



An
Bord
Pleanála

Board Order

PL 29S.248680

Planning and Development Acts 2000 to 2017

Planning Authority: Dublin City Council

Planning Register Reference Number: 4447/16

Appeal by Anthony L. Byrne care of Simon Clear and Associates of 3 Terenure Road West, Terenure, Dublin against the decision made on the 17th day of May, 2017 by Dublin City Council to refuse permission for the proposed development.

Proposed Development: A mixed use development at 135-143 Francis Street and extending via a laneway to Thomas Street, Dublin. The proposed development includes: - (1) the demolition of the Tivoli Theatre and all structures in the existing surface car park and buildings excluding the existing eight-bay building facades (numbers 140-143) on Francis Street; (2) the construction of a courtyard mixed use development including:- a 298 unit aparthotel five-storeys in height onto Francis Street (four-storeys plus setback) and six-storeys in the courtyards (five-storeys plus setback) with associated facilities including reception/foyer and operational areas and retail/non-retail service outlets accessed from/fronting to Francis Street and ground floor restaurant, gymnasium and bicycle hire shop, bicycle parking, electricity sub-station, hard and soft landscaping located in the main courtyards; (3) access archway to pedestrian/cyclist priority street (restricted to emergency and service vehicle traffic) from Francis Street to internal courtyards and (4) all ancillary street-level fascia signage boards, boundary treatments, site development works and services.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016 to 2021, the Liberties Local Area Plan 2009 (as amended to 2020), the planning history of the site and the pattern of development of the area, and to the nature and scale of the proposed development which includes cultural/community uses, it is considered that, subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would not adversely affect the setting of the nearby protected structures. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including the Further Information response that was received by the planning authority on the 20th day of April 2017, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:
 - (a) the fifth floor shall be omitted in its entirety,
 - (b) the fourth floor shall be set back from the Francis Street elevation in accordance with the details contained in drawing number PL - 104 of the Further Information submission received by the planning authority on the 20th day of April, 2017, and
 - (c) the proposed entrance off Francis Street to the internal courtyards shall be widened to provide for a greater visual connection. This shall be increased from its present proposed 5.5 metres to 8 metres and the building along Francis Street shall be amended accordingly to provide for the greater opening.

Revised plans shall be submitted for the written agreement of the planning authority before development commences.

Reason: In the interest of visual amenity.

3. The proposed aparthotel development shall be used only as a short-stay tourist accommodation facility with a maximum occupancy period of two months and shall not be used for permanent occupation or for use as a student residence.

Reason: In the interest of orderly development and to protect residential amenities.

4. Details, including samples of the materials, colours and textures of all the external finishes, including external paving/hard landscaping, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

5. No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

6. The landscaping scheme for the courtyards shall be carried out within the first planting season following substantial completion of external construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

7. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:
- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
 - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

8. The developer shall preserve the graffiti art contained within the site by photographic record which should be undertaken by a professional photographer. A written and digital report (on compact disc) containing the results of the photographic survey shall be submitted on completion to the planning authority for distribution to the Dublin City Library service.

Reason: In the interest of preserving by record cultural heritage material likely to be damaged or destroyed in the course of development.

9.
 - (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L_{90} and the specific noise shall be measured at L_{AeqT} .
 - (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at L_{AeqT} .
 - (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating; either
 - (i) during a temporary shutdown of the specific noise source, or
 - (ii) during a period immediately before or after the specific noise source operates.
 - (d) When measuring the specific noise, the time (T) shall be any five-minute period during which the sound emission from the premises is at its maximum level.

(e) Any measuring instrument shall be precision grade.

Detailed plans and indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. An acoustical analysis shall be included with this submission to the planning authority.

Reason: In order to protect the amenities of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

10. Water supply and drainage arrangements, including the disposal of surface water and internal basement drainage, shall comply with the requirements of the planning authority for such works and services as appropriate.

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

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

12. An asbestos survey shall be carried out on the existing structures warehouse to be demolished. Any asbestos containing materials (ACM) identified shall be removed by a licenced waste contractor.

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

13. Prior to commencement of development, the developer shall submit in writing a proposal for the management of the outdoor performance area and public areas for the agreement of the planning authority.

Reason: In the interest of orderly development and to fulfill the objectives of the Liberties Local Area Plan 2009 (Extended to 2020).

14. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

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

15. 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. The application of any indexation required by this condition 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.

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.

