.2.2 below).

3.2.2. Other Technical Reports on initial application

- Conservation Officer – 28th July 2023 – Policies BHA2 (Development of Protected Structures) and BHA9 (Conservation Areas) apply. They have serious concerns regarding height, scale, massing, design and position of the new building proximate to the existing building, which in combination would have an unacceptable injurious and adverse impact on the special architectural character, setting and amenity of the protected structure and adjacent historic streetscapes and landmark buildings including St Patricks Hospital and St James Church (now Pearse Lyons Distillery). The eaves of

the proposed rear extension should not be higher than the protected structure, but they acknowledge that the Board previously overturned condition No. 3 of P.A. Reg. Ref. 2410/20 that sought to reduce a floor from the building.

- Recommended further information regarding:
 - Revised drawings and details regarding the interior of the protected structure at the front of the site, privacy screening, balustrades, doors, windows and access gates.
 - Revised drawings decreasing the height of the rear extension by two floors, preferably below the ridge of the protected structure and ensure adequate separation between the existing and proposed buildings.
- Archaeology Section – 20th of July 2023 – The site is within the Zone of Archaeological Constraint for the Recorded Monument (RMP) DU018-020 (Historic City). Policies BHA26 and BHA16 in Section 11.5.5 and of the development plan apply to the protected structure (RPS No. 4056). A condition requiring licenced archaeological monitoring was attached to a grant of permission under P.A. Reg. Ref. 2410/20. Despite removing 2 floors from the previously refused proposal under P.A. Reg Ref. 5005/22, the scale of the proposed development is out of context with the context of the historic city and would have a negative visual impact on the historic streetscape.
- Recommended further information regarding:
 - Height to be reduced to better reflect and reinforce the scale and grain of the historic James's Street streetscape with a recorded monument.
 - Consult with the City Archaeologist and prepare an Archaeological Impact Assessment addressing visual and archaeological impacts on three monuments being the site, the historic city and St James Church.
- Drainage Division – June 2023 – Recommended further information:
 - Policy SI23 - New developments with roof over 100sqm require green blue roof to control release downstream of water as per Appendix 11.
 - Consider reuse of surface rainwater for non-potable uses.
 - Water Attenuation calculations to include 20% climate change factor.

- EHO – 11th of July 2023 – Recommended further information:
 - A construction management plan should be submitted for DCC approval.
- Transportation Planning – 17th July 2023 – Recommended further information:
 - Bicycle parking numbers, location and type.
 - Restricted footpath width and location of service access off Steeven's Lane.
 - Submit a servicing Access Strategy due to constrained site.
 - Details of foundations adjacent to Steeven's Lane and no encroachment permitted.
 - Preliminary Construction Management Plan.

3.2.3. **Planning Report on response to further information**

- The removal of one floor in Option B is most appropriate. The reduction of 0.2m per floor would have a negligible impact on the perception and scale of the development, and likely impact on the building's interior habitable spaces.
- Recommended clarification of further information regarding:
 - Revised plans addressing:
 - a) Northern bedroom windows unacceptable regarding development potential of adjusted.
 - B) The previously permitted separation should be maintained.
 - C) The removal of one floor as per Option B is supported.
 - D) Loss of sunlight at habitable rooms in Steeven's gate should be avoided, minimised or mitigated.
 - Revised Daylight and Overshadowing Assessment to reflect above changes.
 - Clarify nature of right of way on land to the immediate north.
 - Address inconsistent Architectural and Engineering roof drawings.
 - Address concerns of City Archaeologist.

3.2.4. **Other Technical Reports on response to further information**

- Conservation Officer - 23rd of October 2023 - Option A would still constitute an excessive height. Considering the previous permitted development under P.A. Reg. Ref. 2410/20, a combination of A and B is preferred by removing one floor and reducing each floor by 0.2m in height. No objection subject to detailed conditions, including height reduction as described above.
- Archaeology Section - 18th of October 2023 - References the two options provided to reduce height of the rear extension. Option A remains out of scale with the Historic City Recorded Monument. Option B is the preferred Option as the roofline would be subservient to the steeple soffit and the ridgeline of 134. The Archaeological Impact Assessment was deemed inadequate. A clarification of further information was recommended seeking:
 - A revised Architectural Impact Assessment.
 - A Historic Building Survey should be completed.
- Drainage Division - 11th of October 2023 - CFI recommended regarding inconsistencies between roof finishes on Architectural and Engineering drawings.
- Transportation Planning - 26th of October 2023 - No objection subject to conditions.

3.2.5. Planning Report on response to clarification of further information

- It acknowledges the comments of the Conservation Officer, but notes the previous conclusion of the Planning authority to opt for Option B and no new information was submitted in the response to the CFI or Conservation Officer's report, to affect that conclusion.
- A table sets out the number of units that could be achieved with the three different option provided by the applicant (Original, Option A and Option B), as well as the CFI Option A and Option A with a larger separation distance. It also included DCC's preferred as requested in the CFI which is reflective of the request sought by the conservation officer, with exception of a different height. The potential number of dwelling units range from 11 to 15 for the different configurations, while the density is in excess of the development plan recommendation of 300 units per ha in all 7 scenarios considered. The

preferred option of DCC and the conservation office with 11 units would provide the lowest density at 410 units per ha.

- Given the Conservation Officer's comments and the previous permitted development, Option B with a minimum separation of 2.25m between the existing and proposed buildings is recommended.
- The applicant did not submit a revised daylight and Overshadowing Assessment but is acceptable in the context of Option B and the previously permitted development on site.
- The site maintains a right of way along the northern side of the boundary.
- A grant of permission was recommended, subject to conditions, including condition 4 that is subject of this appeal and the decision of the planning authority and conditions are consistent with the recommendation.
- Condition no 9 is repeated as condition no 10(c).

3.2.6. Other Technical Reports on response to clarification of further information

- Conservation Officer - 9th of January 2024 - No objection subject to conditions, again including a 0.2m reduction in height per floor as well as removal of one floor and an increase in the buffer between the existing and proposed building to a minimum of 2250mm.
- Drainage Division - 15th of December 2023 - No objection subject to conditions.

3.3. Prescribed Bodies

3.3.1. TII – 13th July 2023 – No objection subject to conditions.

3.3.2. Submissions were invited but not received from 1) The Heritage Council; 2) Department of Housing, Local Government and Heritage; 3) An Taisce; 4) Irish Water; 5) An Comhairle Ealaíon and 6) Failte Ireland.

3.4. Third Party Observations

- 3.4.1. Two third party observations were received in respect of the application. One was from Diageo and the other from the owner of an apartment c30m to the east of the site. The observations can be summarised as follows:

Neighbour at Steeven's Gate

- The rear extension will be 7m higher than the protected structure. Increased height, proximity and massing will have a significant negative impact on residential amenity, will be unduly overbearing and visually intrusive. It would be unacceptable to property values.
- Daylight analysis and overshadowing document confirms that the development will significantly decrease levels of daylight and sunlight at 24% of windows.

Diageo Ireland

- The brewery operates on a 24 hour basis and the operator is concerned about the potential noise sensitive use of the site and the future development options for the immediately adjoining lands to the north, which it recently acquired to contribute to its decarbonisation goals.
- The hotel permitted under P.A. Reg. Ref. 2410/20 (ABP-309208) does not have any windows facing north towards the Diageo site, unlike the current proposal.
- Balconies in apartment No's 2, 6 and 15 have northern exposure with no acoustic screening provided.
- The bedrooms/bathrooms and kitchen/ living areas of apartment No's 2, 4, 6, 8, 10, 13 and 15 contain windows on the northern façade recessed shaft in the northern façade and do not provide any significant amenity benefit. No noise study submitted to assess impact on those rooms.
- The building footprint extends to the northern boundary and the site is in a transition zone. The compatibility of the proposed use should take Diageo into consideration, by protecting residential amenity and not prejudicing the development of the site immediately to the north.
- Policies SI37 and QHSN37 and Section 15.13.4 backland housing are relevant.

4.0 Planning History

Application Site

- 4.1.1. **P.A Reg. Ref. 2474/09** – Permission GRANTED on the 16th of September 2009 for the demolition of the existing workshop/music rehearsal space at the rear and construction of a 6-storey mixed use building over 2 levels of raised basement. Refurbishment and change of use of the protected structure to a 6-bedroom bed and breakfast use.

Condition 2 of this grant of planning permission required the omission of the proposed fourth floor from the proposed rear extension. The reason for the condition was to protect the character and setting of the existing protected structure on the site, and to provide for an improved standard of amenity. The height of the building prior to the requirement to reduce the height by one floor was 4.075m higher than the ridge of the existing 4 storey protected structure at the front of the site. The decision was not appealed.

- 4.1.2. **P.A. Reg Ref. 2474/09x1** – Extension of duration granted on the 27th of August 2014 up until the 30th of October 2019.

- 4.1.3. **P.A. Reg. Ref. 2441/17** – Permission REFUSED for the demolition of the existing two storey workshop / music rehearsal space building to the rear of the existing protected structure and the construction of two, five storey split level, five-bedroom townhouses with residential guest house use. The reasons for refusal can be summarised as follows:

1. Inadequate private open space provided for inner city houses.
2. Under-croft car parking in close proximity to the operating LUAS would obstruct road users and encourage additional vehicular movements along the LUAS line.
3. Would not provide safe access and egress from the two additional houses. The provision of windows on its northern boundary would be prejudicial to the redevelopment potential of neighbouring property. The close proximity of basement level bedroom windows to extensive boundaries would inhibit access to daylight and sunlight. Incompatible in design and scale with adjoining dwellings.

- 4.1.4. **P.A. Reg Ref. 4595/17** – Permission REFUSED on the 23rd of February 2018 to refurbish the protected structure to provide a 6 bedroom guesthouse, and for

demolition of the existing two storey workshop / music rehearsal space building to the rear of the and construction of a 6 storey extension (5 over basement) to provide a 16 bed guesthouse. The three refusal reasons can be summarised as follows:

1. Scale, location, excessive plot ratio and site coverage would constitute over development of the site contrary to Section 16.11 of the Development Plan.
2. The location on the narrow right of way and 16 north facing windows would prejudice the redevelopment potential of the neighbouring property.
3. The rear extension due to scale and bulk, and the small protruding link to the west would adversely affect the character and setting of the protected structure.

All 3 reasons included that the proposed development would seriously injure the amenities, and depreciate the value, of property in the vicinity.

- 4.1.5. **ABP-309208 (P.A. Reg. Ref. 2410/20)** – This appeal was against the imposition by the planning authority of a condition requiring that ‘The rear annex building shall be reduced in height by one floor, by omitting the fourth floor which comprises three bedrooms, ensuring that the structure and enclosure on the top floor reads as a light touch feature, so that the parapet of the new brick structure does not exceed the height of the eaves of the rear wall, to reduce the impact on the architectural character and setting of the protected structure’.

The development was described as ‘redevelopment, conservation, refurbishment, including internal and external modifications, and change of use of the existing protected structure and two-storey bow ended return from its current recording/rehearsal use to provide a 20-bedroom hotel.

The inspector recommended that the condition be attached. The board was satisfied, that the determination by the board of the application as if it had been made to it in the first instance would not be warranted, and on the 10th of May 2021 directed the planning authority to **REMOVE** the condition.

The height of the permitted 7 storey structure at the rear of the building, including the lower and upper ground floor levels, would be 3.06m higher than the ridge of the existing 4 storey protected structure at the front of the site.

- 4.1.6. **P.A. Reg. Ref. 5005/22** – Permission **REFUSED** on the 1st of December 2022 for 17 no. residential units (13 no. one-bed units and 4 no. two-bed units) and 1 no.

commercial/coffee shop unit in an 8 storey over lower and upper ground floor building at the rear of the 4 storey protected structure.

The height of the proposed 10 storey structure at the rear of the building, including the lower and upper ground floor levels, would be 11.345m higher than the ridge of the existing 4 storey protected structure at the front of the site.

The three refusal reasons can be summarised as:

- 1 The 9 storey extension to the rear, with dominant and insensitive projecting balconies, would be visually inappropriate, have a seriously and excessive injurious and adverse impact on the architectural character and setting of the Protected Structure and St. Patrick's Hospital to the west. It would seriously injure the visual amenities of the area and be contrary the zoning objective and Chapter 16 of Development Plan 2016-2022.
- 2 The scale, mass and form would constitute overdevelopment of the site and would result in an unacceptable impact on the Projected Structure and surrounding area, by virtue of an overbearing effect and dominance, and would, seriously injure the visual amenities of the area.
- 3 Fails to provide sufficient storage space, adequate floor to ceiling heights, insufficient communal amenity space, and balconies that overhang the street, resulting in a poor standard of residential accommodation for future occupiers. contrary to the provisions of the Guidelines apartment guidelines.

4.2. Nearby Applications

- 4.2.1. **P.A. Reg. Ref. 4530/19** - Permission granted on the 3rd of March 2020 for: (1) The construction of a forklift building (GFA 236sq.m) (c.14.8m in height); (2) The construction of a new canopy structure (GFA 1,070sq.m) (c.8.9m in height). (3) The construction of an oil containment building (GFA 21.8sq.m) (c.2.9m in height) (4) The construction of a hot works unit (GFA 28.7sq.m) (c.4.3m in height); all on a site of c.0.24ha. The proposed development is located within a site which has an approved IE (Industrial Emissions) Licence (Ref. No. P0301-04), in the south-west corner of the Diageo brewery site to the north. The site of this development is separated from the current appeal site by the presence of the Steeven's Gate apartments, to the east of the site.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

Zoning

- 5.1.1. The relevant Development Plan is the Dublin City Development Plan 2022-2028, which came into effect on 14th December 2022. The site is zoned 'Z4 – Key Urban Villages / Urban Villages', the objective for which is 'to provide for and improve mixed-services facilities'. Residential is a 'Permissible Use' in Z4 zoned areas.

Protected Structure

- 5.1.2. No 134 James Street listed as a 'commercial premises' in the Record of Protected Structures (No 4056), with no additional description or information provided.

- 5.1.3. Policy BHA2 'Development of Protected Structures' sets out the criteria to be considered for developments affecting Protected Structures including:

- That development will conserve and enhance protected structures and their curtilage and will (Note: numbering is as per development plan):

(a) Ensure...development proposals...have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011).

(b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(c) Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.

(d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.

(c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

- e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

Conservation Area

5.1.4. The front/southern part of the site where the existing protected structure is located, is located in a Conservation Area defined by Red Hatched lines on Map E, while the rear of the site, where the proposed new building is located, is outside of the Conservation Area. Section 15.15.2.2 'Conservation Areas' provides that all planning applications for development in conservation areas shall:

- Respect the existing setting and character of the surrounding area.
- Be cognisant and/or complementary to the existing scale, building height and massing of the surrounding context.
- Protect the amenities of the surrounding properties and spaces.
- Provide for an assessment of the visual impact of the development in the surrounding context.
- Ensure materials and finishes are in keeping with the existing built environment.
- Positively contribute to the existing streetscape.

5.1.5. Policy BHA9 provides that development within a 'Conservation Area' must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include:

- 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting.
- 3. Improvement of open spaces and the wider public realm and reinstatement of historic routes and characteristic plot patterns.
- 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.
- 6. Retention of buildings and features that contribute to the overall character and integrity of the Conservation Area.
- 7. The return of buildings to residential use.

5.2. NIAH

- 5.2.1. As well as being a Protected Structure, No 134 James's Street, is listed in the National Inventory of Architectural Heritage (NIAH) as 'the Jam Factory and is assigned a 'Regional rating, of 'Architectural' interest. It is described as a 'Formerly terraced two-bay four-storey house, built c.1750, now end-of-terrace, and in use as studio'. Reference to the rear is limited to 'Some small-pane timber sash windows to rear elevation'.
- 5.2.2. The appraisal states that 'This substantial building makes a strong impression on the streetscape, its rendered façade setting it apart from its neighbouring red brick buildings. A relatively unadorned façade is enhanced by the retention of timber sash windows, which lend a patina of age to the structure. Its form and scale is indicative of its status, and Thom's Directory shows that it had a long occupancy by merchants, such as William Ruddell, a tobacco, snuff and cigar manufacturer, who resided there for several decades until the 1920s. The large arched window to the ground floor may have been an alteration for commercial reasons, or it may have formed an integral carriage arch to access the rear, before the demolition of the neighbouring building, no.135'.

5.3. Recorded Monument

- 5.3.1. The site is also a recorded monument, reference 'DU018-440---- : House - 18th century : Dublin South City'. It is described as 'A two-bay, four-storey-over-basemen end-of-terrace former house with a frontage of c. 9.6m with a widening plot of c. 14m to the rear, and c.14m height to top of front parapet. The external chimneystack, bowed extension, arched ground floor window, open-well staircase with ramped handrail, and unusual plan form suggest an early date.'

5.4. National Policy and Guidelines

- 5.4.1. Architectural Heritage Protection Guidelines (2011)
- These guidelines are issued under Sections 28 and 52 of the Planning and Development Act 2000 (as amended) and outline the responsibilities of the Planning Authority in preserving the character of protected structures and conservation areas within their functional area. Under Section 52(1) of the Planning and Development Act 2000, the Minister is obliged to issue guidelines to planning authorities concerning development objectives: a) for protecting structures, or parts of

structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest.

5.4.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities

- Specific Planning Policy Requirement 2 states that:

For all building refurbishment schemes on sites of any size, or urban infill schemes on sites of up to 0.25ha:

All standards set out in this guidance shall generally apply to building refurbishment schemes on sites of any size, or urban infill schemes, but there shall also be scope for planning authorities to exercise discretion on a case-by-case basis, having regard to the overall quality of a proposed development.

5.5. Natural Heritage Designations

- 5.5.1. The nearest Natura 2000 sites are South Dublin Bay and River Tolka Estuary SPA (Site Code:004024) which is c5.2km east of the site.

5.6. EIA Screening

- 5.6.1. See completed Forms 1 and 2 in Appendix 1.
- 5.6.2. Having regard to the limited nature and scale of the proposed development that includes the change of use of the existing building to 4 apartments and the construction of a new building with between 7 and 10 units (with the final number of units being the single subject matter of the condition in dispute in this appeal), the number of units proposed is significantly below the threshold of 500 dwelling units in Class 10(b)(i) of Part 2, while the site is in a serviced urban area and the site area is well below the threshold set out in Part 2 (10) of Schedule 5 to the Planning and Development Regulations 2001 (as amended) - Infrastructure projects - (iv) Urban development which would involve an area greater than 2 hectares in the case of a business district), to the absence of any connectivity to any sensitive locations, to the limited impact of the proposed building as proposed under Condition no 4 of the grant of permission on the fabric of the existing protected structure on site and to a previous grant of permission for a similar development on the same part of the site

as the building seeking permission, for which permission is still live and for which it was deemed that EIA was not required, I have concluded at preliminary examination stage that there is no real likelihood of significant effects on the environment arising from the proposed development having regard to the criteria set out in Schedule 7 to the Planning and Development Regulations 2001 (as amended).

- 5.6.1. I conclude that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal is in solely against the imposition of condition 4(a), (b) and (c) of the decision to grant permission, as the applicant does not accept the rationale provided by the planning authority for attaching the condition.
- 6.1.2. Condition 4(a) requires that the height of the development will be as per option B submitted on the 5th of October 2023 as part of the further information response; Condition 4(b) requires a separation distance of not less than 2.25 metres between the new extension and the existing building and the removal of the proposed cantilevered element at the upper floors, while Condition 4(c) permits a maximum of 11 apartments, with 1 no 2 bed apartment at third fourth and fifth floor levels in the new annex, which is effectively required as a result of condition 4(b).
- 6.1.3. The design underwent significant change following a previous refusal under P.A. Reg. Ref. 5005/22, and it is considered that the original proposal submitted to the planning authority should be permitted, as it is of high quality and appropriately scaled, is cognisant of neighbouring residential and visual amenity, the protection of protected structures and guidance for increased density in urban areas.
- 6.1.4. The planning officer's final report provided for a density that would exceed the development plan guidance, but this was not addressed at either further information or clarification of further information stage and the attachment of a condition would appear to be an oversight.

Design Options for consideration by An Bord Pleanála

- 6.1.5. A table is included that provides details of three different proposals, being:

- 1) The original submission, which has 15 apartments, a height of 24.7m over 7 storeys and a density of 560 units per hectare.
- 2) Option A as per the CFI response, with 14 apartments, a height of 23.49m also over 7 storeys and a density of 520 units per hectare.
- 3) The development as per conditions 4(a), (b) and (c), which would have 11 apartments, a height of 21.7m over 6 storeys and a density of 410 units per hectare.

6.1.6. The applicant requests the third option above is omitted and that Option A submitted as part of the clarification of further information is considered first, as it makes most efficient use of the land and ensures protection of the merit of the protected structure. A reduction in height of 1.2m was achieved by lowering the height of each floor by 0.2m, which addressed Item 1 of the initial request for further information. Despite this, the council omitted an entire floor, and the revised unit mix set out in condition 4(c) reduced the number of units to 11. The reduction in the unit number had not been raised as an issue until condition 4(c) was attached.

6.1.7. The grounds of appeal effectively seek to justify why Option A as per the response to the CFI is appropriate and explain why condition 4(a), (b) and (c) should be removed. The grounds can be summarised as follows:

- The scale of development submitted under Option A at further information stage is appropriate for the subject site given the central location of the site.
- The proposal is in keeping with the pattern of development for increased density throughout the city.
- Reducing the scale of the development will reduce the efficient use of the lands.
- The proposal architecturally enhances the site, introducing a landmark and placemaking feature on a corner site.

6.1.8. Following from the above, the appellant makes the following points in support of their appeal:

- The sites context is described, including its proximity to major employment, retail and hospitality venues, public transport links and the city centre.
- While permission was sought for 15 apartments, permission was granted for 11, made-up of 1 no. studio, 3 no 1 bed units and 7 no 2 bed units. Higher density is considered acceptable due to the restrictive nature of the site and its central location.

- Elevations are presented to illustrate what the building would look like with condition 4 (a), (b) and (c) omitted.

6.1.9. Appropriate Density

- While the development plan density is 300 units per hectare, a density of 522 units per hectare is considered acceptable due to the sites size and proximity to major employment, retail and hospitality venues, indoor and outdoor cultural spaces, good public transport links and the city centre.
- Reducing the density would not be representative of sustainable and compact development.
- They cite an extract from the planning officer's report which states that while 'density (may be of little importance on a small infill site), concerns with regard to height, aspect, daylight/sunlight, lack of amenity space and impact on potential neighbouring development sites, all have implications for density and the scheme is likely to require a reduction in density either by way of reduction in unit numbers or reduction in the physical mass of the proposed building'. The appellant considers that the reduction in height by 1.2m is sufficient to reduce the scale of the development and minimise visual impact. They also consider that due regard has been had to the protected structure, ensuring legibility of the building is maintained.
- Providing for density within the guidelines set out in the development plan would be difficult to achieve and would only provide a development which would not be consistent with the efficient utilisation of land.

6.1.10. Precedent for Increased Density

A number of precedents for higher density are cited being:

- ABP-306569 – Permission granted on the 28th of May 2020 for 481 apartments at 42A Parkgate Street at a density of 587 units per hectare. A further permission was granted by Dublin City Council under LRD6042/23-S3A in January 2024 to increase the density to 681 units per hectare.
- P.A. Reg. Ref. 3227/03 – 26 units granted permission at a density of 1529 units per ha in Grand Canal Quay on 14th January 2004.
- ABP-308871 – Permission granted by the board for a SHD on the 12th of April 2021 at James Street on a site c40m south of the current application site with a

density of 341 units per hectare. The submitted CGI's show 4-6 storey buildings fronting onto James Street, with buildings up to 8 storey in height along Basin View. Despite the significantly lower density cited in this very local precedent, the appellant considers the restricted nature of the application site means that a density of 522 units per hectare is acceptable.

6.1.11. Development Plan Guidance of Density

- While the development plan states that 'there will be a general presumption against schemes in excess of 300 units per hectare', it also states that 'schemes in excess of this density will be only considered in exceptional circumstances where a compelling architectural and urban design rationale has been presented'.
- Following further information and clarification further information the height was reduced from by 1.2m and the density was reduced from 560 (15 units) to 522 units per hectare (14 Units).
- The board is referred to the Architectural Design Statement for the architectural rational.
- From an urban design perspective, omitting Condition 4(a), (b) and (c) and permitting a taller building provides for visually interest, wayfinding and placemaking. To support their urban design case the applicant provides Google Street View and CGI images of buildings on Sir John Rogerson's Quay and North Wall.
- The housing typologies proposed in Option A will support an increased number of households, enhancing social capital.
- While DCC highlighted a preference for a six-storey structure to the rear of the protected structure from a conservation perspective, the applicants of the opinion that it can still retain its architectural contribution and heritage without detriment with a seven-storey structure at the rear, facilitated by the omission of Condition 4(a), (b) and (c).
- The proposed separation distance between the two elements will ensure legibility is retained while allowing the proposed structure to be perceived on its own merit.
- It is considered that a harmony between traditional and modern architectural styles has been achieved, avoiding pastiche development and allowing for both structures to appear independent and complementary to one another.

6.1.12. Building Safety

- The building is unlawfully occupied, and planning delays are further threatening the integrity of the structure.
- Density could have been addressed at further information stage, and the imposition of Condition 4(a), (b) and (c) has further threatened the safety and integrity of the structure.

6.1.13. Conclusion

- The applicant is seeking to retain a suitable density and the omission of Condition 4(a), (b) and (c), will allow the sustainable use of the land.
- The existing and proposed buildings can be perceived separately.
- The architectural heritage of the protected structure is retained while the introduction of the new structure on site will enhance the wider streetscape providing for visual amenity without detriment to the protected structure.

6.2. **Planning Authority Response**

Planning Authority

6.2.1. The planning authority response requested that the board uphold its decision to grant permission and that if permission is granted that the following condition are attached:

- Section 48 and S49 (Luas) development Contributions and a bond.
- A contribution in lieu of open space requirement not being met.
- Naming and numbering and management company conditions.

Conservation Officer

6.2.2. They strongly disagree with the appeal and consider that proposed design does not represent appropriately scaled residential development, in the context of the location of the Protected Structure and its setting in a red hatched conservation area, while it is not cognisant of the visual amenity and protection of the protected structure's 'contributions and heritage'.

6.2.3. They also considered that the pattern of development in the area does not justify the height, scale, massing or proximity to the protected structure, in view of its adverse

and injurious impacts on the architectural character on the setting of the protected structure arising from the proposed proximity of the new development to the rear of the protected structure which is compounded by the overwhelming height as proposed. All of this would contravene policy BHA2 a), b) and d).

6.3. Observations

- TII made a submission on the 15th of February 2024 and attached 10 recommended conditions to be attached to a grant of permission, should one be issued. They also stated their 10 recommended conditions appear in conditions 9 and 12 of the decision to grant permission issued by the planning authority.

6.4. Further Responses

6.4.1. The submissions of Dublin City Council's Planning Authority and the Conservation Officer were circulated to the applicant, who responded via a planning consultant's cover letter and an Architect's Statement.

6.4.2. Planning Cover Letter

- In response to the RFI request to remove a floor from the proposed rear annex two options were proposed, one removing a floor (Option B) and the other reducing the floor to ceiling height over 6 floors (Option A). The planning authority indicated its preference for the removal of a floor (Option B).
- While density was not cited as an issue at further information or clarification of further information stage, a condition was attached reducing the number of units from 15 as originally proposed to 11. Condition No 4(a), (b) and (c) is under appeal as the density is considered acceptable to the applicant.
- In response to the conservation officer's comment that the proposed annex would have an 'overwhelming height', the structure appears as one storey over the roof height of the existing structure due to the sites topography, while the top floor has been set back to further reduce the perceived mass and height in response to previous applications on the site.

- The architect's statement includes precedent examples of how design of higher buildings can ensure the protection of heritage and protected structures and names one at Cardiff Lane in Dublin 2 DSDZ3648/18.

6.4.3. Architect's Statement

- They disagree with the conservation officer's opinion that the height of the proposed development will have a negative impact on the structure or its setting.
- The original setting of the building has long been lost with the original plot shortened and the garden lost. A proposed height increase of 2m above that previously permitted is minor, will have a negligible effect on the historic building and will not adversely affect the character or setting of the historic building.
- The proposed height of the new building is carefully judged and could not be considered excessive or out of scale.
- There are many successful incidents in Dublin, where taller contemporary buildings stand sympathetically side by side with historic structures.
- The existing historic building cannot be adapted to its new use without the addition of new apartments to the north, which have been designed to be deliberately taller than the original structure.
- Careful consideration has been given to the proposed form, scale, height and materials of the proposed building and the proposed height is fully appropriate.
- The relationship, height, and form as proposed looks correct and could not be considered too tall.
- The presence of a setback top floor with associated roof terrace all helps in mitigating the height differential between old and new the proposed architectural design adopts good conservation practice and represents a sensitive design approach, adapting existing housing stock, which is all in line with proper planning and development.

6.4.4. Transport Infrastructure Ireland

- The submissions of DCC was circulated and TII responded on the 26th of March 2024 with the same recommended conditions as they had proposed in the Observation made to the board on the 15th of February 2024.

7.0 Assessment

7.1. Introduction

7.1.1. Having regard to the nature of this appeal which relates solely to the inclusion of condition 4(a), (b) and (c) in the grant of permission, having visited the site, and having considered the information submitted with the application, in response to both the request for further information and the request for clarification of further information, and the information submitted in relation to the appeal, I am satisfied that the principle of the proposed residential development is acceptable given the location of the site and its zoning. In addition, I note the planning history of the site and in particular an extant grant of permission for a similar scaled development on the site. Given the nature of the condition being appealed, I consider it reasonable to treat this case under Section 139 of the Planning and Development Act, 2000 as amended and the considerations of the board should be limited to the merit of the inclusion of Condition 4, including the reason for attaching the condition.

7.1.2. I will assess the appeal under the following headings:

- Condition No 4
- Live Planning Permission
- Building Safety
- Impact on Protected Structure
- Reason for attachment of Condition No 4

7.2. Condition No 4

7.2.1. Condition 4 of the grant of permission states as follows:

4 The development shall be revised as follows:

a) The development shall be 6 storeys over lower ground floor as per the height proposed in 'Option B' submitted with the Further Information response on 5th October 2023, with building height above ground being as per the 'Option B' elevations and sections on pages 2 – 6 of the 'Further Information Response' document prepared by Lawrence and Long Architects.

b) The separation distance between the protected structure, No. 134 James's Street, and the new annex structure, shall be no less than 2.25m above

ground floor level. The cantilevering element on the southern side of the new annex structure on upper floors is omitted from the scheme.

c) The third, fourth and fifth floor of the annex building shall each accommodate 1 no. 2-bedroom apartment. The permission is for 11 no. apartment units as follows: 1 no. studio unit, 3 no. 1-bed units, and 7 no. 2-bed units.

d) No part of the development shall encroach upon the public realm.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In the interests of orderly development and visual amenity.

Parts (a) (b) and (c) of condition no 4 are the only subject matter of this appeal, however, I consider it necessary to consider the reason given by the planning authority for the attachment of the condition.

7.3. Live Planning Permission

In terms of background, and as detailed in paragraph 4.1.5 above, permission was granted by the planning authority for a 7 storey extension at the rear of the existing protected structure with a roof 2.98m higher than the ridge of the existing building. The planning authority imposed a condition to the grant of permission to remove a floor from the building, but following an appeal the board directed the planning authority to remove the condition, on the 10th of May 2021. The duration of the grant of permission is stated to expire on the 1st of July 2026.

7.4. Building Safety

- 7.4.1. The appeal states that the building is in poor condition and that planning delays are further threatening the integrity of the structure. They go on to state that density could have been addressed at further information stage, and the imposition of Condition 4(a), (b) and (c) has further threatened the safety and integrity of the structure.
- 7.4.2. I note that the building is a protected structure and the owner has an obligation to protect and secure the structure from endangerment, in accordance with Chapter 1

of Part IV to the Planning and Development Act 2000 (as amended). In this regard the site has the benefit of a live grant of permission that includes works that would ensure the integrity of the protected structure. I also note a pattern in the planning applications on this site since 2009 where permission has either been refused on grounds related to excessive height or conditions have been imposed limiting the height of the permitted buildings at the rear of the protected structure. I will consider the merits of the height of the building in the following sections of this assessment.

7.5. Impact on Protected Structure

- 7.5.1. The existing building at the front of the site is a protected structure. The development plan policy protections afforded to this site, which must be considered in assessing any application include Policy BHA2 'Development of Protected Structures' which state that criteria to be considered for developments affecting protected structures include 1) to protect protected structures from any works that would negatively impact their special character and appearance; 2) Ensure that any development affecting a protected structure is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials; 3) Ensure that new development does not adversely impact the curtilage or special character of the protected structure.
- 7.5.2. The grounds of the appeal do not adequately address why condition No 4(a), (b) or (c) are deemed to be inappropriate in the context of prevailing development plan policy, but rather seek to demonstrate that the amended Option A as proposed in response to the request for clarification of further information is a more appropriate form of development for the site.
- 7.5.3. The appeal also states that the planning authority did not seek to reduce the number of units until condition 4 was imposed by way of condition no 4 and I will address that below.

Density

- 7.5.4. The grounds of appeal state that density was not addressed at either further information or clarification of further information stage and the attachment of a condition would appear to be an oversight. I do not agree with the applicant for a number of reasons.

- 7.5.5. The initial planning officer's report stated under the heading of 'Height, Massing Density' that the density of 556 units per hectare exceeds the development plan recommendation of 300 units per hectare. The applicant goes as far as citing an extract from that section of the planning officer's report, in their appeal, which states that while 'density (may be of little importance on a small infill site), concerns with regard to height, aspect, daylight/sunlight, lack of amenity space and impact on potential neighbouring development sites, all have implications for density and the scheme is likely to require a reduction in density either by way of reduction in unit numbers or reduction in the physical mass of the proposed building'. The final part of the paragraph states 'this should be a subject for the request for further information'.

Request for further information

- 7.5.6. The first sentence of Item 1 of the request for further information stated, 'the applicant is requested to provide revised plans providing for reduction in height of the development and to reconfigure the layout in order to respect the protected structure'.
- 7.5.7. Item 5(d) requested that the applicant reconsider the 'separation distance between the protected structure and the new building' and continued 'Consider Conservation section advice that the dimension of the set-back between the protected structure and the new building should be sufficient to enable the 'reading' appreciation and respect of the historic rear elevation, which retains a number of original 18thc. and replacement windows.

Response to the request for further information

- 7.5.8. In response to the request for further information, the applicant did propose Options A and B, which both proposed to reduce the height of the building, but neither proposed to increase the separation distance between the protected structure and the proposed new building. The applicant sought in Option A to reduce the height without reducing the number of units. They effectively sought to retain the originally proposed density. Option B would result in the loss of 2 units, so the density would also be reduced.

Clarification of Further Information

- 7.5.9. In the clarification of further information request, the planning authority requested that the applicant provide clarification in respect of:

- b) The separation distance previously permitted between the rear annex and the extant protected structure should be maintained in this development
- c) The Planning Authority supports the removal of one storey from the proposed development, as per 'Option B' in the applicant's response to further information.
- The applicant is invited to show how the plans and elevations of the rear annex can be revised to reflect the above issues. It is likely that the number of or configuration of units may change, and the Planning Authority may exercise discretion with regard to unit mix as per SPPR 2 of the 'Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities' (2022).

Response to the request for clarification further information

7.5.10. In response, the applicant did propose to set back the third floor by 2.25m from the rear of the protected structure, which resulted in the substitution of 1 no 2 bed apartment for the originally proposed 2 no 1 bed apartments, which reduced the number of units from 15 to 14, which is another way of stating that they were proposing to reduce the density of the development.

7.5.11. Comment

7.5.12. Having read the file and noted the evolution of the plans from the original application through the response to the request for further information and the clarification of further information, I am entirely satisfied that the planning authority had informed that applicant of what it considered to be an appropriate building height and separation distance between the existing and propose buildings. The applicant had no reason to be surprised by the attachment of condition No 4 to the decision to grant permission and I do not agree with the applicants contention that the condition was attached as an oversight.

7.5.13. I also note that the planning authority did not go as far as was recommended by the conservation officer, wherein they originally requested that two floors be removed and later recommended that a condition be imposed that in addition to the removal of one floor, which is Option B, that the floor to ceiling height of each floor requiring would also be reduced by 0.2m. I consider that floor to ceiling heights of 2.7m would be appropriate and acceptable and would benefit the internal amenity of future residents of the units.

- 7.5.14. I am satisfied that the CFI clearly states that the width of the building should be reduced to that of the previous permission, which the applicant is aware of as this line is clearly indicated on the drawing shown in the Architects response to the RFI. I am satisfied that the implications of reducing the height of the building as required by the request for further information and width of a building as requested in the Clarification of further information were clearly flagged to the applicant. The CFI even state that 'It is likely that the number of or configuration of units may change'. The RFI and CFI clearly indicate that a reduced density may result and I see no basis for the surprise expressed by the applicant in the appeal for the attachment of any part of Condition No 4. Infact, in responding to the CFI the applicant is well aware that the Planning Authority has stated that Option B is preferred, yet the applicant never provided any fully scaled drawings to that effect and instead continue to make a case as to why Option A was in their consideration a more suitable option.
- 7.5.15. I am satisfied that the planning authority advised the applicant as to what would likely be the outcome of the application, but the applicant chose not to agree, as is their right and it is clear that a level of compromise was reached between what the applicant wanted and what the conservation officer originally recommended in the context of the extant grant of permission on the site under P. A. Reg. Ref. 2410/20 (ABP-309208), where the board omitted a condition requiring that a floor of that building be removed. I note that in response to the CFI the applicant has already partially complied with the requirement of Condition 4(c), as they proposed to set back the building line to 2.25m from the rear of the protected structure at third floor level.
- 7.5.16. While there is nothing to permission being granted for a building that is higher than that which was permitted under P. A. Reg. Ref. 2410/20 (ABP-309208) and I note that part of the propose roof (as per condition 4) would be 1.1m higher than the highest part of the previously permitted roof, I am satisfied that the development that would be amended by way of condition No 4 would be appropriate and I agree with the planning authority in this regard with respect no parts 4(a),(b) and (c).
- 7.5.17. Furthermore, I am satisfied that the applicant has not provided a compelling architectural and urban design rationale that would justify a higher building being built at the rear of the protected structure and both the original proposal and the amended proposal Option A would have a significant and detrimental impact on the character and setting of the protected structure.

7.5.18. In conclusion, I am satisfied that Condition No 4(a), (b) and (c) should be retained in their entirety.

7.6. Reason for attachment of Condition No 4

7.7. The reason for the attachment of Condition no 4 by the planning authority is 'In the interests of orderly development and visual amenity'. The entire theme running through the assessment of the application by the planning authority is that the need for reduced height and an increased separation distance between the existing protected structure and the new building at the rear is based on the need to protect the character and setting of the protected structure, which is also on the NAIH and is a recorded monument. The change of unit mix is also considered appropriate as it will provide for the development of a number larger 2 bed residential units on the site. For that reason, I am satisfied that that the reason for the attachment of condition No 4 should be amended to read as follows:

Reason: In order to protect the character and setting of the protected structure, the amenity of future occupants and in the interest of clarity.

8.0 AA Screening

8.1. I have considered the change of use of an existing commercial premises to 4 no apartments and a new built structure at the rear of the existing building to include up to new 10 apartments, with up to a maximum of 14 apartments in total (or 11 apartments as per Condition No 4(a), (b) and (c) that are the subject matter of this appeal), in light of the requirements S177U of the Planning and Development Act 2000 as amended.

8.2. The subject site is located in the urban area of Dublin City and approximately 5.2km west of the nearest Natura 2000 site, South Dublin Bay and River Tolka Estuary SPA (Site Code 004024).

8.3. The proposed development would comprise between 11 and 14 apartments depending on whether or not condition No 4 is attached or removed.

8.4. No nature conservation concerns were raised in the planning application, the request for further information, the clarification of further information or in the appeal.

- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- The nature and scale of the proposed works.
 - The distance from the nearest the European site and the absence of meaningful pathway to any European site.
 - Taking into account the screening determination by the planning authority.
- 8.6. I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.7. Likely significant effects are excluded, and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

- 9.1. Having regard to the nature of the condition the subject of the appeal, the board is satisfied that the determination by the board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said council under subsection (1) of section 139 of the Planning and Development Act 2000, as amended, to AMEND condition number 4 and the reason therefore to read as follows (amended rest underlined):

4 The development shall be revised as follows:

- a) The development shall be 6 storeys over lower ground floor as per the height proposed in 'Option B' submitted with the Further Information response on 5th October 2023, with building height above ground being as per the 'Option B' elevations and sections on pages 2 – 6 of the 'Further Information Response' document prepared by Lawrence and Long Architects.
- b) The separation distance between the protected structure, No. 134 James's Street, and the new annex structure, shall be no less than 2.25m above ground floor level. The cantilevering element on the southern side of the new annex structure on upper floors is omitted from the scheme.

c) The third, fourth and fifth floor of the annex building shall each accommodate 1 no. 2-bedroom apartment. The permission is for 11 no. apartment units as follows: 1 no. studio unit, 3 no. 1-bed units, and 7 no. 2-bed units.

d) No part of the development shall encroach upon the public realm.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In order to protect the character and setting of the protected structure, the amenity of future occupants and in the interest of clarity.

10.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan, 2022-2028, the Z4 zoning objective to “to provide for and improve mixed-services facilities, the pattern of development in the area, and the nature and scale of the previously permitted development on the site development it is considered that the imposition of Condition No 4(a) requiring a reduction in height of the new building, Condition No 4 (b) requiring an increase in separation distance between the existing and proposed buildings on site, and Condition No 4 (c) that requires a revised unit mix, are necessary to protect the character and setting of the protected structure and the amenity of future occupants and would, therefore, be in accordance with the proper planning and sustainable development of the area.

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.

Joe Bonner
Senior Planning Inspector

31st October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319034-24		
Proposed Development Summary	PROTECTED STRUCTURE: Redevelopment of a protected structure along with demolition of the existing workshop for the construction of 7 storey apartment building comprising of 15 residential units and all associated site works.		
Development Address	134 James's Street, Dublin 8, D08 YV6H		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	No further action required
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?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
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]?			
		Threshold	Comment (if relevant)
No		N/A	
Yes		Class 10(b)(i) of Part 2: threshold 500 dwelling units. Class 10(b)(iv) of Part 2: Urban development which would involve an area greater than 2 ha in the	The development consists of demolition of part of an existing building and the
			Proceed to Q.4

		<p>case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere. (In this paragraph, "business district" means a district within a city or town in which the predominant land use is retail or commercial use.)</p> <p>Class 14 of Part 2 (demolition)</p> <p>Class 15 of Part 2</p>	<p>construction of 15 apartments (with 11 units in the new building) in an urban site of 0.0268ha.</p>	
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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-319034-24	
Proposed Development Summary	PROTECTED STRUCTURE: Redevelopment of a protected structure along with demolition of the existing workshop for the construction of 7 storey apartment building comprising of 15 residential units and all associated site works.	
Development Address	134 James's Street, Dublin 8, D08 YV6H	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The subject development comprises the restoration of a 4 storey building at the front of the site with a proposed 7 or 8 storey apartment building proposed at the rear. Permission has been granted in 2021 for a 7 storey building in the same location at the rear of the existing 4 storey building. In this way, the proposed development would not be exceptional in the context of the existing environment.</p> <p>During the demolition and construction phases the proposed development would generate waste during excavation and construction. However, given the moderate footprint of the development proposed to be demolished and the building to be constructed, I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the demolition, construction or operational phase due to the nature of the proposed use.</p>	<p>No</p> <p>No</p>
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context</p>	<p>The proposed development would consist of the upgrade and change of use of 269sqm at the front of the site and the demolition of 258sqm of floor area at the side and rear. The new extension would have a floor are of up to 950sqm (depending on the version the plans considered. The overall</p>	<p>No</p>

<p>of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>development, regardless of the versions that would be permitted (i.e. number of floors at the rear) would not be considered exceptional in the context of neighbouring buildings.</p> <p>Owing to the serviced urban nature of the site and the infill character of the scheme, I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>	No
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The application site is not located in or immediately adjacent to any European site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024), c.5.2km east of the site.</p> <p>There are no waterbodies or ecological sensitive sites in the vicinity of the site. The site is located within a serviced urban area and the site would be connected to public surface and foul sewers. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p> <p>No</p>
Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)