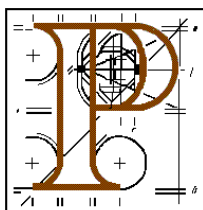


An Bord Pleanála



Inspector's Report

Appeal Ref. PL 29S.245667

Location: 1-3 Hanover Street, 1-4 Windmill Lane and 19-20 Creighton Street, Dublin 2.

Proposed Development: Minor amendments to Register Ref. 4071/09 and Ref. 2270/15 for a mixed use development.

Planning Application

Planning Authority: Dublin City Council.

Planning Authority Reg. Ref.: 3055/15

Applicant: Hibernia REIT

Application Type: Planning permission

Planning Authority Decision: Grant permission

Planning Appeal

Appellant(s): Creighton Street Residents.

Observers: None.

Date of Site Inspection: 7th January, 2016

Inspector: Stephen Kay

1.0 Site Location and Description

- 1.1 The appeal site is located on a 0.422 ha. site that is bounded by Creighton Street to the west, Windmill Lane to the north, Hanover Street to the south and by a development site to the east. The site incorporates the former Windmill Lane recording studios which incorporates No.19 Creighton Street.
- 1.2 The site is currently being developed on foot of permission granted for a mixed use office and residential development on the site. The parent permission for the development of the site comprises Ref. 4071/09; An Bord Pleanála Ref. PL29S.237295 which comprised a grant of permission for the demolition of existing warehouse buildings on the site and the construction of a mixed use development of between four and six storeys in height. This permission was the subject of one amendment on foot of Ref. 2270/15 comprising amendments to the core layout and associated external elevational changes including alterations to the entrance from Windmill Lane.

2.0 Proposed Development

The proposed development is advertised as comprising amendments to Register Ref. 4071/09 and ref. 2270/15. The amendments sought as part of the current application can be summarised as follows:

The relocation of the permitted ESB substation from its previously permitted location on the Hanover Street east frontage at the south east corner of the site to a new location on the western side of the site and within the footprint of No.19 Creighton Street. The substation is proposed to be increased in scale from a single to a double substation with all associated electrical equipment and plant. Access to the substation is proposed to be provided by way of a previously permitted corridor located immediately to the south of the tower structure / staircore to No.19 Creighton Street and the width of this corridor is proposed to be widened from the permitted 2.18 metres to 3.0 metres.

As a result of the revised location of the substation the size of the retail unit / café at the ground floor of No.19 Creighton Street would be reduced by c. 14 sq. metres (from 274 to 260 sq. metres) and the residential unit at first floor level (Unit A11) would be reduced by c. 8.2 sq. metres (from 93 sq. metres to 85 sq. metres). At the south east corner of the development, the proposed amendment would result in additional office accommodation at ground floor level where the substation was originally proposed. The additional floorspace in this location is c. 53 sq. metres.

3.0 Planning History

There is an extensive planning history on the site which can be summarised as follows:

Parent Permission

Dublin City Council Ref. 4071/09; ABP Ref. PL29S.237295: Permission Refused by the Planning Authority and decision overturned by the Board for the construction of a mixed use development on the site comprising demolition of existing warehouses on the site and construction of four to six storey development of office, residential and retail use.

Amendments to Parent Permission

Dublin City Council Ref. 2270/15: Permission granted by the Planning Authority for amendments to the development permitted under Ref. 4071/09 comprising amendments to the structural grid and core layout of the building and resulting elevational changes including alterations to the main entrance from Windmill Lane to incorporate a double height entrance to the development.

Adjoining Sites

The following relate to the block to the north of the appeal site bounded by Creighton Street to the west, Windmill Lane to the south and east and John Rogerson's Quay to the north.

- Dublin City Council Reg. Ref. 1057/08 - Permission granted by the planning authority for a mixed-use retail development on this site incorporating offices, restaurant, café, retail and 3 no. residential units with a floor area of 15,076m². An appeal to the board (PL29S.228560) related to a financial contribution only. This permission altered a previously granted permission, (1222/03), which in turn had permitted alterations to a further set of permissions granted in the late 1990s. It included the reconstruction of No. 4, rebuilding of No. 5 and the demolition of No. 1 and No. 6 Sir John Rogerson's Quay, as well as alterations and extensions to Nos. 7-11 SJR Quay. The proposal provided for the construction of a 4-6 storey mixed use building (rising to 25.5m) on the site of Nos. 1-6 with a floor area of 15,076m², with retail on the ground floor and offices overhead and basement parking for 34 cars. The only part of this scheme that has been implemented is the demolition. This appropriate period of this permission has been extended to 12th December 2018.
- Dublin City Council Reg. Ref. 2664/13; ABP Ref. PL29S.242357 – Permission refused by the board for a building for student accommodation on the site. The reasons for refusal referred to design and the impact on the character of the area.
- Dublin City Council Reg. Ref. 2836/15; ABP Ref. PL29S.245313 – Permission granted by the Planning Authority for what is advertised as an amendment to the development authorised under 1057/08, being a commercial and office

development including works to protected structures. This application is currently with an Bord Pleanála on foot of first and third party appeals.

4.0 Planning Authority Assessment and Decision

4.1 Internal Reports

Planning Officer – The initial report of the Planning Officer notes the planning history of the site and the objections received as well as internal reports, notably that from the Environmental Health Officer. Concerns regarding the potential impact on the structure of No.19 are noted and an initial report recommends further information be requested on noise impacts, the need for a double substation and the potential impact on No.19 Creighton Street. Subsequent to the submission of a response to this FI request recommendation for a grant of permission consistent with the Notification of Decision which issued is recommended.

Drainage Division – No objection subject to conditions.

Environmental Health Officer – Recommends that further information be requested relating to likely noise levels and particularly low frequency noise arising.

City Archaeologist – notes the location of the development with a zone of archaeological constraint around a monument and that condition regarding monitoring be attached to any grant of permission.

Details of the application have been referred by the Board to An Taisce, the Heritage Council and the Development Applications Unit of the Department of the Environment for comment. No responses to these referrals were received.

4.2 Further Information

Prior to the issuing of a Notification of decision, the following items of further information were requested from the applicant:

1. Further details as to the need for a double substation,
2. An assessment of the likely noise implications of the development including low frequency noise.
3. An architectural assessment of the impact of the proposed change of use of the ground floor of No.19 Creighton Street with regard to its retention, conservation and relationship with the approved scheme.

In response, the applicant submitted details that can be summarised as follows:

- That following a review of the proposal and discussions with ESB networks it is now considered that the double substation is not required and that a single substation can be used. This change results in a 50% reduction in transformer plant, and a 15% reduction in the area required. The balance of the area is now proposed to be incorporated into the area accessed off the ground floor lobby to the development.
- A noise and vibration impact assessment has been submitted which is prepared by CLV Consulting. This assessment indicates that the closest residential properties on Creighton Street would have a noise level of 24dBA and that there would not be any vibration issues arising.
- An assessment of the architectural impact of the proposed amendment has been provided. This sets out how the relocation would avoid significant impact on the existing structure and would optimise the layout as the accommodation at ground floor of No.19 is not suitable for other uses.

4.3 Decision

A Notification of decision to Grant Permission was issued by the Planning Authority subject to three conditions which are of a standard nature.

5.0 Grounds of Appeal

A third party appeal made on behalf of the residents of seven properties at Creighton Street and Townsend Street, Dublin 2 has been submitted against the proposed development. The following is a summary of the main issues raised in this appeal submission:

- That the request for further information and the response to the request submitted was not made available or known to the local residents. The fact that the information was not advertised is considered incorrect.
- That the reduction in the scale of the development is acknowledged. However, no written confirmation regarding the agreement with ESB networks has been provided.
- That the location of the proposed seating area in place of the second substation is not appropriate given the fire risk associated with the substation.

- That the statement that the space in the ground floor of No.19 is not suitable for other development is not correct. Such space can be used for accommodation with artificial lighting and ventilation.
- That the statements of the applicant regarding the current permitted location for the substation creating a back of house location do not make sense and there is no clear justification for the proposed relocation.
- That the application and assessment does not take account of the history of substation locations as set out in the original objection or Condition No.3 attached to Ref. 1057/08.
- That the access to the substation will be a fire escape route and a service access which is not appropriate.
- The substation should be a minimum of 10 metres from main entrances and exits. This is not the case with the proposed development. The statement of the noise report that the station is 20 metres from the nearest residential property is not correct, the actual distance is c. 10-12 metres.
- That no risk assessment has been submitted with the application. This is not appropriate given the fires that have occurred in other developments.
- That the noise data referred to in the report submitted is based on data collected on the western side of the site and not on the Creighton Street side.
- That the reference to no moving parts in the substation does not include the transformer. In other locations / developments in the city (notably the One building on Grand Canal Street and the Accountants Academy on Pearse Street) there is a clearly audible noise generated.
- That while the building at No.19 Creighton Street is not protected it is proposed to be retained and its significance has been recognised in previous decisions.
- That the development on the appeal site is ongoing and conditions attached to the permissions Refs. 4071/09 and 2270/15 have been breached, notably noise and vibration and hours of work.

The appeal submission is accompanied by a specification document for a substation building and also by a copy of submission made to the Planning Authority and complaint regarding breach of conditions.

6.0 Response Submissions

6.1 Planning Authority Response to Grounds of Appeal

No response to the grounds of appeal on file.

6.2 First Party Response to Grounds of Appeal

The following is a summary of the new issues raised in the response submission made on behalf of the first party:

- That the procedural issues raised by the appellants relating to the further information request was an issue for the Planning Authority.
- Similarly the statements of the appellants regarding breach of conditions is not relate to the current proposed development. It should be noted that none of these concerns have been substantiated and no enforcement action taken by the Planning Authority.
- Regarding fire risk, a report by Maurice Johnston is attached which refutes the statement that the proposed seating area is not safe close to the substation location.
- That the previous location on Hanover Street East would have created a significant dead frontage / back of house situation along the street frontage. The revised location permits an improved frontage to Hanover Street East.
- That the permitted office space on the ground floor of No.19 was deemed to be sub-standard and not suitable for retail use.
- That the proposed layout allows the substation to be hidden behind a permitted façade which still providing access for the ESB.
- That the comments of the appellants regarding compliance with the requirements of the ESB is not a planning matter. Notwithstanding this, Arup Consulting Engineers confirm that all requirements of the ESB have been met (letter attached with response submission).
- That the comments regarding the noise impact and accuracy of the noise assessment is responded to in a submission from CLV Noise Consultants attached with the submission. This states that all properties on Creighton Street are more than 20 metres from the substation. Noise measurements from an identical transformer in Cork indicate that the noise level generated is below that anticipated at the appeal site in the original noise report.

- That the location of the noise monitors on the site is considered appropriate and representative for background noise levels.
- That the issue of the appropriateness of the substation use for a historic building was addressed in the further information response. The new substation will be a separate and independent structure and separate from the structure of the historic building. The construction of the substation will not impact on the significant conservation works proposed for the structure. As is, the building retains very few internal features of merit.

7.0 Development Plan Policy and Guidance

7.1 Dublin City Development Plan 2011-2017

The appeal site is zoned Objective Z5, *'to consolidate and facilitate the development of the central area and to identify, reinforce and strengthen and protect its civic design character and dignity'* under the provisions of the Dublin City Development Plan, 2011-2017. Under this land use zoning objective advertising structures are classified as Normally Permissible.

None of the buildings on the site are included on the record of protected structures.

The site is located within a zone around a recorded monument. The site is also located within the zone of archaeological influence identified in the development plan.

8.0 Assessment

The main issues arising are considered to be as follows:

- Procedural issues and Processing of Application
- Noise Disturbance and Safety
- Impact on the Existing Historic Buildings on Site
- Visual Impact and Design
- Other Issues

8.1 Procedural Issues and Processing of Application

- 8.1.1 The appellants have raised a number of issue with regard to the processing of the application and its validity. Specifically, concern has been expressed that the details of the further information request were not made available for third party comment during the processing of the application by the Planning Authority. The decision as to whether to determine that further information does or does not contain significant material information rests with the Planning Authority and I would agree with the first party that this is not an issue for determination by the Board but rather a matter between the appellants and the Planning Authority. All further information and responses were available to the third party appellants at the time that they made the current appeal and the issues raised will be considered as part of this appeal.
- 8.1.2 The third party appellants also make reference to the fact that the a number of conditions attached to the extant grants of permission for the site have or are not being complied with. This is an issue for the Planning Authority as the body with powers of enforcement in relation to the development of the site.
- 8.1.3 The appellants have also raised a query regarding the consent of ESB to the reduction from two to one substation. Whether this is acceptable to ESB or not is not relevant to the assessment of the current application. The first party is now proposing that a single substation would be provided and the appeal will be determined on this basis. In the event that the decision to reduce to a single substation is reversed a further planning application and assessment would be required.
- 8.1.4 With regard to the description of development, there is an issue in terms of the application being advertised as an amendment of a previous permission. In fact the proposed development is the second amendment of the original permission for development of the site granted under ABP Ref. PL29S.237295, the first being granted under Ref. 2270/15. The attention of the Board is drawn to the fact that there is no specific provision for the amendment of a planning application under the planning acts and also to the fact that the level of detail submitted with the current application the subject of this appeal, does not include all floorplans, elevation and section drawings focussing only on those drawings which illustrate the amendments sought as part of this application. Notwithstanding the above, the application was validated by the Planning Authority and the issue of validation has not been raised by the third party appellants. I would also note the fact that the extent of the proposed amendments are clearly indicated on the submitted drawings, both elevations and floor plans. In view of the above it is considered appropriate to proceed with the assessment of the appeal.

8.2 Noise Disturbance and Safety

- 8.2.1 A significant element of the third party appeal relates to the potential safety implications of the proposed substation and the potential impact that it would have on residential amenity due to noise impacts. With regard to safety, the type of installation proposed in this development is very similar to the in many developments with the substation being incorporated into the main structure of the building. With regard to the fire risk arising, the first party has submitted a fire safety report which concludes that there is no significant fire risk arising and that the location of the single substation close to an internal seating area off the main lobby does not constitute any safety risk. I would agree with the content and conclusions of this assessment.
- 8.2.2 With regard to noise, the first party submitted a Noise Assessment report as part of the response to the further information request issued by the Planning Authority. This report concluded that there would be no significant adverse noise impact arising. The third party appellants have queried the methodology in this assessment, specifically the fact that the baseline noise survey data collected was recorded at a point located on the western side of the site and not on the Creighton Street side. In response, the first party state that the location of noise monitoring on the site is appropriate for the purposes of noise prediction modelling and I would agree that this is the case.
- 8.2.3 Regarding the separation of the substation from residential properties, the appellants state that this separation is 10-12 metres rather than the 20 plus metres cited by the first party. From my inspection of the plans the transformer room element of the proposed development is at least 20 metres from the frontage of the closest houses on the western side of Creighton Street. In addition, the substation and transformer are largely located behind the tower structure on No.19 Creighton Street which is indicated as accommodating a stair core. The substation is not therefore directly facing the Creighton Street properties.
- 8.2.4 Finally regarding noise, the first party appeal response highlights the fact that noise measurements from an identical transformer in Cork indicate that the noise level generated is below that anticipated at the appeal site in the original noise report. For the above reasons, I do not consider that the noise generated by the proposed development would be such as to have a significant adverse impact on residential amenity in this city centre location and do not consider that the potential noise generated by the proposed development is a basis on which permission should be refused.
- 8.2.5 The third party appellants make reference to the fact that the access passageway to the substation would also be a fire escape route and a service access and contend that this shared use is not appropriate. This fare safety and possible service access referred to is located close to the entrance to the passageway and is between the proposed substation and the street. I am not clear how this layout is inappropriate however any potential conflicts would be issue to be assessed as part of the compliance of the development with relevant building control and fire safety requirements.

8.3 Impact on the Existing Historic Buildings on Site

8.3.1 With regard to the design and layout of the proposed substation and its impact on existing building fabric which is proposed to be retained as part of the development, as part of the response to the further information request issued by the Planning Authority. This submission which is on file details how the proposed works can be undertaken without having any significant impact on the structural integrity or built fabric of the existing structure at No.19 Creighton Street. From an inspection of the plans and the response to further information provided I would agree that this is the case.

8.4 Visual Impact and Design

8.4.1 In terms of visual impact, the location of the substation to the rear of the existing tower feature at no. Creighton Street means that the location of the substation will not be readily visible from the street and does not occupy any of the direct site frontage to Creighton Street. While the proposed development would result in an increase in the width of the passageway immediately to the south of No.19 on Creighton Street from c. 2.2 metres to c. 3.0 metres, this increase in width would not in my opinion have any material impact on the Creighton Street elevation either in terms of the overall composition of the elevation or the creation of what could be deemed to constitute a blank frontage to the street.

8.4.2 The appellants state that the submissions of the first party relating to the justification for the change of location is not clear. It is also contended that the assertions of the first party that the space in the ground floor of No.19 is not suitable for other development is not correct. While I note the concerns raised regarding the justification for the change of location on balance I consider that there is some merit to the alteration proposed. The first party state that the original location would have resulted in a significant dead frontage to Hanover Street east and I would agree that while not significant there would be some loss of active frontage. In contrast, the proposed layout allows the substation to be hidden behind an existing part of the elevation to Creighton Street which will be retained as a façade in the new development.

8.4.3 Regarding the functionality of the accommodation at ground floor level within No.19 Creighton Street and the use of same within the redevelopment of the site, the appellants submit that this accommodation (the site of the relocated substation) could be used as office accommodation or potentially retail with artificial lighting. This is probably correct however on balance I would agree with the first party that the use of this space as office accommodation is not optimal and that the proposed relocation of the substation opens up other floorspace on the southern side of the building which could beneficially be used as modern office accommodation.

8.4.4 The proposed amendments would also result in one of the permitted residential units at first floor level being reduced in size from c.93 sq. metres to c. 85 sq. metres. The revisions to this unit are considered to be acceptable and the floor area and layout would be in accordance with development plan standards and with the Department of the Environment Guidance.

8.5 Other Issues

8.5.1 Having regard to the extant planning permission for development on the site on foot of previous Board decision Ref. PL29S.237295, and to the issues raised at section 8.1 of this assessment above, it is considered appropriate that an assessment of the potential impacts of the works the subject of this appeal on the Natura 2000 network of sites should be restricted to the revised substation location and other minor amendments sought. It is therefore considered that having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.5.2 With regard to financial contributions, the proposed amendment would result in a reduction in both the residential and net office floorspace in the development. No financial contributions are therefore applicable.

REASONS AND CONSIDERATIONS

Having regard to the central location of the site in the Dublin city centre, to the Z5 zoning objective which applies to it under the Dublin City Development Plan 2011-2016, and to the location of the proposed substation behind frontage which is proposed to be retained in the development it is considered that, subject to the conditions set out below, the proposed development would not adversely affect the character of the area or seriously injure the amenities of property in the vicinity and would appropriately conserve the surviving elements of the historic built fabric located on the site. The proposed development would therefore be in keeping 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 as amended by the further plans and particulars submitted on the 10th day of September 2015 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. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on 27/05/2015 under reg. ref. no. 2270/15 and 21/04/2011 under Reg. Ref. PL29S.237395, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).

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

Reason: In the interest of public health.

4. Site development and building works shall be carried only out between the hours of 07.00 to 18.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will 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.

Stephen Kay
Inspectorate
22nd January, 2016