



An  
Bord  
Pleanála

## Inspector's Report ABP-300820-18

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<b>Development</b>	Permission for amendments to approved hotel re-development (ref.3493/15 and amendment applications apply) for the provision of 12 no. bedrooms at basement level to replace the permitted gym, meeting rooms and plant, along with associated alterations to the basement layout.
<b>Location</b>	31, 32 and 33 Stephens Street Lower, and 1, 2 and 3 Digges Lane, Dublin 2.
<b>Planning Authority</b>	Dublin City Council Sth
<b>Planning Authority Reg. Ref.</b>	4239/17
<b>Applicant</b>	Balrath Investments Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Balrath Investments Limited
<b>Date of Site Inspection</b>	17 <sup>th</sup> May 2018
<b>Inspector</b>	Dolores McCague

## **1.0 Site Location and Description**

- 1.1.1. The site located at the junction of Digges Lane and Stephens Street Lower, Dublin 2. The site is occupied by a building which until recently was operated as an hotel but which is currently a building site. The site is located adjoining the South City Retail Quarter Conservation Area. The site is within the Zone of Archaeological Potential for the recorded monuments: Dublin City, Church and Graveyard, and Hospital Site.
- 1.1.2. The site has frontage to Digges Lane where there is a side entrance. Its main entrance is to Stephen's St. On the opposite side of Digges Lane is the Drury Court Hotel with a popular pub/eatery occupying the ground floor. On Stephen's St. the site adjoins the former Mercers Hospital now a medical centre, and on Digges Lane it adjoins a residential apartment block.
- 1.1.3. Digges Lane is a short, cobbled street which falls from south to north forming a junction at Longford St Lower, Noel Purcell Walk and Bow Lane East, to the north; and Stephen St Lower to the south. Stephen St extends west from Johnsons Place, close to St Stephen's Green Shopping Centre, which is close to the subject site. The site is therefore within the city's central area.

## **2.0 Proposed Development**

- 2.1.1. Permission for amendments to approved hotel re-development (ref.3493/15 and amendment applications apply) for the provision of 12 no. bedrooms at basement level to replace the permitted gym, meeting rooms and plant, along with associated alterations to the basement layout. The 12 no. proposed bedrooms would have no windows.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The Planning Authority decided to refuse permission for the reason:

The change of use of the existing basement of the hotel to 12 no. windowless bedrooms would constitute a substandard form of hotel development and would not provide an acceptable level of quality and amenity for visitors to Dublin. The change of use would set an undesirable precedent for other hotels within the city, would be inconsistent with Policy CEE12 of the City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Zoned Z5 Archaeology
- Reference to previous planning application Reg Ref 2140 and An Bord Pleanála refusal's of same.
- 12 bedrooms (each approx. 21 sq m) bringing the total number of bedrooms to 140. The bedrooms will be internal and therefore windowless. Serious concern regarding the provision of windowless bedrooms which will have no natural light and whether they will provide sufficient amenity for visitors to Dublin.
- There is no precedent within the City Council area for approving windowless hotel bedrooms. The application cited in the supporting report Reg. Ref. 2140/15 was for a new hotel with the provision of 6 windowless bedrooms which were changed to meeting rooms in response to a further information request. Following an appeal to An Bord Pleanála a condition was imposed restricting the use rooms to meeting rooms. It is considered therefore that the Board did not regard the use of windowless rooms as acceptable. The provision of windowless bedrooms is not considered an appropriate standard of amenity for hotel accommodation within the City.

#### **3.2.2. Other Technical Reports**

- Engineering Department Drainage Division – conditions - code of practice, compliance with drainage conditions of 3493/14.
- TII Section 49 levy for Cross City Luas.
- Dart expansion office – no comment.

## 4.0 Planning History

3439/17 amendments to Digges Lane façade @ first floor: 26 sq m extension to bedrooms, 53 sqm extension to second floor, third floor fourth floor and fifth floors; no additional bedrooms.

Report - Z5; will bring elevation in line; granted; no objection from Dart underground office.

4086/16 permission granted for amendments to previously approved planning permission 3493/15: a) provision of smoking terrace and non removal of building 32 sq m, improvements to service zone, extension at Mezzanine level and 51 sq m extension at first to fourth floor levels @ Digges Lane frontage; b) internal alterations at ground floor and basement, c) internal alterations at 1<sup>st</sup> to 4<sup>th</sup> @ north east elbow: additional bedrooms (+ 10 bedrooms) to 124 bedrooms total.

Report - Z5 adjoins South City Retail Quarter Architectural Conservation Area, Zone of Archaeological Constraint for recorded monuments: Dublin City, Church & Graveyard site & Hospital Site.

3493/18 cessation of nightclub in basement and replacement with hotel accommodation and plant. Cessation of nightclub at mezzanine level and removal of mezzanine 631sq m between ground and first floor, removal of 32 sq m of ground floor and creation of a courtyard garden. 2 new floors of bedroom accommodation (+32 total) 4<sup>th</sup> floor to Digges lane (+ 8 new bedrooms) 76 existing 116 total, 7 storeys and 2 storey service annex to Digges Lane.

Conditions including:

Contribution to Metro North

Steel gate

11 drainage to minimise the risk of basement flooding

All internal basement drainage must be lifted via pumping to a maximum depth of 1.5m below ground level before being discharged by gravity from the site to the public sewer

Flood risk assessment

## Archaeological

Planning report - At basement a new fitness centre, meeting rooms, staff changing, toilets and plant, (water storage, electrical & mechanical) will be provided. Ground floor part of mezzanine to be removed, part to change to office. 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> relatively unchanged. Change of existing boardrooms to bedrooms. 4 storey extension - 8 bedrooms. Following a further information response - removal of 6<sup>th</sup> floor, loss of 16 bedrooms. 5<sup>th</sup> floor reconfigured to provide an additional 4 bedrooms, ground floor mezzanine reconfigured to provide an additional 10 bedrooms, bar & gym (net loss 2 bedrooms).

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The Dublin City Development Plan 2016-2022 is the operative plan, relevant provisions include:

5.1.2. The site is zoned Z5 - to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.

CEE12: (i) To promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels, apart hotels, tourist hostels, cafes, and restaurants, visitor attractions, including those for children.

(ii) To promote and enhance Dublin as a world class tourist destination for leisure, culture, business and student visitors.

(iii) To promote and facilitate the optimum benefits (including the international marketing benefits) to the city of the Convention Centre Dublin, as well as all other major existing and future visitor attractions.

**5.2. Registration and Renewal of Registration Regulations for Hotels, 2016 under the Tourist Traffic Acts 1939-2011**, from the Fáilte Ireland.ie website.

7.4 Each standard bedroom shall have:

f) Window(s), to be fitted with child proof locking system.

**5.3. Hotel Classification Scheme**

Approval minimum entry level requirements in order to comply with Registration and Renewal of Registration Regulations.

The hotel classification scheme document, from which an extract is provided in the grounds of appeal, is divided into regulation requirements and classification requirements.

7.4 Each standard bedroom shall have:

a) A gross internal floor area, for single bedrooms, of not less than 12.50 square metres inclusive of ensuite and bedroom lobby area.

b) A gross internal floor area for double/twin bedrooms of not less than 14.00 square metres inclusive of ensuite and bedroom lobby area.

c) A gross internal floor area for double and single, or triple, bedrooms of not less than 18.00 square

d) A door viewer.

e) A means for the proprietor or registered proprietor to independently access all rooms in order to service rooms and for emergencies.

f) Window(s), to be fitted with child proof locking system.

g) Additional internal locking mechanism at the bedroom door.

7.5, 7.6, 7.7 and 7.8 sets out further requirements for guest bedrooms for approval and includes all grades of hotel.

Classification Matrix for Hotel Classification Scheme

At least one window providing natural light. This window should also provide ventilation except where air-conditioning is provided.

#### **5.4. Fáilte Ireland Hotel Classification Criteria 2017, FAQ**

- 5.4.1. The Hotel Classification Criteria sets out the relevant criteria hotels must meet in order to be classified as a 2 to 5 star hotel. Fáilte Ireland has updated this criteria to reflect today's consumer needs based on international benchmarking and extensive consumer research. Hotels will be assessed under the updated Hotel Classification Criteria from Monday, 13<sup>th</sup> March 2017. These new regulations and criteria provide opportunities for flexibility which allow hotels to meet the needs of the modern traveller. The changes also take into account changes in technology and the business environment which have taken place over the same period. An approved hotel is a hotel that complies with the minimum regulations for approval as a hotel.
- 5.4.2. In relation to the question 'are all bedrooms required to have a window?' the answer is 'yes all bedrooms are required to have window(s) and these must be fitted with a child proof locking system. For 2 to 5-star hotels the window must provide natural light and should also provide ventilation except where air-conditioning is provided.'

#### **5.5. Natural Heritage Designations**

- 5.5.1. The South Dublin Bay SAC site code 000210 and South Dublin Bay and River Tolka SPA site code 004024, are the nearest Natura sites, located c 3.75km away.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. The appeal has been submitted by Tom Phillips & Associates on behalf of the first party.
- 6.1.2. The grounds includes:
- The reason is not substantiated in terms of Development Plan policy, other guidance or standards or the proper planning and sustainable development of the area.
  - Policy CEE12 (i), (ii), and (iii).

- Seeking to impose a particular and singular view on what constitutes an appropriate form of hotel bedroom accommodation and they query whether this is a planning matter.
- Substandard – their response is that there are no specific standards in CDP. Quality is not a planning consideration, provided that the development will not give rise to any adverse impacts on the proper planning and sustainable development of the area.
- Provision of windows is not a requirement to be designated an approved hotel by Fáilte Ireland. An extract from Fáilte Ireland’s Hotel Classification Scheme is attached with relates to guest bedrooms, providing a matrix in relation to a range of requirements required for ‘approval’ indicating whether the service is required for three star rating or upwards of that ‘the service or facility listed is not required’. The list includes ‘at least one window providing natural light. This window should also provide ventilation except where air-conditioning is provided’. This is indicated as a ‘service or facility listed is not required’.
- They state that there is therefore no mandatory requirement within the current Fáilte Ireland hotel classification criteria to provide windows to hotel bedrooms, in order to be designated an approved hotel. Such provision relates to the subsequent star rating of the hotel premises, which is purely a commercial and marketing consideration for a future hotel operator as to whether such designation will be sought.
- They also refer to the fact that there will be 140 bedrooms of which only 12 will be windowless. The remainder of the hotel will likely meet the 3 or 4 star requirements.
- The planning authority has no remit to assess the quality of any hotel beyond the proper planning considerations.
- Re. quality, this is not a matter for the planning authority whose conclusion is at odds with the national agency.
- Re. amenity, what constitutes amenity to be provided by hotel bedrooms is not a planning matter. A clear distinction requires to be drawn between



qualitative design standards that apply to residential accommodation and hotel bedroom accommodation.

- It has been categorically shown that the provision of a window is not required by Fáilte Ireland in respect of being designated an approved hotel. The issue of amenity in this context is irrelevant to the assessment.
- This land use should not be confused with residential.
- Daylight – no standard of daylight is required.
- Views – it is unrealistic to expect all bedrooms, in a constricted inner city site, to provide views.
- Ventilation – many bedrooms which do have windows, have windows which are permanently sealed. The windows provided at upper levels of this hotel are permanently sealed. Air conditioning system technologies ensure control of smells, temperature and moisture.
- Compact Size – they are double bedroom size - 18sq m. DCC has permitted smaller rooms St Andrews Lane reg ref 4342/16 12.5 sq m.
- Precedent – this is not readily replicated.
- The statement that there is no precedent is inferred as a reason to maintain the status quo.
- In 245235 no detailed appraisal was carried out or required, as the provision of these bedrooms no longer formed part of the proposal. The condition cited was likely deemed necessary in the interests of clarity. They do not accept it as being the Board's position forevermore on all or any such future proposals.
- They ask the Board to consider the case on its merits and to note the absence of any planning criteria.

## 6.2. **Planning Authority Response**

6.2.1. The Planning Authority has not responded to the grounds of appeal.

## 7.0 **Assessment**

7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, quality of accommodation, and other issues and the following assessment is dealt with under those headings.

### 7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

### 7.3. **Quality of Accommodation**

7.3.1. The grounds of appeal states that the provision of windows is not a requirement to be designated an approved hotel by Fáilte Ireland. They provide an extract from Fáilte Ireland's Hotel Classification Scheme in support of their claim.

7.3.2. Fáilte Ireland is charged with the responsibility of setting standards for many services the chief of which is setting standards for hotel accommodation. Their website hosts several relevant and easily accessible documents. One is titled 'Tourist Traffic Acts 1939-2011 Registration and Renewal of Registration Regulations for Hotels, 2016'. It refers to Fáilte Ireland's powers to make regulations for regulating hotels and lists requirements for hotels which include, at 7.4, requirements in relation to bedrooms:

Each standard bedroom shall have:

f) Window(s), to be fitted with child proof locking system.

7.3.3. Fáilte Ireland's Hotel Classification Scheme, which is cited in the grounds of appeal is also available on Fáilte Ireland's website. It refers to guest bedrooms on pages 10, 11 and 12 as well as page 13 which is cited in the grounds. Item 7.4 on page 11:

Each standard bedroom shall have:

f) Window(s), to be fitted with child proof locking system.

7.3.4. A third document prominently displayed on the website alongside the above document cited in the grounds of appeal is a document titled 'Fáilte Ireland Hotel Classification Criteria 2017, FAQ'.

There is a question

'Are all bedrooms required to have a window?'

Answer

'Yes all bedrooms are required to have window(s) and these must be fitted with a child proof locking system. For 2 to 5-star hotels the window must provide natural light and should also provide ventilation except where air-conditioning is provided'.

7.3.5. There is no room for doubt in relation to the necessity for a window or windows as a basic requirement for a hotel bedroom.

I am satisfied that the proposal to provide windowless bedrooms is a proposal to provide substandard accommodation and that the proposed development should be refused for this reason.

#### 7.4. Other Issues

7.4.1. In relation to the provision of such accommodation at basement level additional concerns arise which have not been addressed in the application documentation: the issue of flood risk and the potential impact of proximity to the Luas bored tunnel.

7.4.2. In a previous permission for development on this site reg. ref. 3493/15, condition 11 states:

c) to minimise the risk of basement flooding, all internal basement drainage must be lifted, via pumping, to a maximum depth of 1.5metres below ground before being discharged by gravity from the sit to the public sewer.

d) the developer shall ensure that an appropriate flood risk impact assessment, in accordance with the OPW Guidelines, is carried out for the proposed development.

No information is available on this file to indicate whether or not the flood risk impact assessment required under condition 11 d) of 3493/15 was carried out. The draft flood mapping for the area states that this is an area having no data.

- 7.4.3. The Dart Underground were consulted and have no objection to the proposal. In previous applications they referred to the crown of the tunnels being approx. 24m below street level in the environs of the propose development and that construction of the tunnels is predicted to induce a settlement of approx. 2mm. No information is available on any potential impact arising from use of the basement area for bedrooms.
- 7.4.4. In light of the conclusion reached in relation to the substandard nature of the proposed accommodation I do not consider it necessary to seek clarification of these matters.

## **8.0 Recommendation**

- 8.1.1. In the light of the above assessment I recommend that planning permission be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

The change of use of the existing basement of the hotel to 12 no. windowless bedrooms would constitute a substandard form of development, which would not provide an acceptable level of quality or amenity for visitors to Dublin and would be contrary to the requirements for standard hotel bedrooms per Registration and Renewal of Registration Regulations for Hotels, 2016 under the Tourist Traffic Acts 1939-2011. The change of use would be inconsistent with Policy CEE12 of the City Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

8 June 2018

### Appendices

- 1 Photographs
- 2 Extracts from the Dublin City Development Plan 2016-2022
- 3 Registration and Renewal of Registration Regulations for Hotels, 2016 under the Tourist Traffic Acts 1939-2011
- 4 Hotel Classification Scheme, Fáilte Ireland
- 5 Extracts from Fáilte Ireland Hotel Classification Criteria 2017, FAQ