



An
Bord
Pleanála

Inspector's Report ABP-300516-17

Development

A mid-terrace, dual-fronted building consisting of 8 no apartments on 3 levels over, 1st floor office- use over, ground floor & basement retail use. The development will consist of interior removals & refurbishments & change of use of 1st floor, from office use to 4 no. five-star quality, short-term-let ensuite bedroom, plus store & all associated works. The development is ancillary to The Merchant House's existing 5-star quality facility located at No. 8 Eustace Street, Dublin 2.

Location

The Green Building, 23/24, Temple Lane South, and 3/4 Crow Street, Dublin 2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4008/17

Applicant(s)

Eustace Street Holdings Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal	First Party
Appellant(s)	Eustace Street Holdings Ltd.
Observer(s)	Transport Infrastructure Ireland Tim Cooper Michael Mortell
Date of Site Inspection	21/032018 and 27/03/2018
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site – The Green Building – is located in Temple Bar, running between Temple Lane South (western elevation of the building) and Crow Street (eastern elevation of the building). The five storey over basement building fronts on to both Temple Lane South and Crow Street with access points on each street. The ground floor retail unit and first floor office are vacant. On the date of my site visit, access into the first floor offices was not possible.

2.0 Proposed Development

- 2.1.1. Permission was sought for the change of use of the first floor of an existing 5 storey over basement mixed use (retail, office and apartment) building from office use to 4 no. short-term-let units (suite A, B, C and D).
- 2.1.2. The application was accompanied by an Architects Report which states that while the upper floors of residential are fully occupied the basement and ground floor are vacant and boarded up. The report states that the proposed developer is The Merchant House who provide short term lettings at 8 Eustace Street. It is submitted that the proposed use will have an imperceptible change.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 1st November 2017, the Planning Authority issued a notification of their intention to REFUSE permission for the following reason:
 - 1 Given that the upper floors are in use as long term residential it is considered that the use of the first floor for 4 no. short term holiday lettings would significantly impact on their residential amenity, due to the transient nature of short term letting and the potential for noise and nuisance. As a result, the proposed development would seriously injure the residential amenities and depreciate the value of property in the vicinity and would thereby be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. **Waste Management:** No objection subject to conditions

- 3.2.2. **Drainage** Division: No objection subject to conditions.
- 3.2.3. **Planning Report:** Refers to the Guidance on Planning Applications for Short Term Lettings issued by the Department. Notes the vacancy on the lower floors and the residential use on the upper floors. Report notes that no security or reception desk are proposed but that the facility is linked to the nearby Merchants House. The residential amenity of the upper residential floors would be significantly impacted. Recommendation to refuse permission.

3.3. **Prescribed Bodies**

- 3.3.1. Transport Infrastructure Ireland (**TII**): The proposed development falls within the S49 Luas Cross City scheme area. If the proposed development is not exempt, a S49 levy should be applied.

3.4. **Third Party Observations**

- 3.4.1. Issues raised as similar to those raised in the observation to the Board and discussed in section 6.4 below.

4.0 **Planning History**

- 4.1.1. **PL29S.238140:** Permission was granted for a change of use from retail to café use, basement from retail to social and cultural use, new glazed roof at 1st floor.
- 4.1.2. **PA reg. ref. 0549/93:** Permission was granted for a 5 storey prototype energy efficient building over basement comprising retail at ground and basement level commercial at first floor and 8 no. apartments on the top 3 floors.

5.0 **Policy Context**

- 5.1. **Circular Letter PL10/2017 Guidance on Planning Applications for Short Term Lettings**
- 5.1.1. This guidance circular relates to short term lettings and changes of use. The circular makes the distinction between short term letting and home-sharing. It notes the potential loss of residential properties from the residential housing system. The circular refers to the transient nature of short term letting having a disruptive effect on the daily lives and the cohesion of the owner occupier community in a multi-unit development. The exemption under article 10(4) of the Planning and Development

Regulations 2001 is noted as referring to a house but does not include a building designed for two or more dwellings or any form of apartment.

- 5.1.2. The Guidance requires that the Planning Authority consider the nature and character of the location, the need to provide tourist accommodation and the quality of the residential amenity to be provided.

5.2. **Dublin City Development Plan 2016-2022**

- 5.2.1. The subject site is zoned **Z5 City Centre**, which has the stated objective 'to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'.
- 5.2.2. **Section 14.8.5** of the development plan states that the primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development. Permissible uses within the mixed use Z5 zone include hostel, hotel, office and residential.
- 5.2.3. **Development management standards** for Z5 zones include an indicative plot ratio of 2.5-3.0 and indicative site coverage of 90%.
- 5.2.4. Policy **CHC4 and section 11.1.5.6** refer to Conservation Areas.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The First party has appealed the decision of the Planning Authority to refuse permission. The appeal states that a successful short-term-let business is run at The Merchant House at 8 Eustace Street, Temple Bar – 2 minutes-walk from the subject site. Merchant House wish to have another similar offering in the immediate area.
- 6.1.2. The grounds of the appeal can be summarised as follows:
- It is submitted that the third-party observations were given disproportionate credence by the Planning Authority, leading to an inequitable decision.
 - The applicant was not afforded the opportunity to respond the observations. It was assumed a request for further information would follow.

- The use of the word holiday in the text of the refusal reason does not reflect the application description. Guests of the proposed development will stay for many reasons.
- After the decision issued the Minister for Housing indicated that new regulations would allow for the conversion of vacant spaces for residential use. The appellant notes the difference between residential homes and short-term-lets but states that the proposed development will not reduce housing stock, being designed for purpose short-term-lets.
- The observers concerns regarding noise do not take account of acoustic isolations present and which will be enhanced. The clientele of The Merchant House is not weekend reveller.
- The proposed use will better utilise long time vacant space, positively contributing to tourist visitor accommodation and reducing pressure on short-term apartments elsewhere.
- The applicant seeks to ensure the peaceful enjoyment of both future and existing residents. These interests are already protected by the existing construction of the building.
- Part E of the building Regulations was updated and reissued in 2016. The Building Control Amendment Regulations 2014 introduced the Assigned Certification Process. Sound regulation is better dealt with within building regulations.
- iAcoustics Report- the first floor is double lobbied, between which there is an arcuate sweeping inclined wall of sloping glass bookended by double-lobbies at each end. These provide sound insulation. iAcoustics determined that the existing envelope of the floor in their current construction exceeds the minimum performance requirement of compartment floors as defined in Part E of the Building Regulations. The subjective evaluation of the observers has been technically proven not to be an issue.
- The proposed short-term-lets can provide the critical buffer previously provided by the office use. The proposed building would still be mixed-use, just a different use.

- The proposed development complies with the Z5 zoning objective, helping to sustain life within the city centre through intensive mixed-use development.
- Merchant House can be considered to be a model of innovation. Increased employment will be generated and the proximity and diversity of uses is enhanced.
- The subject application was lodged 17 no. days before the Circular Guidance on Planning Applications for Short Term Lettings. The objective of the Circular is to facilitate short term letting of accommodation whilst protecting the existing stock of residential property. The proposed building is unique and uncategorised within the document. Rent-pressure zones do not apply to the proposed development as there will not be a loss of residential accommodation. The proposed development is in keeping with the National Objective of Rebuilding Ireland Action Plan for Housing Plan and Homelessness. The circular notes the transient nature of short-term lets and the disruptive effect on the cohesions of owner occupied communities in a multi-unit development. It is submitted that the Green Building is not a multi-use development as the first and second floor are a separated-out component where uses co-exist.
- The proposed lettings are for individual letting to individual persons or couples only. No group bookings will be entertained.
- There is no condition requiring restriction of office use hours in the original planning permission. The vacancy of the first floor over a number of years raises questions about their suitability for purpose. The residents may have become used to this level of vacancy. Any change will bring new circumstances.
- The proposed use has been shown not to create nuisance.
- Office use is not essential to the zoning objective. The Green Building has failed to fulfil its promise. The proposed development will reinvigorate the building.
- The Observers presents an unduly negative picture of Merchant House. The proposed development is a small scale proposal catering to specific clientele. The accommodation is managed remotely and no catering facilities are proposed. Guests arriving are screened in voice-to-voice personal telephone contact with Merchant House prior to booking. Full details are recorded. Guests are met on

arrival, shown to their room and provided with out-of-hours contact details – through the night telephone facilities. The existing facility works extremely well.

- There is the possibility of one of the 8 no. upper floor apartments being used for short-term-lets. It is submitted that one of the apartments was recently let to a group of males from a Friday to a Monday. Noise from the apartments may adversely affect the proposed short-term lets. There is no acknowledgement of this from the observers.
- Sound isolation and separation was built in to the construction of the building. This is in accordance with the development plan which requires that “adequate noise reduction measures must be incorporated”.
- The Merchant House facility is well managed and no matters of security have been reported. This will be the case in the subject development. The incident referred to by the Observer occurred over three years ago. It is submitted that this not a reflective of the current operation.
- The applicant as a member of The Green Building management company wishes to foster a mutual community environment. The Minister in his communication New Vision for Apartment Living (Dec 2017) noted that office building is occurring at the expense of residential construction. The conversion of office to short-term-let residential is a step in the right direction. It is submitted that the Observer has misinterpreted the circular.
- It is submitted that maintenance of the status quo is not an option. The first floor has lain vacant more often than used. The proposed development of 5-star specifically designed, tailored and managed suites assists a national objective.
- The Green Building Management company did not make a representation to the Board, nor did the 5 no. other apartment owners.
- The staircase is most likely to be used to access the first floor.
- The Board is requested to grant permission.

- The appeal is accompanied by an Acoustic Assessment. The assessment makes the following points:
 - The first floor is screened from the central atrium by 6mm toughened glass. This acts as a barrier to sound travelling. The sound insulation of this barrier is $R_w31\text{dB}$ (see appendix1).
 - The windows to the apartments are double glazed – 4mm glass, 16mm void, 4mm glass. (photo submitted). The sound insulation of these windows is $R_w35\text{dB}$. Together these provide minimum levels of sound insulation of 66dBA.
 - Table 4 of the British standard states ambient noise levels for bedrooms should not exceed $L_{Aeq} 30\text{dB}$ between 23.00 and 07.00. For noise levels on the first floor to exceed this, the sound pressure level would have to be in excess of 99dBA. This is not likely.
 - An open window would still provide up to 18dB of sound insulation. The sound pressure level would need to be 82dB which is not considered likely.
 - The lift system is a free standing structure. This avoids the possibility of vibration noise being coupled into the buildings overall structure. On the ground and first floors access to the lift is via two sets of glazed doors. This provides for sound buffering as one set of doors will always be closed. Noise disturbance is not expected but the above measures will mitigate against potential disturbance.
 - The floor slab which forms the partition structure between the 1st and 2nd floor is a 350mm thick cast-in-situ concrete slab. This is capable of providing up to $D_{nT,W} 57\text{dB}$. Floor finishes would enhance this further. The required level of sound insulation is $D_{nT,W} 53\text{dB}$. Therefore the recommendation has been complied with. The upper floors will benefit from additional partition floor structures so noise will be almost eliminated.
 - The report concludes that the proposed use is not likely to result in noise disturbance and the concerns are unfounded.

6.2. **Planning Authority Response**

- None on file

6.3. **Observations**

- 6.3.1. **Transport Infrastructure Ireland:** The proposed development falls within the S49 Luas Cross City scheme area. If the proposed development does not fall within one of the exemptions of the Scheme, a S49 levy should be applied.
- 6.3.2. **Tom Cooper, Apt. 6 The Green Building:** Owner and resident of the building since construction in 1994. The residential floors were designed to operate with the office and retail spaces which are served by common entrances, staircases and a lift in the centre. All 12 no. bedrooms in the building open onto the central atrium which provide natural air conditioning. The space is quiet safe and secure. The offices provide a buffer between the retail and the residential uses and do not create a noise nuisance. This combination is in keeping with the zoning objective of 'key employment area'. The proposed short-term-let will cause a great deal of disturbance with strangers in the building at a constant stream. The proposed development would cause a loss of residential amenity to the apartment dwellers causing a loss of these homes to other uses. The proposed development will lead to security concerns and a loss of key office space. The Board is requested to refuse permission.
- 6.3.3. **Michael Mortell, Apt. 8 The Green Building:** The Board is requested to refuse permission, in order to protect the residential amenity of all apartments in the building. The mixed-use nature of the building was a critical aspect of the sustainable design where the office is to provide a buffer between the retail and the residential.
- Any proposed use should be compatible with the existing residential use in the building. The proposed use will threaten the primary residential use of the building.
 - There are no permanent residents in Merchant House and so is not comparable to the subject building.
 - Temple Bar is a rent pressure zone and short term lets are not appropriate for RPZ according to the circular. The Green Building is a multi-unit development.

- The transient nature of the proposed use will have a disruptive effect on the owner-occupied community in the building.
- The use of short-term lets cannot be controlled by way of condition to a specific operator as the operator may change.
- The depreciation of property values is included in the fourth schedule of the Planning and Development Act 2000.
- The draft Planning and Development (Amendment)(no.2) Regulations 2018 do not apply to short term letting – only to a change to residential use. The purpose of the regulations is to encourage vacancies to be converted into residential use.
- Permission was granted for a change of use at basement and ground floor level. The office use at the first floor provides a buffer between the ground and upper floor uses.
- The proposed short-term lets are to be remotely managed, allowing strangers to access the building with residents. There is no control over access, numbers of guests, their behaviour. This is incompatible with permanent residency.
- The proposed short-term lets will lead to noise nuisance late at night. Noise travels upwards in the building through the central atrium. The bedrooms of the apartments open onto the central atrium. The appellants noise report ignores that there are some windows in the first-floor glazing (photo submitted).
- The lift is not enclosed and noise resonates throughout the whole atrium. Tourists in this area noted for late-night activities will arrive and exit at all hours. Short term lets operate on a 24-hour basis. With no management on site, this cannot be controlled. It is unlikely guests will use the stairs as they will have luggage.
- No on-site security or management is proposed. Merchant House (which has security until 10pm) is too remote to ensure safety of the residents at night.
- Suite A and B show sofas that could be used to accommodate extra guests.
- The appellants have not provided any details of how the key access system would work. Keys can be copied, passed on or retained. Access once in the front door is available to all floors. Office use has an on-site manager and so does not create the same security concerns.

- There is no way to prevent stag parties booking the rooms.
- The permitted uses are in keeping with the Z5 zoning objective. The proposed commercial tourist use is not compatible with the residential use above. The proposed development will result in the loss of office space in a central part of the city.
- Short term lets do not increase residential stock, potentially driving out permanent residents in the subject building. Short term lets are suitable over shops and commercial premises in the city, not adjoining full time residents.
- The Guidance on Short Term Lets circular recognises the adverse impacts on local communities. The proposed development introduces a disruptive element to the full-time residents, contrary to the provision of the Circular.
- The issue of nuisance and the transient nature of strangers accessing the building at all hours has not been addressed by the appellant.
- The Board is requested to refuse permission.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions on file. I am satisfied that the issues raised adequately identify the key potential impacts.

7.2. **Principle of Proposed development**

- 7.2.1. The development plan states that the primary purpose of Z5 zone is to sustain life within the city centre through intensive mixed-use development (section 14.8.5 refers). The strategy of the plan is to provide a dynamic mix of uses which interact with each other, help create a sense of community and which sustain the vitality of the inner city both by day and by night. The Green Building, having permitted use on the ground floor of café / retail, office on the first floor and residential on the upper floors accords with this objective.
- 7.2.2. The proposed change of use from office to short-term let would introduce a new use to the first floor. All of the parties to the appeal note that the office use provided a buffer between the day time retail and office uses on the lower floors and the more

intensive all-day use of the upper floors. The proposed short-term letting use would introduce an additional intensive 24 hour use in this interim space.

- 7.2.3. I note that access to the proposed guest suites on the first floor is via the existing stairwells and lift shaft. No measure to contain the short-term left use to the first floor has been presented in the application. Therefore, guests of the first floor could access all of the upper floors – at all points day and night.
- 7.2.4. I share the apartment resident’s concerns regarding the lack of on-site security and management. It is the appellants submission that Merchant House has operated well with no security breaches, however as noted by one of the Observers the two sites are not comparable. Merchant House with no permanent residences would not suffer long term adverse impacts were such a breach to occur. Only other short-term guests would be affected should noise or other disturbance occur. The implications on permanent residents of the Green Building are much more significant. With no on-site management or security, there is no protection against late night noise disturbance or other such disruption. The appellant states that group bookings and “weekend revellers” are not welcome but how such a restriction is to be enforced is not elaborated upon.
- 7.2.5. The appellant (Acoustic Report) makes a compelling argument about the sound insulation properties on the floors and glazing, however, no measures to prevent guests accessing the internal corridors (and therefore the front doors) of the private apartments have been presented. Further, that the windows in the glazed wall can be opened was not considered on the acoustic report.
- 7.2.6. The appellant states that the proposed use would make better use of a vacant floor, positively contributing to tourist visitor accommodation. While there is a need for such accommodation in the city centre, it must be accompanied by the appropriate safeguards such as on-site management and security.
- 7.2.7. It is considered that the adverse impacts of the proposed development on the safety and security of the upper apartments is unduly onerous and would represent a significantly negative impact on the permanent residents of the building. I note the acknowledgement of the Circular Letter PL10/2017 Guidance on Planning Applications for Short Term Lettings that the transient nature of short-term lettings can have a disruptive impact on owner-occupiers. I further note, that section 3 of the

circular states that the change of use to short-term lettings of entire or part of an existing apartment building is not appropriate in an existing apartment building. I do not accept the appellants submission that the subject development is not a multi-unit development. The existence of other permitted uses on the basement, ground and first floors does not negate the fact that 8 no. residential units occupy the greater proportion of the building – thereby making it a multi-unit development. I also do not accept the submission that the rent pressure zone consideration only applies in the provision of new accommodation. No such exemption is included in the circular.

- 7.2.8. It is considered reasonable that if the disturbance from short-term lettings was to be so adverse, some of the permanent residents of the upper floors may be discouraged from maintaining such a residency. The proposed change of use, in such a scenario would result in the loss of permanent residential stock in a prime city centre location. There are many places for tourists and short-term accommodation in the city centre, there are fewer for permanent residents. The impact of the proposed development on the permanent residents of the subject development cannot be ignored. Maintaining the city centre as an attractive place for a residential population is one of the core strategies of the development plan.
- 7.2.9. I am satisfied that the proposed development is not in keeping with the zoning objective of the subject site which is to consolidate and facilitate the development of the central area. Having regard to the Guidance of the Department of Housing, Planning and Local Government on short term lettings, it is recommended that permission be refused on the grounds of the impact of the proposed development on the residential amenity of the existing residents of The Green Building.

8.0 Appropriate Assessment

- 8.1.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

9.0 Recommendation

9.1. I recommend permission be REFUSED for the following reason

- 1 Having regard to Circular Letter PL10/2017 Guidance on Planning Applications for Short Term Lettings, it is considered that the proposed change of use from office to 4 no. short-term let suites, in an existing multi-use development with 8 no. apartments, would seriously injure the residential amenity of the residents of the subject building in terms of lack of on-site management and security for the proposed suites. The proposed development is considered to be contrary to the proper planning and sustainable development of the area.

Gillian Kane
Planning Inspector

29 March 2018