



An
Bord
Pleanála

Inspector's Report PL29S.246993

Development

Internal alterations to the existing second floor to facilitate change of use of 3 apartments (1 two-bed and 2 one-bed) to 7 new guest bedrooms; provision of 2 additional floors providing 14 new guest bedrooms; new roof garden and all associated site works to facilitate proposed development.

Location

Eliza Lodge Guesthouse, 24
Wellington Quay, Dublin 2.

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

2166/16

Applicant(s)

Eliza Lodge Ltd

Type of Application

Permission

Planning Authority Decision

Grant, subject to 9 conditions

Type of Appeal

First Party -v- Condition 3
Third Party -v- Decision

Appellant(s)

Eliza Lodge Ltd
Dorothy Gray

Observer(s)

Temple Bar Residents
An Taisce

Date of Site Inspection

28th October 2016

Inspector

Hugh D. Morrison

1.0 Site Location and Description

- 1.1. The site is located to the south of the Millennium Bridge and Wellington Quay and on the eastern side of the northern portion of Eustace Street. This site lies in the north eastern corner formed by the junction between Eustace Street and Essex Street East. These Streets form part of Temple Bar, a mixed-use area of the city centre that is popular with visitors.
- 1.2. The site itself is of largely regular shape and it extends over an area of 184 sq m. It presently accommodates a three storey building, which is in use as a restaurant at ground floor and which is authorised to be used as 6 apartments on the upper floors, i.e. 3 apartments on each of these two floors. Evidence exists that some but not all of these apartments are currently in use as short-term letting accommodation.

2.0 Proposed Development

- 2.1. The proposal relates to the second floor of the existing building and to the addition of two storeys to this building.
- 2.2. The second floor would be converted from 3 apartments into 7 guest bedrooms.
- 2.3. As originally submitted, the two additional storeys would provide a further 14 guest bedrooms, i.e. 7 on each of the two new floors. However, under further information, the top storey (fourth floor) was revised to that of a recessed structure with accommodation for 6 guest bedrooms. This structure would be glazed along its southern and western elevations to Essex Street East and Eustace Street and it would have a roof garden.
- 2.4. Access and circulation arrangements for the first floor would remain as at present.
- 2.5. Access and circulation arrangements for the converted second floor and the new third and fourth floors would be via the existing arrangements that serve the adjoining five storey building to the north.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was granted subject to 9 conditions, including the following one:

3. The fourth floor (penthouse level) is to be omitted from the development.

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

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The principle of replacing the existing apartments with guest bedrooms is accepted on the basis that these apartments would be considered to be sub-standard under the current CDP, available residential amenity in this area of Temple Bar is limited, and the said apartments have evidently been used for short term Air B n' B lettings.
- Issue is taken with the proposed additional two storeys over the existing three storeys, as the maximum height in the area is three storeys with an additional recessed top storey. Given that the site is within a conservation area, there are protected structures nearby, and the existing building, which is situated on a prominent corner, is not architecturally noteworthy, exception was taken to the proposed additional two storeys.
- Under further information, the applicant revised the proposal to show an additional storey and a further recessed penthouse storey, which as a glazed structure would tie in with the top storey of the adjoining building to the north. Notwithstanding the applicant's insistence that two storeys were necessary for the viability of the project, only one storey was considered to be appropriate and so condition 3 was attached to the permission.

3.2.2. Other Technical Reports

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

3.3. Prescribed Bodies

- An Taisce: See under 6.4 Observations below.
- TII: Metro North levy condition requested.

3.4. Third Party Observations

For Dorothy Gray, see under 6.1 Grounds of Appeal below.

A resident of the existing first floor of the building, objects on the following grounds:

- Three apartments would be replaced by short-stay accommodation. Temple Bar needs more residents, as it is over-subscribed with tourist accommodation.
- Whereas the proposal purports to be an extension to a guesthouse, apart from a single security office on the first floor it would be the subject of no oversight. In this respect, the proposed roof garden would be unworkable and a likely venue for anti-social behaviour.
- The proposed circulation areas, including the lift and staircases, would be unworkable.

4.0 Planning History

The building on the site: 19 East Essex Street

- **1938/95:** Demolition of two storey building and construction of three/four storey building to provide restaurant or shop on the ground floor and in the basement and 7 apartments on the upper floors (4 one-bed and 3 two-bed) + roof gardens: Conditions appealed PL29S.097778, but confirmed, including one that omitted the third floor “To mitigate overshadowing of adjoining property to the north.”
- **1829/96:** Additional basement accommodation: Permitted.

(Other applications at this address related to signage + elevational alterations + internal alterations).

The adjoining building: 23/24 Wellington Quay

- **1741/92:** Change of use from retail/commercial to restaurant + elevational alterations and signage: Permitted.
- **2292/98:** Change of use from commercial to B n' B at first, second, and third floors + infilling of area to the rear of each of these floors: Permitted at appeal PL29S.109294.
- **2956/98:** Four-bed penthouse extension as an addition to guest house (permitted under 2292/98) + elevational alterations: Permitted.
- **0439/99:** Change of use at first, second, and third floors from offices to 7 apartments + penthouse extension + elevational alterations: Permitted.
- **3176/12:** Removal of 4 en-suite bedrooms from the first floor and change of use of this floor to a restaurant to facilitate full board accommodation for the remaining 14 bedrooms: Permitted.
- **2522/14:** Extension of ground floor restaurant into first floor: Permitted.

5.0 Policy Context

5.1. Development Plan

Under the Dublin City Development Plan 2016 – 2022, the site lies within an area that is zoned Z5 (city centre) within which 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.” It also lies within a conservation area.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

First Party: Eliza Lodge Ltd

The proposal was revised under further information to show a recessed glazed fourth floor. However, this floor would be omitted under condition 3 of the draft permission.

This condition is appealed on the following grounds:

- The planning authority's insistence that no more than one additional storey be added to the existing building reflects an over emphasis on the number of floors rather than the actual physical height. Thus, the proposal would result in a building that would be 14.8m high, while the adjoining building known as "The Italian Corner" is 15.2m high and the hotel opposite is 14.2m high.
- Attention is drawn to the submitted photomontages, which show that the revised fourth floor would be barely visible and so no negative visual impact would ensue with respect to the streetscape, adjacent protected structures, and the surrounding conservation area.
- The appellant contends that their proposal would add to the verticality of the existing building, thereby emphasising the fine grain architecture of the streetscape, complementing the aforementioned "Italian Corner", and acknowledging the importance of the corner site.

Third Party: Dorothy Gray

- The applicant has insufficient legal interest to make the current application, as they are not the sole owners of the building in question, i.e. a management company also owns this building and the appellant, as an owner of one of the apartments, has a share in this company and she with holds her consent for the making of this application.
- The red line denoting the site is not accompanied by any blue line denoting adjoining property in the applicant's ownership.
- The appellant reviews CDP definitions and concludes that dwellings are distinguishable from hotels, guesthouses, and aparthotels. The applicant's

properties are being used as a guesthouse and an aparthotel and under the current proposal they would become a hotel within an apartment block.

- The planning history of Eliza Lodge Guesthouse and the subject building are reviewed. The dwellings within the latter building are thereby distinguished from the former Guesthouse.
- The case planner's assessment is critiqued in the basis that it fails to assess the amenity impact of the proposal on the apartments that would remain in use as dwellings. This assessment also fails to acknowledge that the use of the subject apartments as Air B n' B short term lettings is unauthorised. (Various legal, planning authority, and Board decisions are cited by way of support for this contention). Negative amenity impacts already arise from this unauthorised use, e.g. the loss of the opportunity to have permanent neighbours and the sharing of communal facilities with strangers. These impacts would be accentuated by the proposal and the apartments remaining as dwellings would be devalued.
- The arrangements for permanent residents of the building during any construction phase have not been divulged.
- The appellant supports the concerns by other third parties at the application stage over the adequacy of the staircase to accommodate additional numbers of people and the visual impact of the proposal upon the protected structure opposite and the Quays.

6.2. Applicant Response to Third Party Appellant

None

6.3. Planning Authority Response

None

6.4. Observations

Temple Bar Residents

Support is expressed for the third party appellant's appeal, on the following grounds:

- The proposal would entail the loss of three apartments and so it would be contrary to the goal of sustaining a residential community in Temple Bar.
- The planning authority considered neither the impact of the proposal on the amenities of existing/continuing residents of the building nor the unauthorised use of apartments as accommodation for short term letting, a phenomenon that is contributing to the current housing crisis in Dublin.

An Taisce

- The proposal would entail the loss of apartments and so it would be contrary to the basis of the regeneration of Temple Bar as a mixed-use area that includes a sustainable residential population. Its corollary, an increase in short term lettings, would erode the amenities of remaining residents.
- Without prejudice to the aforementioned critique of the proposal, if the Board is minded to grant permission, then support is expressed for condition 3, as, due to the availability of views from the northern Quays, the profile of the envisaged building should not exceed that of The Italian Corner.

6.5. Further Responses

None

7.0 Assessment

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

- (i) Legalities,
- (ii) Land use,
- (iii) Residential amenity,
- (iv) Visual amenity, and
- (v) AA.

(i) Legalities

7.1.1 The appellant expresses concern that the applicant has insufficient legal interest in the building to make the current application. She states that this building is owned by a management company and that she, as an owner of one of the first floor apartments, has a share in this company. She is unwilling to grant consent to the making of this application. The appellant also expresses concern that the applicant's adjoining building to the north has not been denoted by means of a blue edge.

7.1.2 The applicant has not responded to these concerns.

7.1.3 With respect to the former concern, I note that the application relates to the second floor of the existing building rather than the first floor. With respect to the latter concern, I note that the application was validated by the planning authority. Internal access to the proposed converted second floor and the proposed new third and fourth floors would be via the lift and staircase in the adjoining building to the north. Thus, it is implicit within the proposal that the applicant controls this building. Furthermore, under Section 34(13) of the Planning and Development Act 2000 – 2015, "A person shall not be entitled solely by reason of a permission under this section to carry out any development."

7.1.4 I conclude that there are no legal impediments to the Board proceeding with an assessment of the current application/appeal in the normal manner.

(ii) Land use

7.2.1 The proposal would entail the change of use of the second floor from its authorised use as residential apartments to guest bedrooms and the construction of two additional floors of guest bedrooms.

7.2.2 The appellant and the observers allege that the said residential apartments are being used as short term letting accommodation and so they have undergone an unauthorised change of use. My site visit lent support to these allegations. However, the proposal refers to the authorised use of these apartments, which, when considering a proposed change of use for planning permission, is the relevant baseline, i.e. an unauthorised use cannot form such a baseline, as it would first need to be regularised to do so.

7.2.3 The appellant and the observers state that the loss of 3 residential apartments in favour of 7 guest rooms would be retrograde, as the residential community of Temple Bar needs to be strengthened, by means of safeguarding and adding to the stock of dwelling units relative to visitor accommodation, rather than depleted.

7.2.4 While I acknowledge the above cited concern, I recognise, too, that at present there appears to be no statutory plan that addresses this specific concern and so, in the absence of any adopted policy, pursuit of the same runs the risk of being arbitrary.

7.2.5 I therefore conclude that I am not in a position to object on land use grounds to either the proposed conversion of 3 apartments to 7 guest rooms or the addition of 13/14 new build guest rooms.

(iii) Residential amenity

7.3.1 The appellant expresses concern that the residential amenity of the first floor apartments would be adversely affected by the proposal, insofar as the opportunity to have permanent neighbours on the second floor would be forfeited and communal facilities would be shared with strangers. She also refers to the existing experience of apartments being let out on a short term basis to visitors.

7.3.2 Under the proposal, the access and circulation arrangements between the ground and first floors would remain as at present and the access and circulation arrangements to the second and proposed third and fourth floors would be via the adjoining building to the north. Thus, insofar as the first and second floors would be no longer linked, the residents of the first floor would be isolated from visitors on the floors above. While the pool of potential neighbours would be restricted to this floor, residents would not have to share access and circulation arrangements between the ground and first floors with visitors.

7.3.3 Exceptions to the foregoing separation of residents and visitors would arise with respect to the access needs of the mobility impaired and the access route to the proposed roof garden.

- With respect to the former, a note on drawing no. PP02 states that Part M requirements would entail the use of the front door, lobby, and corridor to the subject building as a means of access to the lift, which is sited in the adjoining building to the north. Thus, residents and visitors would share these spaces.
- With respect to the latter, at present, access to the roof is by means of a staircase that serves the existing floors, whereas, under the proposal, access to the new roof would be by means of the existing staircase and lift in the adjoining building. Residents would share the use of this lift with visitors and the roof garden itself.

7.3.4 Two of the three first floor apartments have Juliet balconies, which permit the opening of French windows. However, they do not afford the provision of dedicated private outdoor space. The only outdoor space available to residents is on the existing roof top, where it is available on a communal basis.

7.3.5 The subject building is sited in the north eastern corner of a busy cross roads within Temple Bar. The residential amenity afforded by such a lively location is limited externally. As originally provided, the first and second floor apartments were designed to have access, circulation, and roof garden facilities that would be available for the use of residents only. Thus, internally, within these communal spaces, residents could expect a level of amenity consistent with such exclusive use. Under the proposal, this level of amenity would be undermined by the sharing of these spaces with visitors.

7.3.6 The appellant supports the views of objectors at the application stage, who expressed concern that the proposed shared use of a single staircase in the adjoining building would fail to comply with the building regulations. As this concern is one that is addressed by the said regulations, I do not propose to consider it under my assessment.

7.3.7 I, therefore, conclude that the proposal would be incompatible with the maintenance of the existing level of amenity that is available to residents under the authorised use of the subject building.

(iv) Visual amenity

- 7.4.1 As originally submitted, the proposal would have entailed the construction of two additional storeys over the subject building, the design of which would replicate the existing design of its upper floors. Following a request for further information, the proposed top storey (fourth floor) was revised to show a 1m recess along its street side elevations to the south and west and it was redesigned to show glazing to these elevations. (Associated revisions were introduced to the access arrangements at fourth floor level to the roof top garden). The resulting smaller top storey has led to the proposal of 6 rather than 7 guest bedrooms.
- 7.4.2 The planning authority's draft permission omits the revised top storey by condition, in the interest of visual amenity. The applicant has appealed this condition, while the appellant has expressed support for the same.
- 7.4.3 The applicant has submitted a height survey of the buildings within the vicinity of the site. This survey indicates that there is a mixture of buildings with three storey, three storey with a recessed storey, four storey, and four storey with a recessed storey form within the vicinity, all of which are in a conservation area. The buildings fitting the former two descriptions are clustered around the junction between Eustace Street and Essex Street East, i.e. the subject building itself at No. 29 Essex Street East, Nos. 27 – 30 Essex Street East (Nos. 28/29 and 30 are protected structures), and Fitzpatrick's Hotel (the only example of a building with a three storey with a recessed storey form). The buildings fitting the latter description are within the same block as the site, i.e. at Nos. 23/24 and No. 27 Wellington Quay and Nos. 21 and 22 Essex Street East. Thus, unusually, the lower existing buildings are clustered around the said junction, of which two of the four are protected structures.
- 7.4.4 The applicant has also submitted plans that depict the existing public elevations of the subject building within their streetscape context. Thus, the corner parapet height of this building is 14.443m (all heights are expressed as OD) and the equivalent height of the adjoining building to the north is 17.448m (with the parapet of the recessed top storey rising to 19.682m). The Norseman

Public House to the south has a parapet height of 13.148m and Fitzpatrick's Hotel to the west has a parapet height of 17.457m.

7.4.5 As originally submitted, the proposal would have entailed a new corner parapet height of 20.452m and, with an addition to the top storey of the adjoining building to facilitate access to the new roof top, a maximum parapet height of 21.852m.

7.4.6 As revised, the proposal would entail a new corner parapet height of 16.938m and a new parapet height to the recessed top storey of 18.802m.

7.4.7 A comparison of the existing and proposed building heights indicates that, whereas the existing building is similar in height to the Public House to the south, the one now proposed would be similar to the Hotel opposite and the adjoining building to the north. The proposed top storey would tie in with the existing top storey to this adjoining building.

7.4.8 An Taisce adds its voice to that of the planning authority in expressing concern over the visual impact of the proposal in its revised form. Specifically, it states that views of the subject building from the north quays are such that the full height of this proposal would be evident.

7.4.9 During my site visit, I observed that the aforementioned views are available. I also observed that from public vantage points further to the east and to the west on Essex Street East and from public vantage points further to the south on Eustace Street, one or other or both of the public elevations of the subject building are visible and so the additional two storeys, even with the recessed top storey, would be visible, too.

7.4.10 I concur with the planning authority's view that the existing building is not particularly noteworthy from an architectural perspective and yet it occupies a prominent location within Temple Bar. I consider that the top storey of the adjoining building to the north is not particularly successful aesthetically, especially along its interfaces with the adjoining buildings to the east and to the south. Thus, I do not consider that the emulation of this storey in the revised proposal is one to be welcomed. While this storey would hide the southern elevation of the top storey of the adjoining building to the north, I

consider that the proposed fourth storey would provide adequate mitigation from street level of this elevation.

7.4.11 I, therefore, conclude that the addition of one more storey to the existing building would be aesthetically appropriate as it would be in scale with Fitzpatrick's Hotel opposite and it would mitigate the visual impact of the unattractive exposed southern elevation of the adjoining building to the north. I thus concur with the planning authority's position in omitting the proposed top storey by condition.

(v) AA

7.5.1 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 a vertical extension to the existing relatively small building on this site and an intensification of its use and so it poses no appropriate assessment issues.

7.5.2 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.

8.0 Recommendation

8.1. In the light of my assessment, I recommend that the proposal be refused.

9.0 Reasons and Considerations

1. The proposal would entail the shared use of communal spaces, such as the front lobby, circulation spaces, and roof top garden, within the extended building and the adjoining building to the north by residents and visitors. As originally designed, the subject building would have permitted access to these spaces by residents only and so their use by visitors, too, would change their character and be seriously injurious to their residential amenity value. Accordingly, to accede to this proposal would be contrary to the proper planning and sustainable development of the area.
2. The proposed top storey would be visible from public vantage points on surrounding streets and the riverside. This storey would cause the building to appear out of scale with adjacent buildings, including two protected structures to the south and the south west. It would be similar in design to that of the top storey on the adjoining building to the north. However, as this storey does not add to the aesthetic appeal of its host building, its replication on the subject building would not be desirable. Accordingly, the proposed top storey would be seriously injurious to the visual amenities of the area and, as such, it would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison

Planning Inspector

1st November 2016