



An  
Bord  
Pleanála

## Inspector's Report ABP-306435-20

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<b>Development</b>	Change of use of first floor from public house to 5 apartments, and second floor from office to 4 apartments, including communal roof garden.
<b>Location</b>	Seabank House, East Wall Road, Dublin 3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3992/19
<b>Applicant(s)</b>	Danring Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Donnachadh Byrne
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	17/03/2020
<b>Inspector</b>	Anne Marie O'Connor

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## 1.0 Site Location and Description

- 1.1. The site of the proposed development is located at the junction of East Wall Road and East Road, Dublin 3 adjacent to the Dublin docks area. The building is a three-storey structure (over basement) which is used as a public house (Seabank House) on the ground and first floors. The second floor is laid out as an office/ admin/ storage area. A smoking area is provided at an elevated ground floor level with an opening and safety balcony railing which is slightly raised above the East Road street level due to the gradient of the street.
- 1.2. An associated off-licence also occupied the ground floor on the East Wall Road side, accessed from the corner of the building. The incorporation of the unit into the public house had been carried out at the time of the site visit.
- 1.3. The building is modern in design, with an unusual tower shaped staircase on the East Road elevation at the far side of the building to the off-licence.
- 1.4. The immediately surrounding area is characterised by a mix of commercial, industrial and residential uses. Opposite Seabank House on East Road is an established community of 2-storey former Council houses. A vacant site lies on the opposite side of East Wall Road, which is a busier road than East Road.

## 2.0 Proposed Development

- 2.1. Planning permission is sought for the change of use of the first and second floors of the building to provide 9 no. apartments as follows:
  - First Floor – 4 no. 1-bed apartments, plus 1 no, 2-bed apartment
  - Second Floor – 4 no. 1 -bed apartments
  - Second floor – communal roof garden for the residential units.
  - Creation of a double height open courtyard at first and second floor level.
  - Revisions to elevation facing East Road to include new windows at first and second level and removal of the existing stair tower.
- 2.2. Access to the apartments is via the existing two entrances at ground level from East Wall Road and East Road. Lift access is available from the East Road access.

- 2.3. Further information including details of cycle parking, landscaping, management of communal areas and waste management was submitted at application stage. Drawing F1-01 also provides further cross sections.
- 2.4. A concurrent appeal relates to an application for change of use of the off-licence on the ground floor of the building to public house and alterations to the openings and elevations (ABP-306439; Reg. Ref. 3769/19).

### 3.0 **Planning Authority Decision**

**Grant.** The following conditions are of note:

- C.2 S.49 Development Contribution (Luas C1 line)
- C.5 The roof terrace shall not be used between 10pm and 7 am Monday-Sunday inclusive.
- C.6 Management Company
- C.7 Noise
- C10. Waste Management
- C.11 Bicycle parking

#### 3.1. **Planning Authority Reports**

3.1.1. Planning Reports - The planner's report reflects the decision to grant planning permission and the conditions attached.

3.1.2. Other Technical Reports

Drainage: No objection subject to condition.

Transportation – No objection subject to condition- cycle parking, repair to roads etc.

Waste management – No objection subject to conditions.

#### 3.2. **Prescribed Bodies**

TII: S49 (Luas C1) Supplementary Development Contribution Scheme levy to be applied if applicable.

### 3.3. Third Party Observations

An observation was received from the appellant. The issues raised are covered in the grounds of appeal as set out below.

### 4.0 Planning History

- 6749/07 Installation of two openable screens to balcony space. **Grant.**
- 29N.221012 (5251/06) (i) Retention of external balcony for use as an external smoking area (ii) Retention of new shop front and railings associated with the balcony area. **Refused** on grounds of impact on residential amenity by reason of noise and general disturbance.
- 4606/04 Provision of balcony space, new shopfront and railings. 2 year **temporary permission** for the balcony. Condition 2 required removal of balcony area and incorporation of area into the premises within 2 years unless separate grant of permission obtained.

### 5.0 Policy Context

#### 5.1. Development Plan

The Dublin City Development Plan 2016-2022 is the County Development Plan for the area. The site is zoned **Z14** "To seek the social, economic and physical development and/or rejuvenation of an area with mixed use of which residential and Z6 would be the prominent uses". The site is located in the Docklands SDRA6.

The following policy are relevant:

- QH5 To promote residential development, including underutilised sites.
- QH6 To foster attractive mixed-use sustainable neighbourhoods which contain a variety of housing types and tenures.
- QH18 Provision of high quality apartments within sustainable neighbourhoods

#### 5.2. The Sustainable Urban Housing Guidelines: Design Standards for New Apartments Guidelines apply.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal set out the planning history and history of complaints associated with the site. The grounds of appeal can be otherwise summarised as follows:

- The DCC planners' reports relating the two concurrent applications differ in relation to comments relating to the planning status of the smoking balcony, and the conversion of the off-licence prior to the application being made.
- It will not be feasible to restrict use of the roof terrace between 10pm and 7am. The condition is unenforceable and issues are likely to arise at times when there is no-one available to attend from DCC. There is the potential of noise disturbance from large parties being held on the roof terrace.
- The proposed residential use and roof garden should have been granted only in-line with a full regularisation of the planning issues associated with the smoking balcony.
- The works to covert the off-licence were completed several months ago without planning permission. DCC planning enforcement have been notified. Other enforcement issues relating to the works after the fire are also raised.
- Failure to address the issue of noise/ disturbance to existing properties near the pub and future residences above the pub from the existing smoking balcony.
- At every stage where the impact of the smoking balcony on residential amenity has been considered, the decision has been that the use of the smoking balcony will injure the residential amenity of those nearby homes.
- The smoking balcony is unauthorised and the passing of time does not give a development planning permission. The planner and the applicant both state that the balcony does not have permission.
- The conversion of the off-licence has increased the overall floor area of the pub, increasing the numbers potentially using the smoking area.

- Any extension of pub opening hours during the week is liable to result in nuisance extending until very late during mid-week.
- The appellant must get up at 5.15 in order to leave for work and therefore being able to sleep is extremely important. He has been forced to undertake sound reduction measures such as triple glazed windows to alleviate noise issues from the smoking balcony. The measures have helped but not alleviated the problem.

## 6.2. Planning Authority Response

No comments received to the grounds of appeal.

## 6.3. Applicant response to the grounds of appeal

The applicant's response to the grounds of appeal can be summarised as follows:

- Danring Limited purchased the property in 2015.
- The upper floors of the premises were damaged in a fire in December 2018. The public house element was upgraded but the closure affected trade.
- This is a simple proposal for a change of use to residential as the need for a public house with upper floor lounge function rooms is no longer required.
- There would be reduction in noise.
- There is a need for residential accommodation in the area.
- The grounds of appeal do not relate to the proposed development.
- Communal roof terrace by their nature are not used a night.

## 7.0 Assessment

- 7.1. The policies of the development plan in general, and the Z14 zoning in particular, is supportive of residential development in such accessible locations in close proximity to the Docklands, and city centre. Furthermore, the re-use of existing buildings is to be welcomed where such buildings provide an appropriate standard of residential

amenity for future occupants, while protecting the amenity of existing residents. The key planning issues in these cases are, therefore:

- Residential amenity of future occupants
- Residential amenity of existing residents in the vicinity
- Other matters

### **Residential Amenity of Future Occupants**

- 7.2. The Sustainable Urban Housing: Design Standards for New Apartments Guidelines set out minimum standards for unit sizes (1 bed – 45m<sup>2</sup>; 2 bed – 73m<sup>2</sup>). These can, however, be relaxed in building refurbishment schemes on a case-by-case basis subject to overall design quality. The proposed one-bed apartments range in size from 45m<sup>2</sup> to 50.3m<sup>2</sup>, and therefore comply with the guidelines. In addition, the 2-bed unit (72.4m<sup>2</sup>) falls only minimally below the guidelines. All units also have dedicated storage areas.
- 7.3. In terms of private open space, the removal of the tower staircase on the East Road elevation will facilitate the provision of winter gardens for two of the units. Seven of the nine units would, however, have no private open space. The two corner units at first and second floor do, however, have the benefit of a high quality of internal amenity and daylight/sunlight by virtue of the tower corner element. A communal roof garden (62m<sup>2</sup>) is proposed on the second floor. Although the space is more akin to an enclosed courtyard (with a limited opening only on the East Road), details of planting, seating etc were provided at further information and, in the context of an urban refurbishment I am satisfied that a sufficient level of amenity can be provided for future residents in terms of access to open space.
- 7.4. I note that kitchen and bathroom windows for four of the units are proposed onto the shared landing facing the proposed void and the applicant has confirmed that the kitchen windows would comprise non-openable glass blocks and opaque glazing. Furthermore, the kitchen and bedroom for the second floor unit adjacent to the roof garden are proposed onto the communal space as the only means of daylight/ventilation for these rooms. While not ideal, this unit does have the benefit of a winter garden and it is likely that the level of use of the roof garden will not be of a magnitude to seriously injure the residential amenity of this unit.

7.5. It is noted that no car parking is proposed. Bicycle parking spaces will, however, be provided at basement level, which is in the ownership of the applicant. A condition in relation to the details can be attached. Having regard to the high level of accessibility of the location, and the re-use of an existing building, I have no objection to the proposed residential use on these grounds. I note that bin storage is also provided in the basement.

### **Impact on Residential Amenity of existing residents**

7.6. The grounds of appeal relate in large part to concerns regarding the pub's smoking balcony on the ground floor, which is not directly related to the proposed residential use. The matter of potential noise disturbance from the roof garden and the inability to control night-time activities is, however, a relevant consideration. I note that there is an opening measuring 1795mm x 1250mm in the second floor East Road elevation which faces the established residential housing on East Road/ Bargy Road. However, the provision of a roof terrace for residents is not akin to that for a public house and I would suggest that the net impact on noise and disturbance resulting from the proposed change of use would be likely to be positive. I am likewise satisfied that the condition attached by the planning authority provides additional protection in this respect.

### **Other Matters**

7.7. The proposed development largely comprises 1-bed room units which is not ideal in terms of achieving a balanced housing mix, and exceeds the recommended 50% in the Guidelines. However, having regard to the constraints presented by the refurbishment of an existing building, and the limited number of units, I consider the proposal to be acceptable.

7.8. Having regard to the nature, comprising a change of use to an existing building in a serviced urban area, and the distance to the nearest European sites, I am of the view that no **appropriate assessment** issues arise, and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the proposed development and the existing pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would provide an adequate level of amenity for future residents and would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

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

**Reason:** In the interest of clarity.

2. The proposed roof terrace shall be reserved for use by residents of the apartments hereby permitted only, and shall not be used between 10pm and 7am Monday-Sunday inclusive.

**Reason:** In the interests of residential amenity.

3. The external finishes of the proposed extension including roof tiles/slates shall be the same as those of the existing building in respect of colour and texture.

**Reason:** In the interest of visual amenity.

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

**Reason:** In the interest of public health and to ensure a proper standard of development.

5. 9 no. bicycle parking spaces shall be provided within the site. Details of the layout and marking demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

6. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company, or by the local authority in the event of the development being taken in charge. Detailed proposals in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the satisfactory completion and maintenance of this development.

7. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the

provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials [and for the ongoing operation of these facilities] for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

**Reason:** In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

8. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.

**Reason:** To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.

9. Site development and building works shall be carried out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

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

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

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

Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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Anne Marie O'Connor  
Planning Inspectorate

17 March 2020