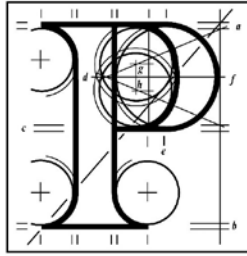


An Bord Pleanála



Inspector's Report

Development: Modifications and minor revisions to the granted permission (reg. no. 3737/09) at 10 – 12 Hogan Place, Dublin 2.

Application

Planning authority: Dublin City Council
Planning application reg. no. 3896/15
Applicant: Alcove Developments Ltd
Type of application: Permission
Planning authority's decision: Grant, subject to 6 conditions

Appeal

Appellant: Hogan Management Ltd
Type of appeal: Third party -v- Decision
Observers: None
Date of site inspection: 30th March 2016

Inspector: Hugh D. Morrison

Site

The site is located in the north eastern corner of the “T” junction formed between Hogan Place and Harmony Row and within an area of mixed residential, commercial, and retail uses that are undertaken in old and new buildings of varying heights.

The site itself coincides with the footprint of a predominantly four storey building that maintains frontages onto Hogan Place and Harmony Row. This building rises to five storeys at the corner between these two streets. It is in commercial and residential use. The site extends over an area of 1088 sq m and the existing building upon it has a floorspace of 3140 sq m.

The site abuts a court yard to the rear (north east) known as Temple Court, which is in use as a surface car park that serves the surrounding residential buildings to the north and east and that is accessed off Hogan Avenue. Underneath this court yard is a basement car park that serves the existing building on the site and that is accessed via a ramp from Harmony Row.

Proposal

The proposal would entail an increase of 1.95m in the parapet height of the six storey over basement building previously granted permission under application reg. no. 3737/09. Thus, the height of this building would rise from 21m to 22.95m above ground level.

The proposal would also entail the following amendments:

- An increase in the size of the existing basement under the building footprint to incorporate cycle storage, showers, lockers, and plant room,
- The rearrangement of the lobby and retail areas on the ground floor,
- An increase in the extent of the low external louvered screen to the open roof top plant area, and
- The repositioning of external screens and doors to the external elevations.

No increase in the office or retail floor areas previously permitted would occur, i.e. the proposed building would continue to have a floorspace of 5942 sq m, 5732 sq m of which would be office space and 210 sq m of which would be retail space.

Planning authority's decision

Permission was granted subject to 6 conditions.

Technical reports

- Drainage Division: No objection, subject to conditions.

- Roads and Traffic Planning: No objection, subject to conditions.

Grounds of appeal

Height

- Attention is drawn to the planning history of the site and the establishment that, while eight storeys has been held to be excessive, six storeys has been permitted.
- The additional 1.95m in height would not be marginal in its effect upon residential amenity, i.e. this addition translates into lengthened shadows by, variously, 1.12m, 8.35m, and 2.62m at the Summer and Winter Solstices, and the two Equinoxes. Accordingly, the top storey should be set back to ensure that no increase in shadow line would ensue.
- The BRE's Site Layout Planning for Sunlight and Daylight (revised 2011) and BS8206-2-2008 should be used to ascertain objective data.

MUD Act 2011/Property rights and permissions

- Attention is drawn to a civil dispute between the appellant and the applicant over apartment common areas, i.e. surface and underground car parks.
- Attention is drawn to the absence of clarity over which structures/services would be shared and which would be for the dedicated use of either of the aforementioned parties. Clarity in these respects should be sought either by way of further information or condition precedent.

Work practices

- A condition is requested under which the appellant's access to services would be safeguarded during any construction period.

Responses

The planning authority has no further comments.

The applicant has responded. They begin by explaining the rationale behind the higher floor to ceiling heights sought, i.e. these are necessary to facilitate modern open-planned office space that can be serviced in an adequate and environmentally sustainable manner. They proceed to address the question of lighting which they view as the only material planning consideration raised by the appellant.

- Attention is drawn to the Board's refusal of an eight storey proposal for the site and the absence from the accompanying reason of any reference to residential amenity.

- The current proposal for a six storey building with a parapet height of 22.95m would be well within the CDP's height guidelines that place a cap of seven storeys on commercial buildings and a maximum height of 28m.
- A comparative shadow analysis has been submitted, which illustrates that the increase in overshadowing that would result from the proposal *vis a vis* the extant permission would not be material.
- Attention is drawn to the land directly to the north and rear of the proposed building, which is in use as a surface car park, wherein lighting is a less sensitive issue than might otherwise be the case. Attention is also drawn to the incidence of residential units to the rear that enjoy dual aspect.

Response to response

The appellant has responded to the applicant's response, as follows:

- While the limited jurisdiction of the Board is acknowledged with respect to shared services, the delineation of which services would be relied upon is relevant insofar as the development would depend upon the same.
- While the applicant's quest to secure higher environmental standards for the proposed building is laudable, this quest does not negate the need to assess the external impact of the higher building now envisaged.
- The applicant's shadow analysis does not allay the appellant's concern over lighting. Accordingly, the need previously cited to apply a BRE methodology to the assessment of lighting is reiterated. Notwithstanding this, the appellant has undertaken their own shadow analysis, which indicates that first floor windows in the eastern elevation of the three storey building that would adjoin the proposed six storey building would be affected to a greater extent during the early afternoon Equinox.
- The applicant undertakes a preliminary look at the said BRE methodology and expresses the tentative view that neither the permitted nor the proposed building may be compliant. The Board is requested to seek, under a request for further information, a definitive application of this methodology to the said buildings.

Planning history

- 6576/06: Remodelling/renovation of existing four storey office building resulting in a six storey office building and all associated site works: Permitted subject to 12 conditions, including the second condition which was confirmed at appeal PL29S.222403 and required, variously, the omission of the fifth floor and the setting back of the fourth floor.

- 6800/07: Demolition of existing five storey office building and construction of new mixed development of 7191 sq m, including 950 sq m retail, 5808 sq m office, and ESB sub-station on eight floors over basement and associated plant rooms and site works: Refused at appeal PL29S.228307 on the grounds that the proposal is excessive in terms of height, scale, and massing relative to established and permitted buildings in the vicinity and would unduly dominate the streetscape, seriously injuring the visual amenities of the area.
- 3737/09: Demolition/partial demolition of the existing four/five storey office block and the construction of a six storey building (overall height one storey above existing building). The new building with a gross floor area of 5657 sq m would include 211 sq m of own door commercial/retail space and a sub-station: Permitted and period for implementation subsequently extended until 16th January 2020.
- PAC 0351/15 occurred on 10th July 2015.

Development Plan

Under the Dublin City Development Plan 2011 – 2017 (CDP), the site is zoned Z6 (employment/enterprise), wherein the objective is “To protect for the creation and protection of enterprise and facilitate opportunities for employment creation.”

Figure 21 of the CDP shows the site as lying within a low rise area of the inner city, wherein under Section 17.6.2 office buildings can have up to seven storeys and their total height can be up to 28m.

Assessment

I have reviewed the proposal in the light of the CDP, relevant planning history, and the submissions of the parties. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Height,
- (ii) Streetscape,
- (iii) Lighting,
- (iv) Miscellaneous, and
- (v) AA.

(i) Height

1.1 Permission was granted to application reg. no. 3737/09 for the redevelopment of the appeal site to provide a six storey commercial/retail building. The life of this permission has been extended until 16th January 2020 and so it remains extant.

- 1.2 The current application seeks to amend the aforementioned permission, principally by raising its overall height by 1.95m. As permitted, the six storey building would have a height above ground level of 21m. Under this application, its height would rise to 22.95m.
- 1.3 The CDP addresses height. This Plan shows the site as lying within a low rise area of the inner city, wherein the maximum number of storeys above ground for office buildings is seven and the maximum permissible height is 28m. Accordingly, the current application, which envisages the construction of a six storey building with a maximum height of 22.95m, would come within the ambit of this approach.
- 1.4 I, therefore, conclude that the proposal would comply with the CDP's height policy for new buildings.

(ii) Streetscape

- 2.1 Sections through the permitted and proposed buildings are shown on drawing no. S-02 revision D. These sections show that, whereas the height of each storey in the former building would have varied between 3.280m (first floor) and 3.565m (fifth floor excluding the parapet), the height of each storey in the latter building would be 3.700m consistently (again excluding the parapet on the fifth floor). Likewise, the floor to ceiling heights would vary between 2.680m and 2.965m compared with a consistent 2.8m. Given the increase in storey height, the increase in floor to ceiling height might have been expected to be greater. However, deeper ceilings are now proposed to accommodate services.
- 2.2 Externally, the design and appearance of the facades of the proposed building to Hogan Place, Harmony Row, and Temple Court would be similar to that which was previously permitted. The only appreciable difference would be an overall greater vertical emphasis borne of the aggregate effect of each of the storey heights being higher than its predecessor.
- 2.3 The proposed building would remain six storeys in height. As such it would exceed the height of adjoining three storey buildings and adjacent four storey ones. Elsewhere within the vicinity of the site there are examples of higher buildings, which would be comparable in height to that which is proposed, i.e., to the south east, No. 1 Grand Canal Street Lower is six storeys over basement, to the west, the part six/part seven storey building on the south western corner of the junction between Fenian Street and Holles Street, and, to the north, the seven storey over basement building known as Harmony Court, which faces onto Erne Place. The proposed building would invite comparison with these existing buildings and so it would not appear within the streetscape as being inordinately tall.

2.4 The proposal would also entail other external alterations to the permitted building, which would relate to external screens and doors and the louvered screen around the open roof top plant. The submitted plans also show alterations to the extent and design of brickwork panels on the rear elevation and the specification of flat architectural panel cladding to the exposed fourth and fifth floor northern end elevation. These alterations would not pose any visual amenity issues.

2.5 I, therefore, conclude that the proposal would be compatible with the visual amenities of the existing streetscape in the vicinity of the site.

(iii) Lighting

3.1 The appellant draws attention to the two and three storey residential buildings that surround the court yard, known as Temple Court, to the rear of the appeal site.

- In the north western corner of this court yard, a three storey apartment block elevation faces east into the court yard. Each of the storeys to this elevation has habitable room windows within it.
- On the northern side, two three storey end elevations to apartment blocks present to this court yard. Each of the storeys in these elevations has a pair of French windows that open onto balconies.
- In the north eastern corner, a two storey block of apartments has a pair of French windows that serve a first floor balcony on its southern elevation.
- On the eastern side, the principal elevation of a three storey apartment block faces the court yard. This elevation includes within it three pairs of French windows and balconies on each floor, along with habitable room and circulation space windows.

Given the aforementioned residential buildings, the appellant expresses concern that the proposed increase in height of the previously permitted six storey building would lead to greater overshadowing of these buildings and hence a loss of residential amenity.

3.2 The applicant has responded to this concern by submitting a comparative shadow analysis of the permitted and now proposed buildings. This analysis examines overshadowing at 09.00, 12.00, and 15.00 hours at the Spring Equinox and the Summer Solstice and at 10.00, 12.00, and 14.00 hours at the Autumn Equinox and the Winter Solstice. It indicates that the overshadowing of the buildings to the west and north of the court yard would increase slightly during

the early afternoon and, by extension, during the Summer Solstice into late afternoon.

- 3.3 The applicant has drawn attention to the use of the court yard as a car park and so they contend that this use means that the overshadowing of the same is not an amenity issue. The applicant also draws attention to the fact that the apartments around the court yard are dual aspect and so any increased over shadowing of one elevation would not have the same lighting implications as would arise if they were single aspect.
- 3.4 The appellant has submitted their own shadow analysis, which seeks to elucidate, to a greater degree than is possible from the applicant's analysis, the extent of over shadowing of elevations. This analysis illustrates that increased overshadowing of first floor east facing windows to the apartments to the north of the proposed building on Harmony Row would arise during early afternoon in the Equinoxes.
- 3.5 The appellant also undertakes a preliminary look at the BRE's Site Layout Planning for Sunlight and Daylight (revised 2011) methodology for assessing the adequacy or otherwise of lighting that would arise under development proposals. They express the view that the application of this methodology to the permitted and now proposed buildings may indicate non-compliance with minimum lighting provisions. In these circumstances, the Board is petitioned to request that a definitive application of this methodology be applied by the applicant to their permitted and proposed buildings.
- 3.6 I note that under Section 17.9.1 of the CDP, the planning authority states that "Development shall be guided by the principles of Site Planning for Daylight and Sunlight, A Good Practice Guide (BRE, 1991)," i.e. a predecessor of the document cited by the appellant. I note, too, that, while lighting was assessed under the parent permission by the case planner, this document is not cited in her report. Thus, it may well be the case that its requested use has only now arisen and yet the current application is principally for a relatively minor amendment to the height of the permitted building.
- 3.7 The existing building on the site is essentially a four storey one and its permitted replacement would be a six storey one. The sections, shown on submitted drawing no. S-02 revision D, indicate that, whereas the eaves height of the former building is 15m above ground floor level, the parapet height of the latter would be 21m above this level. The effect on lighting of adjacent apartments facing into Temple Court to the rear of the site would thus undergo a significant change as things stand. Under the current proposal, the height of the proposed six storey replacement building would increase by 1.95m or a further 32.5% to 22.95m.

3.8 I conclude that the greater impact upon lighting would arise from the replacement of the existing building with the permitted one. By comparison with this increase in impact, that which is now proposed would be minimal and so it would be unlikely to have a bearing on whether or not compliance with the BRE methodology could be achieved or not. The Board may choose to test this view by requesting, under further information, that the applicant undertakes the fuller lighting impact assessment that the appellant has petitioned for.

(iv) Miscellaneous

4.1 The applicant has stated explicitly that the current proposal would not lead to any additional floorspace over that which was authorised under the parent permission. Thus, the intensity of use of the redeveloped site would be unaffected by this proposal. In these circumstances, the need to revisit traffic generation, access and parking considerations does not arise.

4.2 The proposal would entail some alterations to the internal layout of the ground floor that would affect the lobby and retail units. It would also entail the introduction of a basement, which while considerably smaller than the footprint of the building, would facilitate the provision of cycle storage, showers, lockers, and a plant room. This basement would link into the existing basement car park that is underneath the court yard to the rear.

4.3 The appellant draws attention to a civil dispute that exists between themselves and the applicant over common areas. They also draw attention to the absence of clarity over which structures/services would be shared and which would be for the dedicated use of either of the aforementioned parties. Access to shared services should be safeguarded during any construction phase.

4.4 The applicant takes the view that the appellant's aforementioned concerns do not constitute material planning considerations.

4.5 I am satisfied that the proposed building would be capable of being adequately serviced. In this respect, I note that Section 34(13) of the Planning and Development Act, 2000 – 2015, states that "A person shall not be entitled solely by reason of a permission under this section to carry out any development." Clearly, this Section is of relevance to the applicant. I note, too, that, whereas the planning authority's draft permission, which incorporates the parent permission, conditions the submission of a demolition and construction waste management plan, it does not condition the submission of a construction management plan. I consider that such a plan should be conditioned and that its contents may indirectly address some of the appellant's concerns.

(v) AA

5.1 The site is neither in nor near to a Natura 2000 site. The nearest such sites are in Dublin Bay (SAC and SPA). The proposal would be linked to these sites via the foul water public sewerage network that discharges to the Ringsend WWTP. Periodic storm water surges through this Plant can lead to a decrease in the water quality of the Bay. However, the Conservation Objectives of the said Natura 2000 sites do not refer to water quality. Furthermore, the scale of water treatment occurring at the Plant is such that the contribution of the proposal would be negligible.

5.2 Having regard to the nature and scale of the proposed development, the nature of the receiving environment, and the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Recommendation

In the light of my assessment, I recommend that the proposed modifications and minor revisions to the granted permission (reg. no. 3737/09) at 10 – 12 Hogan Place, Dublin 2, be permitted.

Reasons and considerations

Having regard to the Z6 (enterprise and employment) zoning of the site in the Dublin City Development Plan 2011 – 2017 and the extant permission for a six storey commercial/retail building on the site, it is considered that, subject to conditions, the proposed modifications and amendments to this building would comply with the height policy of the Development Plan and that they would be compatible with the visual and residential amenities of the area. The proposal would thus accord 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, 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 terms and conditions of the permission for the original development, which was granted to application reg. no. 3737/09 shall be fully complied with, except where modified by this permission.

Reason: To provide for an acceptable standard of development.

3. 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:
 - (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Location of areas for construction site offices and staff facilities;
 - (c) Details of site security fencing and hoardings;
 - (d) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
 - (e) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (f) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - (g) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
 - (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
 - (i) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
 - (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;

- (k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

Note

A person shall not be entitled solely by reason of a permission under this section to carry out any development.

Hugh D. Morrison

Inspector

31st March 2016