



An
Bord
Pleanála

Inspector's Report PL29S.246877

Development

Minor amendments to permitted application 4071/09 including amalgamation and extension of retail units, omission of 7 basement car parking spaces in favour of retail storage space, the omission of 1 fifth floor apartment, consequential alterations to heights and other alterations to elevations at 1 – 4 Windmill Lane, 1 – 3 Hanover Street East, and 19 – 20 Creighton Street, Dublin 2.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2686/16

Applicant(s)

Hibernia REIT Holding Co. Ltd. &
Trinity General Two Ltd.

Type of Application

Permission

Planning Authority Decision

Grant, subject to 10 conditions

Creighton Street Residents

Appellant

Association

Observer(s)

William Finney

Shannon Guzman

Date of Site Inspection

11th October 2016

Inspector

Hugh D Morrison

1.0 Site Location and Description

- 1.1. The site is located to the south of Sir John Rogerson's Quay. It is bound on three sides by the following streets: To the north by Windmill Lane, to the south by Hanover Street East, and to the west by Creighton Street. To the east, this site adjoins a building that spans the block between the first two of the aforementioned streets.
- 1.2. The site is of rectangular shape and it extends over an area of 0.4223 hectares. Redevelopment has commenced, as has the redevelopment of the site to the north, which fronts onto Sir John Rogerson's Quay. The western side of Creighton Street is composed predominantly of two storey over basement terraced dwelling houses, the majority of which are period ones. The southern side of Hanover Street East is composed of a complex of four and five storey local authority flats. On the northern side of this Street and to the east of the site lie four and five storey blocks of new apartments and offices. In addition, the block next to the site has a Eurospar at ground floor level.
- 1.3. Photographs of the site within its immediate context accompany this report.

2.0 Proposed Development

Proposed amendments:

- i. The amalgamation of 2 no. permitted retail units at ground floor level (of 199 sq m and 376 sq m) to provide 1 no. retail unit, and minor increase in size of the unit by extending the façade to the west towards Creighton Street. (The amalgamated unit will be 632 sq m gross).
- ii. Provision of a retail storage area of 163 sq m gross at basement level, resulting in the omission of 7 no. car parking spaces and associated amendments to the layout of the basement at this location, including provision

of lift and stair from ground floor level to serve the storage area. (This will reduce the residential car parking spaces from 15 no. to 8 no.).

- iii. Minor amendments to the western elevation of the amalgamated retail unit to provide an additional fire exit door to Creighton Street to allow for direct exit from basement level.
- iv. The omission of 1 no. two-bed residential apartment of 91 sq m gross located at fifth floor level of the permitted development. (The proposed development will result in a reduction of 1 no. residential unit, from 15 no. to 14 no. units).
- v. A reduction in height of the residential element of the permitted development onto Hanover Street East from a maximum permitted height of 19.48m above street level to parapet level to 18.08m above street level to parapet level (resulting from the removal of the permitted fifth floor level apartment). The proposal also includes a glass balustrade at roof level set back from the building facades.
- vi. A minor increase in the height of the residential element of the permitted development onto Creighton Street, from a maximum permitted height of 16.48m above street level to parapet level to 17.21m above street level to parapet level, (in order to accommodate increased floor to ceiling heights for the permitted retail uses at ground floor level and the permitted residential uses at first to fourth floor levels inclusive).
- vii. All associated and ancillary works, including revisions to shop front design of the amalgamated retail unit and minor amendments to elevations and minor amendments to the permitted layout of the residential units.

The permitted proposal would entail the retention of 520 sq m of existing floorspace and the construction of 16,783 sq m of floorspace. Under the current amending proposal 91 sq m would be omitted and 57 sq m would be added and so the proposed floorspace now would be 16,749 sq m.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 10 conditions, one of which, denoted as no. 8(i), requires that the omission of 7 car parking spaces be taken from those allocated to the proposed office rather than the proposed residential use.

3.2. Planning Authority Reports

The report of the area planner can be summarised as follows:

- The amalgamation of the two retail units would lead to a single unit that would facilitate a shop of local/neighbourhood size, which, subject to conditions, would be appropriate to a building with residential content.
- The omission of the fifth floor apartment and the proposed increase in the floor to ceiling heights of the retained apartments would enhance their amenity to future occupiers, while having no discernible additional impact upon existing residential properties in the vicinity.
- The proposed elevational alterations would stream line and thus enhance the emerging streetscape.

3.3. Other Technical Reports

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

3.4. Third Party Observations

See grounds of appeal.

4.0 Planning History

- **4071/09 and PL29S.237295:** Demolition of existing warehouse buildings, retention of No. 19 Creighton Street and the construction of a mixed use development consisting of 4 – 6 storey office building, including setback penthouse levels with roof terraces at third floor level, ground floor café and associated roof top plant, a 4 – 5 storey residential building with a retail space at ground floor level and residential development at upper floors around a raised first floor landscaped court yard providing 15 residential units, and an ESB sub-station and all associated works. Permission was granted subject to 24 conditions on 20th April 2011.
- **2270/15:** To amend the aforementioned parent permission was granted permission subject to 12 conditions on 20th April 2015: Amendments include changes to structural grid and core layout and associated elevational and internal alterations.
- **3055/15 and PL29S.245667:** To amend the aforementioned parent permission was granted permission subject to 4 conditions on 8th February 2016: Amendments include relocation of sub-station, reductions in the size of ground and first floor retail units, and a reduction of 53 sq m in office space.
- **4323/15:** To amend the aforementioned parent permission was granted permission subject to 8 conditions on 24th February 2016: Amendments include change of use of 498 sq m of office space to retail and associated elevational alterations to form a shop front.
- **4186/15 and PL29S.256245:** To amend the aforementioned parent permission was granted permission subject to 13 conditions, one of which was subsequently omitted by the Board on 27th June 2016 (Section 49 levy): Amendments include internal and external alterations.

- **2258/16:** To amend the aforementioned parent permission was granted permission subject to 7 conditions on 11th April 2016: Amendments include extensions to the north eastern corner of the fourth and fifth floors to provide additional office space of 122 sq m and 93 sq m, respectfully.

Policy Context

Under the Dublin City Development Plan 2011 – 2017, the site is shown as zoned Z5, wherein the objective is “To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.”

5.0 The Appeal

5.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Attention is drawn to the non-disclosure of flooding on the site in the completed application forms.
- Concern is expressed that the current proposal may entail the relocation of the existing Eurospar from the Hanover Building. As it is, residents of Creighton Street are burdened by patrons of this Eurospar sitting on the steps to the front doors of their dwelling houses and engaging in anti-social behaviour. If the said relocation were to occur, then a higher incidence of the same could be anticipated.
- Concern is also expressed over the likely hours of opening, i.e. 06.30 to 23.30 and the implications in terms of noise and disturbance that this would entail for local residents. (They request that these hours should be 09.00 to 18.00). Furthermore, deliveries can be as early as 05.30 and waste removal as late as 23.30. Rather than being on-street, these should be via the basement car park.

- The loss of 7 proposed residents car parking spaces would lead to increased competition for finite on-street car parking spaces. In this respect, the appellant supports the attachment of condition 8(i) to the draft permission. They also anticipate competition for these spaces from taxis, once the proposed offices become operational.
- Concern is expressed that the proposed loss of one apartment reflects a pattern within the applicant's developments in the area of switching from residential to office use. Concern is also expressed over the statement that the proposed apartments would be used for corporate letting, which is not a residential use.
- Notwithstanding undertakings to the contrary from the applicant, the current proposal would lead to an increase in the parapet height of the building on Creighton Street in addition to that already proposed under application 2836/15.
- Attention is drawn to condition 4 attached to the draft permission, which excludes certain retail uses from the proposed shop, i.e. pet shop, betting office, off-licence, undertakers or for the sale of hot food for consumption on or off the premises, unless a separate permission for the same is obtained. While the applicant welcomes the clarification of this condition, they recognise that it affords no protection against such uses in the future.

5.2. Planning Authority Response

None.

5.3. Other Party Responses

The applicant has responded to the above cited grounds of appeal as follows:

- The application forms were correctly completed. Nevertheless, the original proposal does include rainwater attenuation and flood defence measures.

- Matters relating to Hanover House are not relevant to the current proposal. The identity of the future occupier of the retail floorspace is not relevant either, only that they operate within the conditions attached to any permission.
- The proposal is simply to amalgamate two existing retail units into one, thereby, amongst other things, limiting servicing requirements. This proposal has been the subject of public meetings, at which the applicant has undertaken the following in relation to the proposed retail unit:
 - No outdoor seating to be provided,
 - Servicing to be from Hanover Street East, and
 - Only one public entrance/exit to be provided.

Additionally, the applicant would accept the following conditions:

- Opening hours to be between 07.00 and 22.00 daily,
- Deliveries to occur between 07.00 and 16.00 on Mondays to Saturdays, and
- Security personnel to be present during opening hours.
- The aforementioned measures would both safeguard residential amenity and ensure that both the CDP's endorsement of retail use as a permissible one under the Z5 zoning and its pursuit of active ground floor uses are upheld.
- Condition 8(i) would ensure that there is no loss of car parking spaces for future residents. The CDP encourages low provision of car parking spaces for offices, where they are close to public transport hubs, circumstances that are applicable to the site.
- The omission of the fifth floor apartment is proposed to facilitate an increase in the floor to ceiling height of the remaining 14 apartments. The improvement in the amenity of these apartments would justify the slight reduction in their

total number. They would not be let out on a corporate basis but as conventional apartments.

- The consequential increase in the overall height of the building to 18.074m (to the top of the glass balustrade) would represent a slight increase over the permitted height. However, the applicant's Shadow Analysis and Vertical Sky Component Study concludes that this would have a negligible effect upon residents' lighting levels.
- Condition 4 simply states what the Planning and Development Regulations, 2001 – 2015, state in any event.

5.4. **Observations**

The observers essentially reiterate the appellant's grounds of appeal. Their observations are accompanied by petitions bearing 111 signatures of local residents.

5.5. **Further Responses**

None.

6.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Use
- Streetscape
- Amenity
- Parking
- Appropriate Assessment

6.1 Use

6.1.1 The permitted plans for the site show the inclusion of two retail units at ground floor level with floor areas of 199 sq m and 376 sqm. The former unit would be accessed via a single entrance from Creighton Street, while the latter one would be accessed via two entrances off this Street and one off Hanover Street East.

6.1.2 Under the current proposal, the aforementioned two retail units would be amalgamated into a single one with a combined floor area of 613 sq m, i.e. an additional 38 sq m would result from alterations to the design of the building. Access from Creighton Street would be consolidated by the omission of the central of the three permitted entrances and the fourth one from Hanover Street East would be re-specified as an emergency exit. The proposed single retail unit would be served by a new 163 sq m storage area in the basement, which would entail the omission of 7 car parking spaces.

6.1.3 The site lies on the eastern side of Creighton Street, which is zoned Z5 (city centre). The eastern side is zoned Z2 (residential neighbourhoods (conservation areas)). Under Z5, there is no restriction on the type or size of shop that can, in principle, be permitted. Given this juxtaposition, Section 15.9 of the CDP, which addresses transitional zones, is of relevance. This Section counsels that particular attention must be paid to, amongst other things, use in transitional zones in order to protect the amenities of residential properties.

6.1.4 I will discuss the proposed retail use further below under the headings of "Amenity" and "Parking".

6.1.5 Under the current proposal the permitted residential content of the building would contract by one apartment from 15 to 14. The appellant and observers draw attention to what they consider to be a pattern in the applicant's developments within the locality of switching from residential to commercial

floorspace. They also express concern that the remaining apartments would be used for corporate lettings.

6.1.6 The applicant has responded to the first of these concerns by explaining that the impetus for the omission of the permitted fifth floor apartment is their quest to specify higher floor to ceiling heights in the remaining apartments on the first to fourth floors. If the development is to be consistent with the CDP's height cap of 19m, then the omission of this apartment is necessary. They have responded to the second by stating unequivocally that the apartments would be the subject of conventional residential use.

6.1.7 In the light of the CDP, I do not consider that any policy or objective therein would be affected by the said omission. I note the applicant's undertaking and I note, too, that *prima facie* corporate letting would entail a material change of use that would, therefore, be the subject of planning control.

6.1.8 I conclude that there is no in principle land use objection to the current proposal.

6.2 Streetscape

6.2.1 The submitted plans show the permitted and proposed elevations of the building onto Hanover Street East and Creighton Street, along with cross sectional details. Additionally, photomontages depict these permitted and proposed elevations within their streetscape contexts and the applicant has provided a commentary on the rationale for the envisaged changes.

6.2.2 The design of the two public elevations of the building would change as a result of the following factors:

- Under the proposal, the fifth floor apartment, which would have occupied a prominent corner position, would be omitted and higher floor to ceiling heights in the ground and remaining upper floors would be specified.

- Under the proposal, the permitted majority solid streetside parapet heights to both Streets would change from 16.150m to 15.830m. An accompanying glazed balustrade would bring this latter height to 16.720m.
- Under the proposal, the permitted ground floor, which would have been recessed, and the permitted upper floors, which would have projected along the building's two street fronts, would now, for the most part, align vertically.

6.2.3 The applicant has indicated that the proposed shop front would be composed of hardwood. Details of the same, along with any signage, have not been submitted, and so they should be the subject of conditions.

6.2.4 Overall, the elevations now proposed would appear more consistent, integrated, and streamlined than their predecessors. They would thus make a more positive contribution to the emerging streetscape and so I conclude that they are welcome in terms of the visual amenities of the area.

6.3 Amenity

6.3.1 The appellant and the observers draw attention to the above cited increase in the parapet height of the building and they express concern over the impact upon lighting levels in dwelling houses opposite. The applicant has responded by drawing attention to the findings of their Shadow Analysis and Vertical Sky Component Study, which compares the impact on lighting of their permitted and proposed buildings and concludes that the latter would have a negligible additional impact over that which would arise under the former. I concur with this conclusion.

6.3.2 The appellant and the observers also draw attention to anti-social behaviour that has resulted from patrons of the nearby Eurospar choosing to eat and drink in Creighton Street. They anticipate that, should this shop relocate to this Street itself, an increase in such behaviour would occur. Deliveries and servicing would lead to further noise and disturbance at anti-social hours.

6.3.3 The applicant has neither confirmed or denied that the said relocation is in prospect. They have, however, referred to a series of commitments that they have either given or would be prepared to give to residents, in a bid to allay their concerns. Thus, they have, amongst other things, addressed hours of opening and they have stated that deliveries would be from Hanover Street East rather than Creighton Street.

6.3.4 Clearly, issues of anti-social behaviour reach beyond the ambit of the planning system. However, the impact of the proposal upon the residential amenities of the area is something that can be addressed. The appellant has requested that the hours of operation be confined to between 09.00 and 18.00 daily. The applicant has stated that these hours should be between 07.00 and 22.00 daily, with deliveries between 07.00 and 16.00 on Mondays to Saturdays (inclusive). I consider that, in the light of the transitional nature of Creighton Street discussed under the heading of use above, a tightening of the hours of opening at the weekends would be appropriate, i.e. between 09.00 and 21.00, with a corresponding tightening of deliveries on Saturdays.

6.3.5 I note the applicant's undertaking with respect to deliveries. I note, too, that the Hanover Street East elevation lies between Creighton Street and the entrance/exit to the basement car park to the building. Whether the parking of a delivery vehicle beside this elevation would be consistent with sightlines and indeed existing/future parking restrictions is unclear. I, therefore, consider that this matter is one that can be best worked through with the City Council's Roads and Traffic Planning Division, while residents' amenity concerns can be addressed by conditions pertaining to hours of operation and delivery.

6.3.6 Condition 4 of the draft permission delineates the retail use in question, largely in accordance with the definition of "shop" set out in Article 5(1) of the Planning and Development Regulations, 2001 – 2015. The applicant has drawn attention to this condition, and expressed the view that it is superfluous. I concur with this view.

6.3.7 During my site visit, I observed that a site notice dated 1st September 2016 had been posted, which advertised the applicant's proposal to have as ancillary uses a part off-licence and a hot food for consumption off the premises facility in the proposed retail unit. As this proposal is the subject of a further application, it will be considered as such by the planning authority.

6.3.8 I conclude that the proposal would be compatible with the amenities of the area, provided the hours of operation and delivery are restricted by conditions.

6.4 Parking

6.4.1 The proposal would entail the loss of 7 basement car parking spaces. As submitted, the applicant envisaged that this reduction would be from spaces allocated to the residential use of the building. Under condition 8(i), this reduction would be from spaces allocated to the commercial use, as the planning authority takes the view that each of the 14 apartments should be served by a car parking space.

6.4.2 Under the proposal, the total number of spaces in the basement car park would decline from 58 to 51. The site is located centrally within the city in a position that is conveniently placed for commuter railway stations. (Under the CDP it lies within Zone A for car parking purposes). Accordingly, I concur with the planning authority's view that the proposed reduction should not be at the expense of residential spaces but commercial ones.

6.4.3 I conclude that, while the proposed reduction in off-street car parking spaces would be acceptable in principle, commercial rather than residential spaces should be reduced in number.

6.5 Appropriate Assessment

6.5.1 The site is not located within or near to a Natura 2000 site. It is a fully serviced urban site. The current proposal is for amendments only. The underlying

permitted proposal is presently being implemented. This latest proposal poses no appropriate assessment issues.

6.5.2 Having regard to the nature and scale of the proposal, no appropriate assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.0 **Recommendation**

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

8.0 **REASONS AND CONSIDERATIONS/ REASONS**

Having regard to the Dublin City Development Plan 2011 – 2017 and the planning history of the site, it is considered that the proposal would accord with the Z5 objective for the site and, subject to conditions, it would be compatible with the visual and residential amenities of the area. Provided the loss of car parking spaces is from those allocated for the commercial rather than the residential use of the building, such loss would be in order. No appropriate assessment issues arise. The proposal would thus accord with the proper planning and sustainable development of the area.

9.0 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 terms and conditions of the extant parent and amending permissions granted heretofore for the development shall be complied with, unless they are modified by the terms and conditions of this permission.

Reason: In the interest of clarity.

3. Prior to the installation of the shop front, details of this shop front shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

4. Details of all retail signage shall be the subject of a separate planning application.

Reason: In the interest of visual amenity.

5. Security roller shutters, if installed, shall be recessed behind the perimeter glazing and shall be factory finished in a single colour to match the colour scheme of the building. Such shutters shall be of the 'open lattice' type and shall not be used for any form of advertising, unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

6. Prior to the commencement of the retail use, details of the bin storage arrangements for this use shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of orderly and well-planned development.

7. The car parking facilities, hereby permitted, shall be reserved solely to serve the proposed development and shall provide for the following:

(a) A total of 14 number car parking spaces shall be reserved to serve the proposed residential units. At least one clearly identified car parking space shall be assigned permanently to each residential unit and shall be reserved solely for that purpose.

(b) A total of 3 number car parking spaces shall be reserved for persons with impaired mobility. The layout and design of such designated spaces shall be in accordance with the guidance set out in the document "Building for Everyone" published by the National Disability Authority.

Reason: To ensure that adequate parking spaces are permanently

available to serve the proposed residential units and other commercial uses within the development and also to prevent inappropriate commuter parking.

8. The retail use shall operate between the hours of 07.00 and 22.00 on Mondays to Fridays (inclusive) and between the hours of 09.00 and 21.00 on Saturdays and Sundays. Deliveries shall not be made before 07.00 on weekdays and 09.00 at the weekend or after 16.00 daily.

Reason: In order to safeguard the residential amenities of the area.

Hugh D. Morrison
Planning Inspector
13th October 2016