

## Development Management Committee Report

Summary	
<b>Committee Meeting Date:</b> Thursday 15 October 2020	
<b>Application ID:</b> LA04/2016/0559/F	
<b>Proposal:</b> Proposed construction of 4No separate blocks of office development - Block A 10 No Storeys, Block B 14 No Storeys, Block C and Block D 3No Storeys. Proposal also includes 4 No retail units, plant and car parking at lower ground floor level with external plaza and associated landscaping	<b>Location:</b> Site at the junction of Stewart Street/East Bridge Street and West of Central Station, East Bridge Street, Belfast
<b>Referral Route:</b> Major Planning Application (>5,000 square metres of office floor space)	
<b>Recommendation:</b> Approve subject to Conditions and Section 76 Agreement	
<b>Applicant Name and Address:</b> Kilmona Property LTD Adelaide House 1 Falcon Road Belfast BT12 6SJ	<b>Agent Name and Address:</b> Coogan and Co Architects Ltd 144 Upper Lisburn Road Finaghy Belfast BT10 0BG
<p><b><u>Executive Summary</u></b></p> <p>Full planning permission is sought for the construction of four separate blocks of office development – Block A 10No Storeys, Block B 14No Storeys, Block C and Block D 3No storeys. The proposal also includes 4No retail units, plant and car parking at lower ground floor level with an external plaza and associated landscaping.</p> <p><b><u>Background</u></b></p> <p>This application was originally received on 04 March 2016, and was reported to the Planning Committee ('Committee') in August 2016 at which it was deferred for a site visit. The application was reported back to the Planning Committee on 20 September 2016 (<b>see Annex D</b>). The Committee resolved to grant full planning permission, subject to the completion of a Section 76 Legal Agreement to secure a developer contribution of £230,000 towards the cost of local public realm improvement works; access to the tunnels project; submission and retention of a Tunnels Protection Scheme; completion of the piazza and management of the land.</p> <p>The planning permission was issued on 05 June 2017 following the completion of the Section 76 planning agreement. The Council's decision to grant planning permission was subsequently the subject of legal challenge on eight grounds. These are summarised as follows:</p> <ol style="list-style-type: none"> <li>1. The Council was not adequately informed of, and failed to sufficiently consider, the impact of the proposed development on the area generally;</li> <li>2. Breach of residents' right under Article 8 of the European Convention on Human Rights, contrary to section 6 of the Human Rights Act 1998;</li> <li>3. Wrongly taking into account non-planning consideration, namely the payment by the developer of £230,000 towards the cost of public infrastructure works;</li> </ol>	

4. Inconsistency, having regard to a previous decision refusing to approve the development of a hotel at the location;
5. Wrongly taking into account certain provisions of the Belfast Metropolitan Area Plan 2015, at all stages, on the (erroneous) premise that this was a lawfully finally adopted measure;
6. In consequence of (e), failing to take into account the material consideration constituted by the Belfast Urban Area Plan 2001, thereby contravening section 6(4) of the Planning Act (NI) 2011;
7. Using the wrong reference point regarding height, in breach of planning policy.
8. Disregard of a material consideration namely the unmet need for social housing in the Belfast Metropolitan Area generally and, more specifically, the view of the Planning Appeals Commission during the BMAP adoption process that the subject site should have been zoned for this development purpose.

On 24 May 2018, the High Court quashed the Council's decision to grant planning permission. The legal challenge had succeeded on two of the eight contested grounds as set out below.

- Firstly, the High Court concluded that the Council's approach to the still extant Belfast Urban Area Plan 2001 and the still unadopted Belfast Metropolitan Area Plan 2015 had been erroneous in law. In particular the Committee failed to consider the impact of successive orders of the Northern Ireland High Court and Court of Appeal declaring legally ineffective the purported adoption of the draft BMAP which emerged from the former DOE's consideration of the Planning Appeals Commission Report. Whilst not criticising the reasoning of Officers in their assessment of the impact of those orders, the Court found that Officers had misapplied its Scheme of Delegation in that the assessment should have been undertaken by Committee. The consequent legal error was that Committee erred by treating BMAP as being, in substance, the adopted urban area plan for Belfast and did not consider BUAP.
- Secondly, the Council erred in law by failing to take into account the Planning Appeals Commission's recommendation that the subject site at Stewart Street should be designated for social housing development. The former DOE rejected the PAC recommendation in this regard, and thus it did not form part of the final document. The High Court concluded that this was a material consideration which the Council should have weighed and evaluated. While it was considered by Senior Council Officers, it was at no time considered by the relevant decision maker, namely the Planning Committee.

The legal challenge to the Council's decision on the other six grounds were not successful (see **Annex A**).

Accordingly, the legal challenge succeeded and the High Court quashed the Council's decision to grant planning permission on 05 June 2017.

This in effect requires the Council to re-determine the application taking into account the two additional issues that it failed to have regard to as well as any further change in material circumstances since the decision.

#### Post decision being quashed

Since the previous decision was quashed, the Local Planning Authority has been carefully considering the issues raised through the judicial review. This required a number of additional steps to be taken before the application could be reported back to Committee. These included:

- Reviewing the High Court's decision including the grounds for the challenge being upheld, whether these were accepted and taking a view on whether to appeal the decision of the Court;

- Considering the next steps in terms of addressing the grounds upheld, and in addition the other comments made in the judgement;
- Commissioning an independent review of the design of the proposal, dealing with comments regarding scale, massing and design within the judgement;
- Considering the implications of the passage of time on the application, including consideration of any material changes in circumstance since the decision, supporting information and making additional consultations as necessary; and
- Compiling a revised report for consideration by Committee addressing all of the above.

### Summary of Key Issues

The site is located within the City Centre of Belfast as defined within BUAP 2001 and both versions of draft BMAP 2015. It is located on un-zoned land within the City Centre outside the primary retail core and within the city centre office area. Belfast City Centre Regeneration and Investment Strategy (Sept 2015) seeks to increase the employment population of the city centre.

The site extends to approximately 0.8 hectares. It is located adjacent to East Bridge Street which sits at a higher level with access taken off Stewart Street which sits at a lower level. The site is a vacant, hard standing plot of land which was previously used as a temporary car park.

The site is situated between very different urban forms of development: the high rise commercial development to the north, the elevated Lanyon Place Railway Station to the west and the domestic residential scale and form of the Markets residential area to the south and west.

The key material factors in the post judicial review assessment of this application are as follows:

- Principle of Proposed land use for Office and Retail at this location
- Belfast Urban Area Plan 2001
- Draft Belfast Metropolitan Area Plan 2015
- Decision of the Planning Committee on 20 September 2016
- Response from Ministerial Advisory Board
- Response from Historic Environment Division – St George’s Market
- Height, Scale & Massing
- Landscape & Visual
- Impact on Amenity & Surrounding Properties & Area
- Traffic Movement & Parking
- Other Environmental Matters
- Economic Benefits
- Pre-Community Consultation
- Consideration of additional Representations
- Section 76 Planning Agreement

252 letters of objection have been received which are summarised in section 1.4 of the report below.

A further letter of objection was received post Judicial Review on 11 September 2018 from the Markets Development Association (MDA). In this letter the MDA requested that the Council obtain an opinion from the Ministerial Advisory Group. The MDA stated that the scale and urban design of the proposal needs to be properly assessed and the decision needs to be informed by an independent body. Following that request a consultation with the Ministerial Advisory Group has taken place to enable an impartial view to be obtained, responding to the comments from the Judge. Full consideration of the Ministerial Advisory Group’s report, including the applicant’s response, is set out in the main report. The Ministerial Advisory Group concluded that had it considered the proposal at an earlier stage it would have recommended that the arrangement of buildings on the site was reconsidered; and that the site should be considered as a transition site between business (at Lanyon) and living (at the Markets) and thus a mixed use scheme should be encouraged to

provide the best regeneration opportunity. Members are reminded that they must assess the planning application proposal before them.

20 additional letters of objection were received post Judicial Review on 29 September 2020. Points raised in these additional letters of objection are listed in section 1.4 below and considered in the report. Any further representations will be reported to Members via the Late items report.

Given the urban city centre context, it is considered that the scale, height and massing of the buildings proposed are acceptable and would not harm the character or appearance of the immediate or wider area. The form and height of the proposal establishes a presence that responds to the scale and massing of both other commercial buildings in the immediate environment on East Bridge Street whilst stepping down considerably having regard to the smaller scale of the residential dwellings on Stewart Street to the south and west, which is considered to be appropriate.

In terms of compatibility and the potential for dominance, it is acknowledged that the scheme proposes large scale blocks, however, the scale of the proposal was reduced during the processing of the application to take account of the local environment, namely residential properties on Stewart Street, to ensure that the character of the area and residential amenity would not be compromised. It is considered that the scale and massing proposed, with the separation distances as proposed, and the planted buffer will ensure that the proposal, on balance, will not cause an unacceptable impact on neighbouring residential properties.

The architectural approach both in terms of design and materials is modern. As part of the consideration of the application, both independent design advice and advice from the Ministerial Advisory Group has been sought on the proposal. In weighing up all the material planning considerations, as set out in the main body of the report, it is considered that on balance the proposed design and architectural treatment are acceptable.

The proposal has been assessed having regard to the Development Plan and against planning policies including:

- Strategic Planning Policy Statement for Northern Ireland;
- Planning Policy Statement 3 – Access, Movement and Parking;
- Planning Policy Statement 4 – Planning and Economic Development;
- Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage;
- Planning Policy Statement 13 – Transportation & Land Use; and
- Planning Policy Statement 15 (Revised) – Planning & Flood Risk.

Statutory consultees raise no objections to the proposal subject to conditions.

The submitted Pre-Community Consultation Report has demonstrated that the applicant has carried out their duty under Section 27 of the Planning Act (NI) 2011 to consult the community in advance of submitting an application.

### **Recommendation**

Having regard to the Development Plan, planning policies and relevant material considerations, the proposal is considered acceptable.

It is recommended that planning permission is granted subject to conditions and completion of the Section 76 planning agreement. Delegated authority is sought for the Director of Planning and Building Control to finalise the wording of conditions and the Section 76 planning agreement. The Section 76 planning agreement shall include:

- Public Realm Improvement Contribution of £230,000 towards the cost of public realm improvement works within the area;
- Adjoining Street – Piazza to be completed to a standard agreed by the Council;
- Estate Management Statement to be submitted and agreed by the Council;
- Public Access – permit reasonable access across the site in relation to the Tunnels Project and from Stewart Street across the site to the Tunnels;
- Tunnels Protection Retention Scheme – not to commence development until a method statement showing the proposed protection / retention systems for the bridge and tunnels situated at East Bridge Street; and
- Securing apprenticeships in the main trades during construction.

1.0	<b>Background</b>
1.1	<p>On 04 March 2016, Belfast City Council received a planning application from Kilmona Property Ltd seeking full planning permission for a proposed office development at lands at the junction of Stewart Street and East Bridge Street, and West of Central Station. The original description of the development proposal made to the Council was:</p> <p><i>‘Proposed construction of new 13 storey office building (in 2 blocks) with 4No retail units, car parking and plant on lower ground floor and 4No 3 storey pavilion office buildings including external plaza and landscaping.’</i></p>
1.2	<p>Upon receipt of the application, the Council advertised the proposed development in the Andersonstown News, Belfast Telegraph, Irish News and News Letters newspapers on 08 April 2016, and notified neighbours of the proposed development on 05 April and 29 April 2016.</p>
1.3	<p>The Council also consulted the following statutory and non-statutory agencies seeking their view on the development:</p> <ul style="list-style-type: none"> <li>• Transport NI (now DfI Roads);</li> <li>• Rivers Agency;</li> <li>• NI Water Ltd;</li> <li>• DOE (Historic Environment Division; Water Management Unit; Waste Management Unit);</li> <li>• Environmental Health;</li> <li>• Belfast City Airport;</li> <li>• Northern Ireland Transport Holding Company;</li> <li>• Health &amp; Safety Executive NI; and,</li> <li>• Independent Design Advice.</li> </ul>
1.4	<p>In total, 252 formal objections to the planning application have been received, on the following grounds:</p> <ol style="list-style-type: none"> <li>1. Concern regarding the scale of the proposal in a residential area which would dominate the residential properties in the immediate area;</li> <li>2. Inappropriate scale, massing and design – will result in demonstrable harm;</li> <li>3. Height of the proposal is contrary to BMAP;</li> <li>4. Access to the Tunnels Project – impact of the proposal on this community project;</li> <li>5. Connectively – pedestrian access through the site at different locations in order to prevent the Tunnels and the site from being severed from the Markets community;</li> <li>6. Community benefit – there must be tangible benefits for the community and to ensure the sustainability of the Tunnels project;</li> <li>7. No provision is made to improve the layout of Stewart Street which is dangerous – problem further heightened with additional traffic as a result of the proposal;</li> <li>8. Commuter car parking – this is a serious issue in the Markets Area and it poses a health and safety hazard for all residents – does the development include sufficient car parking for potential office workers?</li> <li>9. Detrimental Impact on the physical and mental wellbeing of residents – lowers the quality of life for residents;</li> </ol>

	<p>10. Overshadowing and Loss of Light;  11. Residents will have no privacy – contrary to Article 8 of the Human Rights Act 1998;  12. Major detrimental impact on residential property prices;  13. No mix of affordable housing included within the proposal;  14. Vacant offices in proximity to the site that should be occupied rather than creating additional office space at this location;  15. Assessment of environmental impact – wind analysis and air quality;  16. Adverse noise and disruption;  17. Already an oversubscription of office buildings in the vicinity;  18. Contrary to the SPPS and Belfast Metropolitan Area Plan;  19. The PAC report into draft BMAP stated that the site should be re-zoned for social housing and in the recent JR judgement it was stated that this was a material matter;  20. Ministerial Advisory Group was overwhelming negative about the design of the proposal, however, no changes have been made;  21. The voluntary financial contribution from the application cannot be justified, it is contrary to the Council’s policy in respect to developer contributions and suggest the applicant is buying permission.</p> <p>Any further representations will be reported to Members via the Late items report.</p>
1.5	<p>Two previous committee reports have been prepared in relation to this application (appended at <b>Annex D</b>). The first was made in preparation for the scheduled Committee meeting on 16 August 2017 when the matter was tabled for consideration. However, before the presentation of the application, the Committee decided to defer consideration of the application to allow Members to undertake a site visit. The reason for the site visit is noted in the minutes of the Committee meeting as being in response to the issues outlined regarding height, scale, mass and its potential impact on neighbouring properties. The site visit took place on 31 August 2016.</p>
1.6	<p>The second report was presented to the Planning Committee on 20 September 2016. The Committee agreed to approve the development proposal and delegated power to the then Director of Planning and Place in conjunction with the Town Solicitor to enter into discussions regarding a planning agreement with the applicant.</p>
1.7	<p>The planning permission was issued on 05 June 2017 following the completion of the Section 76 planning agreement. The Council’s decision to grant planning permission was subsequently the subject of legal challenge on eight grounds. These were as follows:</p> <ol style="list-style-type: none"> <li>1. The Council was not adequately informed of, and failed to sufficiently consider, the impact of the proposed development on the area generally;</li> <li>2. Breach of residents’ right under Article 8 of the European Convention on Human Rights, contrary to section 6 of the Human Rights Act 1998;</li> <li>3. Wrongly taking into account non-planning consideration, namely the payment by the developer of £230,000 towards the cost of public infrastructure works;</li> </ol>

	<ol style="list-style-type: none"> <li>4. Inconsistency, having regard to a previous decision refusing to approve the development of a hotel at the location;</li> <li>5. Wrongly taking into account certain provisions of the Belfast Metropolitan Area Plan 2015, at all stages, on the (erroneous) premise that this was a lawfully finally adopted measure;</li> <li>6. In consequence of (e), failing to take into account the material consideration constituted by the Belfast Urban Area Plan 2001, thereby contravening section 6(4) of the Planning Act (NI) 2011;</li> <li>7. Using the wrong reference point regarding height, in breach of planning policy; and</li> <li>8. Disregard of a material consideration namely the unmet need for social housing in the Belfast Metropolitan Area generally and, more specifically, the view of the Planning Appeals Commission during the BMAP adoption process that the subject site should have been zoned for this development purpose.</li> </ol>
1.8	<p>The Court concluded that the applicant’s legal challenge succeeded, on two grounds:</p> <ul style="list-style-type: none"> <li>- First, the Court accedes to the contention that the Council’s approach to the still extant Belfast Urban Area Plan 2001 and the still unadopted Belfast Metropolitan Area Plan 2015 was erroneous in law. In particular, the Council failed to consider the impact of successive orders of the Northern Ireland High Court and Court of Appeal declaring legally ineffective the relevant Minister’s purported adoption of the daft BMAP which emerged from the former DOE’s consideration of the Planning Commission Report following a Public Inquiry. Whilst not criticising the reasoning of Officers in their assessment of the impact of those orders, the Court found that Officers had misapplied its Scheme of Delegation in that this assessment should have been undertaken by Committee. Furthermore, the Council erred in law by in substance treating BMAP as the adopted plan for Belfast, to the exclusion of the still extant BUAP.</li> <li>- The Council also erred in law by failing to take into account the Planning Appeals Commission’s proposal (ultimately rejected by the DOE/it’s Minister) that the subject site at Stewart Street should be designated for social housing development. This was a material consideration which the Council should have weighed and evaluated. While it was considered by Senior Council Officers, it was at no time considered by the relevant decision.</li> </ul>
1.9	<p>As a result of the Judicial Review the decision was quashed by the High Court on 31 May 2018 and the application remains undetermined. This report details the reconsideration of the planning application, having regard to the above.</p>
2.0	<p><b>Additional Planning History</b></p>
2.1	<p>LA04/2019/0219/F Single level car park (244 spaces) with associated landscaping (temporary) - Permission Refused 16.10.19</p>



2.2	LA04/2020/1554/F Renewal of planning permission referenced Z/2012/1421/F - Conversion of and extension to existing archways to comprise a crèche, an employment education and training club, community space, cafe, health and fitness facility with access to East Bridge Street and train station – undetermined.
3.0	<b><u>Extant and Draft Development Plans</u></b>
3.1	Section 45 (1) of the Planning Act (NI) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6 (4) of the Planning (Northern Ireland) 2011 Act states that in making any determination under the said Act, regard is to be had to the local development plan, and that the determination must be made in accordance with the plan unless material consideration indicate otherwise.
3.2	Following the judicial proceedings in relation to the adoption of BMAP, the statutory Local Development Plan for the area is the BUAP. Both draft BMAP (BMAP 2015) and pre-examination draft BMAP (dBMAP) are a material consideration. Given the advanced stage that BMAP 2015 reached (i.e. pre-adoption following a period of independent examination), and that the only area of contention was limited to policies relating to Sprucefield Shopping Centre, that version of BMAP 2015 is considered to hold significant weight.  <i><u>Belfast Urban Area Plan 2001</u></i>
3.3	In the context of BUAP the subject site is within the city centre on un-zoned white land. Under the BUAP, there are a number of relevant and material policies as set out below:
3.4	The Office Development Strategy states that office development will be concentrated in the City Centre with large scale office developments directed to the Main Office Area. The site is located within the city centre and adjacent to the Main Office Area as defined in BUAP.
3.5	Policy CC12 states that high buildings must be sympathetic in scale to the traditional height of buildings in the city centre.
3.6	Policy CC1 states that City Centre Shopping will be concentrated in the Main Shopping Area around Donegall Place / Royal Avenue. Small scale shopping development up to 2,500 sqm gross floorspace may be permitted in existing shopping frontages in the remainder of the City Centre. Retail policies within BUAP and draft BMAP are now superseded by the Strategic Planning Policy Statement for Northern Ireland. The SPPS sets out a Town Centre first approach for retailing and other main town centre uses and sets out a sequential approach. The retail element proposed is small scale at less than 600 sqm, and thus is not considered to cause any harm to the primary retail core of the City Centre.
3.7	The purpose of BUAP was to establish physical development policies for this broad urban area up to 2001, clarifying the extent and location of development and providing a framework for public and private agencies in their investment decisions relating to land use. BUAP was published in 1990, nearly 30 years ago, and although alterations were made in 1996, the BUAP is now largely out-of-date. The Belfast City Council Plan Area has undergone massive transformation since then, particularly in the city centre. The formal

	<p>development plans which apply are dated and silent on many of the planning issues relevant to the needs of the current planning decision making process.</p> <p><u><i>Draft Belfast Metropolitan Area Plan 2015 (November 2004)</i></u></p>
3.8	<p>In draft BMAP (November 2004) the site is identified as a 'Development Opportunity Site Stewart Street' (Designation CC 070). Defined as a site greater than 0.1ha which presents an opportunity to develop and normally vacant derelict or in use as a surface level car park. A Key Site Requirement is detailed under designation CC 070 stating that access arrangements shall be agreed with Roads Service. In addition, detailed consultation will be required with Roads in order to identify any necessary improvements to the road network / public transport / transportation measures in that area, to facilitate development of the site. A Transportation Assessment (TA) may be required to identify such improvements. It also states that detailed consultation with Water Service will also be required as an existing major trunk sewer is located adjacent to and within the eastern boundary of the site.</p>
3.9	<p>It is also located within the City Centre (outside the primary retail core), the main office area and within Laganside South and Markets Character Area (Designation CC 017). The site is also situated within the Belfast Area of Archaeological Potential and within an area of parking restraint.</p>
3.10	<p>Policy R1 Retailing in City and Town Centres states that outside designated primary retail cores and within city and town centres retail development will only be granted planning permission where it can be demonstrated that there is no suitable site for the proposed development within the Primary Retail Core. As stated previously, retail policies within draft BMAP are now superseded by the Strategic Planning Policy Statement for Northern Ireland, as set out above in para 4.5 above.</p>
3.11	<p>Policy OF1 Belfast City Centre Main Office Area, Lisburn City Centre and other Town Centres states that planning permission will be granted for office development in these designated areas.</p>
3.12	<p>The Laganside South and Markets Character Area (CC 017) provides a number of urban design criteria relevant to that character area. In general, development proposals shall take account of the height of adjoining buildings and elsewhere development shall aim to reflect traditional plot widths.</p>
3.13	<p>The Public Inquiry into the draft published in 2004 ran from April 2007 – May 2008. Two objections were received to the proposed Development Opportunity Site Stewart Street Designation (CC 070). Of particular relevance being:</p> <p><i>'An objection from the Markets Development Association generally sought the re-designation of this development opportunity site to include a suitable mix of housing types, including a social element to fulfil a local need.'</i></p>
3.14	<p>The Planning Appeals Commission (PAC) stated in response to this objection that given the sustainable location of this site and the PAC conclusions regarding the significant shortfall in housing provision in the Belfast area they see merit in the objection and considered that the site should be zoned for housing rather than as a Development Opportunity Site. The PAC recommended that zoning CC 070 was deleted and land zoned for housing.</p>

3.15	The level of social housing would be a matter that should be determined by the Department.
3.16	In the BMAP Adoption Statement 2014 the then DOE did not accept this recommendation and stated that as the site had extant planning permission for residential development, the development opportunity site is deleted and the site is un-zoned and is not zoned for any particular land use.
3.17	<p>This is a matter upon which the recent JR was upheld, in that this point was not considered by the Committee in September 2016.</p> <p><u><i>Draft Belfast Metropolitan Area Plan 2015 (Post-Examination)</i></u></p>
3.18	In Draft BMAP 2015 the site is also located within the City Centre (outside the primary retail core), and within the main office area. The site is also within the Laganside South and Markets Character Area (Designation CC 014) and within the Belfast Area of Archaeological Potential. The site is located within Belfast City Centre Core Area of Parking Restraint (Designation CC 025).
3.19	The site is not zoned as a Development Opportunity Site or any other use in draft BMAP 2015.
3.20	Therefore, in the Development Plan history of the site as set out above, the lands were never formally zoned for housing development. The site was designated as un-zoned whiteland, a Development Opportunity Site and in the most recent version of draft BMAP 2015 was un-zoned again. This was despite the PAC recommendation following the 2007/2008 Public Inquiry to zone for housing.
3.21	Significant weight should be afforded to the examination version of BMAP 2015 given its advanced stage, in which the site was un-zoned.
3.22	The consequence of the above is that the site has the potential to be used for a range of land uses, providing it is broadly compliant with other relevant planning policies. The proposal for consideration is for an office led development and there are no policies to preclude that form of development on this site in principle.
<b>4.0</b>	<b>Reviewed Consideration / Assessment</b>
4.1	<p>The key material factors in the post judicial review assessment of this application are as follows:</p> <ul style="list-style-type: none"> <li>- Principle of Office and Retail Use at this Location</li> <li>- Belfast Urban Area Plan 2001</li> <li>- Draft Belfast Metropolitan Area Plan 2015</li> <li>- Decision of the Planning Committee on 20<sup>th</sup> September 2016</li> <li>- Response from Ministerial Advisory Board</li> <li>- Response from Historic Environment Division – St George’s Market</li> <li>- Height, Scale &amp; Massing</li> <li>- Landscape &amp; Visual</li> <li>- Impact on Amenity &amp; Surrounding Properties &amp; Area</li> <li>- Traffic Movement &amp; Parking</li> <li>- Other Environment Matters</li> <li>- Economic Benefits</li> </ul>

	<ul style="list-style-type: none"> <li>- Pre-Community Consultation</li> <li>- Consideration of Additional Representations</li> <li>- Section 76 Planning Agreement</li> </ul>
<b>5.0</b>	<b><u>Principle of Office and Retail Use at this Location</u></b>
5.1	As previously stated, the application site is located on un-zoned land in dBMAP 2015 (and BUAP 2001 and dBMAP (2004)) within the defined City Centre boundary and the city centre office area yet outside the primary retail core.
5.2	The SPPS supports vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions consistent with the RDS.
5.3	4 No. retails units are proposed at lower ground level with a total gross floorspace of approximately 553 square metres (Unit 1 – 198 square metres; Unit 2 – 109 square metres; Unit 3 – 123 square metres; and Unit 4 – 123 square metres). Either cumulatively or individually the size of the retail units proposed is not considered to be of such a significant size to impact upon the primary retail core. It will bring active frontage to this area of the city and combined with the Tunnels Project (approved immediately adjacent / opposite) will enhance the vitality and viability of the area.
5.4	dBMAP is clear in that Belfast City Centre remains the first choice location for major office development (Policy OF 1). A total of 26,309 square metres of Grade A gross office space is proposed in the development.
5.5	The Building Owners and Managers Association (BOMA) classifies office space into three categories: Class A, Class B and Class C. According to BOMA, Class A office buildings have the 'most prestigious buildings competing for premier office users with rents above average for the area'. BOMA state that Class A facilities have 'high quality standard finishes, state of the art systems, exceptional accessibility and a definite market presence'. In planning terms Grade A office space falls within Planning Use Class B1 (a).
5.6	The planning system has a key role in achieving a vibrant economy and the Belfast City Centre Regeneration and Investment Strategy (Sept 2015) seeks to increase the city centres employment population. The applicant has advised that this proposal represents a £55 million investment, creating 350 construction jobs during the two year build programme. Once fully operational the estimated employment generated will be around 2,500 people.
5.7	The site is considered to be logistically well located, beside the railway line and within easy walking to the central shopping core of the city. The intensification of use at this location could have a positive impact on service provision across the city in terms of connectively, namely access to public transport, access to Belfast Bikes for ease of movement, access to wifi and other facilities. Upgrades to these services are to be secured within a S76 planning agreement.
5.8	PPS4: Planning and Economic Development sets out the planning policies for economic development uses. It recognises that the planning system has a key role to play in achieving a vibrant economy.

5.9	Policy PED 1 states that a development proposal for a Class B1 business use will be permitted in a city or town centre and in other locations that may be specified for such a use in a development plan. Given the city centre location the proposed uses are considered to comply with the draft development plan and the policies contained with the SPPS as well as PED 1 of PPS4.
5.10	In considering proposals for economic development the Council will seek to minimise adverse effects on the amenities of adjacent properties - particularly dwellings. Policy PED 9 details general criteria for economic development that will be considered throughout this report.
5.11	Having considered the application against the policy framework, it is considered that the proposed land uses are in principle in accordance with PPS 4 and relevant policy.
<b>6.0</b>	<b><u>Decision of Planning Committee on 20<sup>th</sup> September 2016</u></b>
6.1	The Committee's previous resolution to grant full permission is a material consideration, as is the Judgement of the Court following the successful Judicial Review.
6.2	Whilst these are material considerations, the application must be determined afresh and the Committee is not therefore bound by its previous decision.
<b>7.0</b>	<b><u>Ministerial Advisory Group</u></b>
7.1	The Local Planning Authority sought an independent design review of the proposed scheme by the Ministerial Advisory Group (MAG) to respond to the comments made throughout the judgement regarding scale, massing and design. This was sought on 16 October 2018.
7.2	The MAG Review was carried out on 06 November 2018 and their Design Review Report was received by the Council on 16 November 2018 and is attached at <b>Annex B</b> for information. Notifications were issued by the Council to inform neighbours of the Design Review Report on 08 February 2019.  <u>MAG Report</u>
7.3	In summary, the review concluded that had the scheme been considered by the MAG Panel at an earlier stage it would have made two key recommendations:  <ol style="list-style-type: none"> <li>1. Reconsideration of the arrangement of the buildings on the site; and,</li> <li>2. Confirming their thoughts that the site should be considered as a transition site between business (at Lanyon) and living (at the Markets) and thus a mixed use scheme should be encouraged to provide the best regeneration opportunity.</li> </ol>
7.4	MAG review comments in summary are:  <ul style="list-style-type: none"> <li>• The design results in an inward looking scheme and there are opportunities for increased public frontage;</li> </ul>

7.5	<ul style="list-style-type: none"> <li>• The scale, bulk and mass would be prominent especially when viewed from the south (Markets) and when viewed from entering and leaving the city from the east;</li> <li>• The proposed plaza is of limited proportions with access to offices only. Landscaping should also be reconsidered and cross referenced with the shadow analysis to ensure a viable lasting and successful scheme;</li> <li>• The level changes across the site will discourage public access and enjoyment of the public space; and</li> </ul> <p>The 10m walkway in front of “The Tunnels” is likely to be overshadowed and have relatively poor access. A more inclusive design and connectivity would allow for the Tunnels to open out to open space.</p> <p><u>Applicant’s Response</u></p>
7.6	<p>The applicant provided a detailed response to the issues raised by MAG as set out at <b>Annex C</b> and summarised below (responding to the above points):</p> <ul style="list-style-type: none"> <li>• A commitment is maintained to provide and improve the width of access to the Tunnels, and this means that public frontage at East Bridge Street level are limited to that where the bridge connectivity is. Full public frontage is provided at the level where the tunnels project is located, which will complement this project. This maximises the opportunities for an outward looking scheme, given the site constraints;</li> <li>• The architectural concept is to form a gateway to the City, which relates to the scale of development at Lanyon, whilst stepping down to relate to the scale of the Markets beyond;</li> <li>• The proposed plaza is of sufficient size in relation to the proposed scheme, it is accessible to all, and there is public connectivity through the public areas, which is secured within the Section 76 legal agreement. Landscaping has been fully considered by the applicants project team and been assessed by the Council with no issues raised;</li> <li>• There is no reason why the stepped access would hinder public access or enjoyment of the plaza space itself;</li> <li>• There is a fundamental requirement to excavate the ground in front of the Tunnels to create a viable scheme (internal head heights etc.) and thus the external ground levels will be lower than existing. The proposed significantly increases the width in front of the Tunnels to maximise opportunities for improved access. The Tunnels will have an element of overshadowing as they sit due north of a currently vacant site, which when developed will create an impact, the acceptability of which needs to be judged on its merits.</li> </ul> <p><u>Officer comment</u></p>
7.7	<p>The instruction of MAG followed a detailed design assessment of the proposal by officers, which took place prior to the original committee meetings. This</p>

	included independent design advice which resulted in amendments to the scheme, including a reduction in scale.
7.8	The issues that have been raised by MAG are material considerations to be given consideration as part of this application.
7.9	The matters raised are all issues that were considered by officers, and the Committee in September 2016, as part of the approval which was quashed by Judicial Review.
7.10	It is important to note, that whilst it may be possible to take a view on how the scheme could be amended to improve it, the role of the Local Planning Authority is to consider the application before it.
7.11	In that context, it is considered that the scheme put forward is acceptable on planning grounds, for the reasons rehearsed as part of the September 2016 resolution to grant and set out in this report. The proposal has not been amended since that time, and the core planning policy context has not altered, therefore it follows that despite suggested improvements to the proposal by MAG, the actual proposal is considered to comply with planning policy and therefore it is not considered reasonable to request the changes put forward.
<b>8.0</b>	<b><u>Response from Historic Environment Division</u></b>
8.1	One of the grounds for challenge focused on an alleged failure to assess the impact the proposed development would have on the setting of St George's Market (Grade B+ Listed Building), in accordance with the planning policies and guidance for listed buildings. The Court concluded that the ground of challenge on Policy BH 11 of PPS 6 were without substance and thus was not upheld. A consultation also issued to the Department for Communities Historic Environment Division on 24 October 2018 and 05 February 2019, as this had been raised as a third party concern.
8.2	Historic Environment Division's response dated 20 November 2018 advised that the proposal is sufficiently removed in situation from St George' Market as to have no further impact on this urban setting. HED considers that the proposal has no harm to the setting of the listed building under the policy requirements of 6.12 and 6.13 of the SPPS for Northern Ireland and Policy BH11 of PPS6.
8.3	In addition, HED noted that the reason the Local Planning Authority had consulted it was due to third party objections and noted the high numbers of objection. They sought further clarification regarding the specific representations concerning St George's Market. In this respect, the relevant information was issued to HED on 05 February 2019. HED responded on 05 September 2019 stating that having considered the impacts of the proposal on the building and on the basis of the information provided the proposal has no harm to the setting of the listed building under the policy requirements of 6.12 of the SPPS for Northern Ireland and Policy BH11 of PPS6.
8.4	Having regard to HED's advice, it is considered that the proposal would have no undue impact on the setting of St George's Market, or other heritage assets. The proposal is considered compliant with Policy BH11 of PPS6 and Section 91(2) of the Planning Act (NI) 2011.

9.0	<b><u>Design, Height, Scale &amp; Massing</u></b>
9.1	The site is located within Laganside South and Markets Character Area (CC 014) in Draft Belfast Metropolitan Area Plan 2015. This designation provides advice that development proposals shall take account of the height of adjoining buildings and that development shall aim to reflect traditional plot widths.
9.2	The proposal requires to be assessed within the context of the site, which is surrounded by two very different types of urban form, as previously set out. Officers' assessment of the proposal has been informed by VU.CITY, an accurate 3D model of Belfast, as well as Independent Design Advice. The subject site immediately adjoins Lanyon Place Railway Station which is 4 storeys in height. As detailed in the reports it is concluded that the height of the buildings fronting East Bridge Street would be in keeping with the high rise commercial buildings to the north of the site. Block A is to be 10 storeys, but then reduces to 6 storeys at the intersection with East Bridge Street and Stewart Street. Similarly, it is proposed that Block B transitions from 14 storey, to 11 storey, down to 3 storey fronting into Stewart Street. The buildings fronting Stewart Street are also set back 25m from the nearest residential properties and a planting landscaping scheme is also proposed to further soften the impact. The materials proposed for the buildings fronting Stewart Street include a solid red brick base to reflect the brick character of the residential properties in the Market's area. The proposed scheme is considered to be in keeping with the high rise buildings to the north of the site. In relation to the properties the south, it is noted that the proposed reduction in scale seeks to minimise the impact on the residential properties in Stewart Street. The relationship with those properties is considered acceptable.
9.3	Full planning permission was granted in May 2008 by the former DOE for 320 apartments with 230 car parking spaces on the subject site. This building ranged from 6 storeys (car parking at ground level with 5 storeys above) at its boundary with Stewart Street to 12 storeys (car parking at ground level with 11 storeys above) fronting onto East Bridge Street. Whilst this permission has now expired however, it is still a material consideration in the assessment of this planning application, and demonstrates the scale previously considered acceptable.
9.4	Full planning permission was refused in March 2015 by the former DOE for a mixed use development comprising 126No bed hotel, office accommodation, 136No apartments and associated car parking. This application proposed a 12 storey building on East Bridge Street and a 6 storey building on Stewart Street. Permission for the hotel development was refused as it was considered inappropriate in terms of scale, massing and design. It proposed a 6 storey solid block facing Stewart Street.
9.5	This is in contrast to the current application that has been broken up into 4 blocks, 2 of which are stepped down to 3 storey where they face Stewart Street. Significantly, each case must be considered on individual merits and it is considered that the refused application and the current application are materially different.
9.6	The resulting regeneration is a material planning consideration as the site has been vacant for at least half a century and its re-development for an economic use will be an addition to other new, relatively recently approved office developments (for Concentrix and AllState) on the south side of East Bridge



<p>9.7</p> <p>9.8</p>	<p>Street. Given the city centre location, it is considered that the height of the buildings proposed on East Bridge Street are acceptable and would not harm the character or appearance of the immediate area. The form and height of the Block A and Block B (East Bridge Street) establishes a presence that responds to the scale and massing of other commercial buildings in the immediate environment that is considered to be appropriate.</p> <p>The scale of the proposal has been reduced during the application process to take account of the local environment namely, residential properties on Stewart Street, seeking to ensure that the character of the area and residential amenity would not be compromised to an unacceptable degree. The drop in scale and massing, proposed separation distances and landscaping have all been incorporated to improve the design relationship and reduce the impact on the residential properties in the markets.</p> <p>The architectural approach is modern and the elevations contain elements which include curtain walling in addition to glass spandrel panels, reconstituted granite cladding, red brick and rain screen polyester powder coated cladding. A condition is recommended requiring sample boards for all external materials to be submitted for agreement by the Council prior to commencement on site.</p>
<p><b>10.0</b></p> <p>10.1</p> <p>10.2</p> <p>10.3</p>	<p><b><u>Landscape &amp; Visual</u></b></p> <p>A continuous tree planting zone is proposed along the boundary of the site with Stewart Street and along the eastern boundary of the site adjacent to Central Station. This comprises shrub planting and tree planting together with a wide section of granite paving located between Blocks C and D. At its shallowest point, directly outside Block C, this buffer measures 5.6m deep. A 3.0m wide footpath is also proposed between this buffer and the kerb / road carriageway. This results in the proposed building line along Stewart Street being set back a minimum distance of around 8.6 m from the kerb line. There is a separation distance of 26m between Block C and Nos 3-6 Friendly Street.</p> <p>Provision is also made with the proposal for public spaces which serve to enhance the overall design quality of the development.</p> <p>The landscaping plan confirms that at the entrance on East Bridge Street a tree is proposed to perforate the entrance platform. Trees are also proposed on the lower street level outside the tunnels and proposed retail units together with a range of planters through the site. Trees on easements or at the Tunnels would also be in planters. A landscaping condition is recommended to ensure that the landscaping and public realm enhancements are completed prior to occupation.</p>
<p><b>11.0</b></p> <p>11.1</p> <p>11.2</p>	<p><b><u>Impact on Amenity &amp; Surrounding Properties &amp; Area</u></b></p> <p>The protection of neighbouring properties from unreasonable loss of amenity is a well-established planning consideration.</p> <p>In a city centre and within other high density locations, properties are likely to be overlooked to some degree, and any new development proposals should seek to provide reasonable space between buildings in order to minimise overlooking.</p>

<p>11.3</p> <p>11.4</p> <p>11.5</p>	<p>The proposed development includes a minimum separation distance of approximately 25 metres between the proposal and the residential properties on Stewart Street. This separation distance includes a landscaping buffer, including new trees which will assist in minimising the impact on the neighbouring residential properties. It is considered that the relationship of the proposed development with the neighbouring residential development is not uncommon in a city centre location such as this. Therefore, on balance, the proposal is considered acceptable in terms of privacy, outlook and dominance.</p> <p>The proposal has the potential to bring approximately 2,500 additional people to this area of the city. Whilst the facilities, in terms of location to public transport, are considered good, the impact on the amenity in the surrounding area has the potential to be significant. The public realm in the vicinity has had some recent upgrade due to the physical enhancement at the railway station and BRT halt. It is considered that this upgrade should be extended to include the area of the site in order to support a development of this scale and provide a visually integrated street scene in line with the Council's Developer Contribution Framework.</p> <p>As such it is recommended that the developer enter into a Section 76 Agreement to secure contributions to facilitate environmental improvements in the area.</p>
<p>12.0</p> <p>12.1</p> <p>12.2</p> <p>12.3</p> <p>12.4</p> <p>12.5</p>	<p><b><u>Traffic Movement &amp; Parking</u></b></p> <p>The site is located within an Area of Parking Restraint (Designation CC025) in draft BMAP. Policy TRAN 1: Parking Standards within Areas of Parking Restraints recommends 1 space per 300 square metres for non-operational spaces and 1 space per 930 square metres for operational spaces. Reductions in these standards will be considered in appropriate circumstances where evidence of alternative arrangements can be clearly demonstrated.</p> <p>The proposal includes a new vehicular access point on Stewart Street to replace the existing.</p> <p>Pedestrian access into the site is proposed directly from East Bridge Street and Stewart Street. Linkages are proposed across the site to increase overall permeability. Those accessing from East Bridge Street can either directly enter the office accommodation at a higher level which takes them to the landscaped public spaces or descend into the lower ground level where a street will be created with an active frontage on both sides by the proposed retail units and the Tunnels Project. A further three pedestrian access points are also located on Stewart Street. The proposal also includes improvements to the footways along Stewart Street surrounding the site.</p> <p>The development will comprise 63 car parking spaces at lower ground level against a policy requirement of 119 spaces. The proposal also incorporates the provision of 60 cycle parking spaces. 3 spaces will be for disabled parking.</p> <p>Policy AMP 7 of PPS3 states that a reduction in parking provision may be accepted where, for example, it forms a part of a package of measures to promote alternative transport modes. A Travel Plan has been submitted in support of the application seeks to encourage a modal shift from car based trips to more sustainable modes of transport. It is proposed to appoint a Travel Co-ordinator – responsible for the promotion of cycling, walking and public</p>

<p>12.6</p> <p>12.7</p>	<p>transport for staff and visitors. This requirement will form part of the Section 76 Agreement with the Developer. Within this context a reduced car parking provision is considered, in these circumstances, to be appropriate.</p> <p>The site is well placed in terms of accessibility to a range of alternative and sustainable modes of transport. Lanyon Place train station is located adjacent to the site; there are a number of bus stops, including a Glider stop, are located along East Bridge Street and Belfast Bikes have three bike docking stations located in close proximity to the site. A lift is proposed at lower ground level to provide direct access to central station.</p> <p>Having had regard to the above and consultation response from DfI Roads (then Transport NI) which confirms no objection, it is considered that the scheme is acceptable and in accordance with relevant sections of PPS 3 and PPS 13.</p>
<p>13.0</p> <p>13.1</p> <p>13.2</p> <p>13.3</p> <p>13.4</p> <p>13.5</p>	<p><b><u>Other Environmental Matters</u></b></p> <p>Paragraph 4.11 and 4.12 of the SPPS states that there are a wide range of environmental and amenity considerations including noise and air quality, which should be taken into account by planning authorities when proposing policies or managing development. Other amenity considerations arising from development that may have potential health and well-being implications include design considerations, impacts relating to visual intrusion, general nuisance, loss of light and overshadowing. Other environmental impacts associated with development include sewerage, drainage, waste management and water quality.</p> <p><i>Flood Risk and Drainage</i></p> <p>PPS15 seeks to minimise and manage flood risk to people, property and the environment. Given that Flood Maps are regularly updated by DfI Rivers Agency, a further consultation was issued to Rivers Agency on 17 June 2019. Rivers Agency responded on 17<sup>th</sup> July 2019, confirming that the site is located within the 1 in 200 year coastal floodplain. A Flood Risk Assessment was subsequently requested and submitted.</p> <p>DfI Rivers has reviewed the Flood Risk Assessment and concluded that it cannot object to the proposed development from a drainage or flood risk perspective. DfI Rivers advised that they cannot comment on the acceptability of the flood evacuation plan. Consequently, further consultation took place with BCC Emergency Plan Section with regarding the flood evacuation plan. They noted that it is the developer's responsibility to ensure that the flood evacuation plan is documented and future occupants are aware of this. If the Committee is minded to approve the application a condition is recommended regarding the implementation of the flood evacuation plan.</p> <p>Furthermore, the applicant has received consent from NI Water to discharge these runoff rates into an existing combined sewer.</p> <p>NI Water Ltd has been consulted on the proposal and confirmed that the waste water treatment works (WWTW) has available capacity to accept the additional load. Given that NIW confirmed available capacity, DAERA Water Management Unit has no objection to the proposal subject to Informatives detailed below.</p>

13.6	<p>Having had regard to the above it is considered that the proposal would not have a significant impact on flood risk, drainage and the sewerage system. The proposed scheme is therefore considered acceptable in accordance with Policy FLD 3 of PPS 15 and the SPPS with respect to flood risk, drainage, sewerage and climate change.</p>
13.7	<p><i>Contaminated Land</i></p> <p>Preliminary and Generic Quantitative Risk Assessment were submitted in support of the application. Waste Management (DAERA) and Environmental Protection (BCC) raised no objection to the proposal subject to conditions and Informatives.</p>
13.8	<p><i>Archaeology</i></p> <p>The application site is located within Belfast Area of Archaeological Potential as identified in dBMAP. The application site includes the location of a former abattoir and is also in close proximity to a number of Industrial Heritage Sites associated with the economic development of Belfast. Historic Environment Division: Historic Monuments Unit is content with the proposal in the context of BH4 of PPS6 conditional on the agreement and implementation of a developer-funded programme of archaeological works. This could take the form of the current Archaeological Impact Assessment augmented with a detailed archaeological mitigation strategy related to the proposed development. The programme of archaeological works is to be secured by condition.</p>
13.9	<p><i>Noise, Air Quality and Wind Microclimate Assessment</i></p> <p>Noise and Vibration Impact Assessment and an Air Quality Impact Assessment were submitted in support of the application. A Pedestrian Level Wind Microclimate Assessment Desk Study was also submitted in support of the application.</p>
13.10	<p>Environmental Protection (BCC) raised no objection to the proposal subject to conditions and Informatives.</p>
13.11	<p><i>Loss of Light and Overshadowing</i></p> <p>A Shadow Analysis has been submitted in support of the application which demonstrates that the development will not cause overshadowing to an unreasonable degree to the surrounding environment, in particular to the Markets properties to the south of the subject site. It confirms that there would be limited overshadowing only during the winter months of the year. As previously mentioned, due to the orientation of the tunnels project to the north of the development site, there would be some overshadowing to this potential scheme, however, this is not considered to be of a degree that warrants a reason for refusal.</p>
13.12	<p><i>Waste Storage</i></p> <p>Bin storage is proposed at lower ground level contained within the car parking area of the proposal. If the scheme is considered acceptable a condition will be necessary to ensure an adequate waste storage area and waste management strategy is implemented for the collection and disposal of waste.</p>

<p><b>14.0</b></p> <p>14.1</p>	<p><b><u>Economic Benefits</u></b></p> <p>The SPPS states that planning authorities should take a positive approach to appropriate economic development proposals and proactively support and enable growth generating activities, taking into account all material planning considerations. The proposal is consistent with this aim.</p>
<p><b>15.0</b></p> <p>15.1</p> <p>15.2</p>	<p><b><u>Pre-Community Consultation</u></b></p> <p>As required by Section 27 of the Planning Act (NI) 2011 places a statutory duty on applicants for planning permission to consult the community in advance of submitting an application.</p> <p>It is considered that the Pre-Community Consultation Report submitted has demonstrated that the applicant has carried out their duty under Section 27 of the Planning Act (NI) 2011 to consult the community in advance of submitting an application.</p>
<p><b>16.0</b></p> <p>16.1</p> <p>16.2</p> <p>16.3</p> <p>16.4</p>	<p><b><u>Consideration of Additional Representations Received</u></b></p> <p>The majority of the issues raised have already been considered in this or the preceding reports. However some matters are new and are addressed below.</p> <p><i>The voluntary financial contribution from the application cannot be justified, it is contrary to the Council's policy in respect to developer contributions and suggest the applicant is buying permission.</i></p> <p>The Developer Contribution Ground was one of the eight grounds that challenged the grant of planning permission. This ground was predicated on the Section 76 Agreement and that the Council's decision was vitiated by taking into account the developer's willingness to contribute £230,000 to the cost of public infrastructure works at this was not a legally impermissible consideration. The Court concluded that this ground of challenge must fail.</p> <p><i>Inappropriate Scale</i></p> <p>This height ground argued that a misunderstanding and misapplication of the building height policies in draft BMAP 2015 had resulted in the concentration on the height of buildings situated on the opposite side of East Bridge Street, rather than the immediately adjoining buildings, namely Central Station. The Court concluded that this ground of challenge had no merit. Design, Height, Scale and Massing has also been considered under section 8.0 of this report.</p> <p><i>Planning Precedent for a Refusal on the Site</i></p> <p>The inconsistency ground of challenge is that the impugned granted of planning permission is vitiated by the planning history on the site, namely a decision of the then DOE dated 31 March 2015 to refuse planning permission involving the construction of two blocks, one of 12 storeys (on the East Bridge Street side) and the other of 6 storeys (on the Stewart Street side). The Court concluded that irrationality is not demonstrated and this ground fails accordingly.</p>

<p>16.5</p>	<p><i>Independent Design Advice</i></p> <p>Independent Design Advice was sought on the proposal. Following the submission of amended plans to address concerns raised regarding the scale, massing and design no further objection was offered to the scheme on design grounds from the Independent Design Consultant.</p>
	<p><i>Connectivity</i></p>
<p>16.6</p>	<p>The proposal includes improvements to the footways along Stewart Street, and the creation of 3 access points on Stewart Street which will allow access through the development to the tunnels project and the City Centre. Rather than interfering with the tunnels project, it is considered that the proposal will complement and enhance it, and increase accessibility through the site for residents of the Markets area.</p>
<p><b>17.0</b></p>	<p><b><u>Section 76 Planning Agreement</u></b></p>
<p>17.1</p>	<p>A Section 76 planning agreement was signed in respect of the now quashed planning permission issued on 5 June 2017. The planning agreement set out in detail a number of obligations upon the developer in relation to the markets tunnel project. These are:</p> <ul style="list-style-type: none"> <li>• To prohibit the development from commencing until a method statement showing the proposed protection system for the bridge and tunnels at East Bridge Street has been submitted and agreed by BCC;</li> <li>• Securing the developer’s co-operation in relation to providing access for the purposes of construction and maintenance of the Tunnels project;</li> <li>• To permit the public to have access through the development to the tunnels project including access for construction of a public pedestrian access from Stewart Street across the site to the Tunnels; and</li> <li>• Requiring the developer to invite local residents to attend a meeting with the developer twice each year, to review and matters arising which may affect residents.</li> </ul>
<p>17.2</p>	<p>The Section 76 agreement therefore secures appropriate protection for the tunnels project. If the Council were not satisfied with proposals for the protection of the tunnels, it would not agree with the method statement and development could therefore not commence.</p>
<p>17.3</p>	<p>The planning agreement also provided that the developer will pay the total sum of £230,000 towards the cost of public realm improvement works.</p>
<p>17.4</p>	<p>In addition, the Section 76 agreement secures the works to the piazza; and the submission and implementation of an Estate Management Strategy. This will provide for the management of parking spaces and access; travel coordinator; alternative and sustainable modes of transport; management and maintenance of the piazza, planting and landscaping; and an anti-social behaviour plan.</p>
<p>17.5</p>	<p>The applicant has expressed a willingness to enter into another Section 76 Agreement to secure the same planning obligations.</p>

17.6	The applicant has also agreed an additional clause which would secure apprenticeships in the main trades consistent with the requirements of previous planning agreements. This employability and skills intervention is considered appropriate given the applicant's commitments to other developer contributions and obligations.
<b>18.0</b>	<b>Summary of Recommendation</b>
18.1	Having regard to the Development Plan, planning policies and relevant material considerations, the proposal is considered acceptable.
18.2	<p>It is recommended that planning permission is granted subject to conditions and completion of the Section 76 planning agreement. Delegated authority is sought for the Director of Planning and Building Control to finalise the wording of conditions and the Section 76 planning agreement. The Section 76 planning agreement shall include:</p> <ul style="list-style-type: none"> <li>• Public Realm Improvement Contribution of £230,000 towards the cost of public realm improvement works within the area;</li> <li>• Adjoining Street – Piazza to be completed to a standard agreed by the Council;</li> <li>• Estate Management Statement to be submitted and agreed by the Council;</li> <li>• Public Access – permit reasonable access across the site in relation to the Tunnels Project and from Stewart Street across the site to the Tunnels;</li> <li>• Tunnels Protection Retention Scheme – not to commence development until a method statement showing the proposed protection / retention systems for the bridge and tunnels situated at East Bridge Street; and</li> <li>• Securing apprenticeships in the main trades during construction.</li> </ul>
	<p>Provisional Conditions (based on the conditions imposed on the previous decision which was quashed by the Court).</p> <p>1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.</p> <p>Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.</p> <p>2. The development hereby permitted shall not be occupied until the vehicular accesses, including visibility splays and any forward sight distance, have been constructed in accordance with the approved layout Drawing No. 02B '15-184-02, 'Proposed Site Layout – Lower Ground Floor Level rev_C' and bearing Belfast City Council Planning Office date stamp 29 June 2016. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250 mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.</p> <p>Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.</p>

3. The Private Streets (Northern Ireland) Order 1980.  
The Council hereby determines that the width, position and arrangement of the street, and the land to be registered as being comprised in the streets, shall be as indicated on Drawing No. 15-184-PSD01, 'PSD Site Layout' and bearing Belfast City Council Planning Office date stamp 04 August 2016 and Transport NI determination stamp of 31 August 2016.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

4. The development hereby permitted shall not be occupied until the associated hard surfaced area have been constructed in accordance with the approved layout Drawing No. 02B '15-184-02, 'Proposed Site Layout – Lower Ground Floor Level rev\_C' and bearing Belfast City Council Planning Office date stamp 29 June 2016 to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time than for the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking.

5. The gradient of the access road shall not exceed 4% (1 in 25) over the first 10 m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road user.

6. Any existing street furniture or landscaping obscuring visibility or located within the proposed vehicular accesses shall, after obtaining permission from the appropriate authority, be removed, relocated or adjusted and at the applicant's expense.

Reason: In the interests of road safety and the convenience of road users.

7. The development hereby permitted shall operate in accordance with the approved Travel Plan & Service Management Plan published on ePIC 6 May 2016. This includes provision of the Translink Corporate Commuter Initiative, the Translink TaxSmart Initiative and the Bike2Work Initiative or equivalent measures agreed by DFI Roads.

Reason: To encourage the use of alternative modes of transport to the private car in accordance with the Transportation Principles and in the interests of road safety and the convenience of road users.

8. No site works of any nature or development (other than that required to fulfil this condition) shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Council. The programme should provide for the identification and evaluation of archaeological remains



within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

9. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Council to observe the operations and to monitor the implementation of archaeological requirements.

Reason: to monitor programmed works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

10. No development or piling work should commence on this site until a piling risk assessment has been submitted in writing and approved by the Council.

. Piling risk assessments should be undertaken in accordance with the methodology contained within the Environment Agency document on "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention" available at

<http://publications.environment-agency.gov.uk/PDF/SCHO0501BITT-E-E.pdf>.

The development shall not be carried out unless in accordance with the approved details.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

11. If during the development works, new contamination or risks are encountered which have not previously been identified, works should cease and the Council shall be notified immediately in writing. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11). In the event of unacceptable risks being identified, a remediation strategy shall be submitted and agreed in writing by Council, and subsequently implemented and verified.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

12. After completing the remediation works under Condition 11; and prior to occupation of the development, a verification report shall be submitted to and approved in writing by the Council. This report should be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11). The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

13. The final site layout shall be built in accordance with Drawing Number 02B - Coogan and Co Architects Ltd - Proposed site layout - Lower Ground Floor Level, Revision C, stamp date 29th June 2016.

Reason: Protection of human health

14. Prior to the operation of the development, a Verification Report which demonstrates that a capping layer of clean imported material demonstrably suitable for end use has been installed to a depth of at least 500mm within all landscaped areas shall be submitted to and approved in writing by the Council. The Verification Report should be in accordance with current best practice and guidance as outlined by the Environment Agency.

Reason: Protection of human health

15. Prior to the commencement of development, a Construction Noise Management Plan shall be submitted to and approved in writing by the Council. This Plan should incorporate the recommended mitigation measures outlined in the RPS Limited 'Noise & Vibration assessment of the proposed development at East Bridge Street, Belfast' Reference NI1665/N/01/01, dated 11th February 2016. The Plan shall pay due regard to BS 5228:2009 Noise and Vibration Control on Construction and Open Sites and include a detailed programme for the construction phase, the proposed noise/vibration monitoring methods and evidence of neighbour liaison. The Construction Noise Management Plan shall be implemented as agreed.

Reason: In the interest of residential amenity

16. On operation of the development, the Rating Level (dB LAr) of sound from all combined building services plant associated with the development shall at all times not exceed the background sound level (for both daytime and night time) at the nearest sound sensitive premises when measured in accordance with assessment methodology outlined in BS4142:2014 - Methods for rating sound and assessing industrial and commercial sound. A Rating Level (dB LAr) indicative of 'no adverse impact' shall be maintained thereafter.

Reason: In the interest of residential amenity

17. No development shall take place until samples of all external finishes has been submitted to and been approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved sample details.

Reason: In the interests of visual amenity and the character and appearance of the area.

18. All hard and soft landscaping works shall be carried out in accordance with Drawing No 16b date stamped 29 June 2016. Planting shall be carried out in the first available planting season prior to the occupation of the proposed development, unless otherwise specifically set out in the Section 76 Legal Agreement between the landowner and Belfast

City Council. All hard landscaping works shall be completed prior to occupation.

Reason: To ensure provision, establishment and maintenance of a high standard of landscaping.

19. In the event that unexpected contamination is encountered during the approved development of this site, the development shall cease and a written report detailing the nature of this contamination and its management must be submitted to and approved in writing by the Council. In the event of unacceptable risks being identified, a remediation strategy shall be submitted and agreed in writing by Council, and subsequently implemented and verified.

Reason: Protection of human health.

20. After completing the remediation works under Condition 19; and prior to occupation of the development, a verification report shall be submitted to and approved in writing by the Council.

Reason: Protection of human health

21. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no buildings, walls, gate pillars, fences or other means of enclosure requiring foundations shall be constructed.

Reason: To preserve the open plan nature of the development.

22. Notwithstanding, the landscaping details shown on drawing no 16b date stamped 29 June 2016. The 4no trees shown on the granite cobbles street within the 5 metres bridge service strip shall be moveable at all times.

Reason: To avoid obstruction within the 5 metres bridge service strip.

23. On occupation of the development hereby approved, the recommendations and mitigation measures outlined in the Flood Risk Assessment including the Flood Alleviation Plan, shall be fully implemented. No part of the agreed measures shall be removed or altered without the prior written permission of the Council.

Reason: In the interest of public safety and amenity and to mitigate against the environmental effects of climate change.

## **ANNEX A**

### **Summary of Other Unsuccessful Grounds of Challenge**

#### **The Developer Contribution Ground**

This ground was predicated on the Section 76 Agreement and that the Council's decision was vitiated by taking into account the developer's willingness to contribute £230,000 to the cost of public infrastructure works as this was not a legally impermissible consideration.

*The Court concluded that this ground of challenge must fail.*

#### **The Inconsistency Ground**

The essence of this ground of challenge is that the impugned granted of planning permission is vitiated by the planning history on the site, namely a decision of the then DOE dated 31 March 2015 to refuse planning permission involving the construction of two blocks, one of 12 storeys (on the East Bridge Street side) and the other of 6 storeys (on the Stewart Street side).

*The Court concluded that irrationality is not demonstrated and this ground fails accordingly.*

#### **The Height Ground**

This ground entailed a complaint that a misunderstanding and misapplication of the building height policies in draft BMAP 2015 resulted in the concentration on the height of buildings situated on the opposite side of East Bridge Street, rather than the immediately adjoining buildings, namely Central Station.

*The Court concluded that this ground of challenge had no merit.*

#### **The Policy BH 11 Ground**

This ground focused on failing to assess the impact the proposed development would have on St George's Market setting, in accordance with the planning policies and guidance for listed buildings. It was irrational not to consider these relevant factors.

*The Court concluded that the ground of challenge on Policy BH 11 of PPS 6 were without substance.*

#### **Fairness and Balance**

The main thrust of this ground of challenge is that the Development Management Officer Reports to the Committee partook of an unfair imbalance favouring the planning applicant and prejudicing the Markets residents. The main submission advanced was that the planning officer misled the Committee.

*The Court concluded that this criticism was not sustained.*

#### **Article 8 ECHR**

The pleading stated that there have been on or inadequate regard for the impact of the proposed development on the Article 8 rights of the Applicant and other residents.

*The court rejected this ground of challenge.*