



An
Bord
Pleanála

Inspector's Report ABP-301253-18

Development	Alterations to a protected structure
Location	No. 37, Harcourt Street, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3072/17
Applicant	BO Vision Capital
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant	BO Vision Capital
Observer	None
Date of Site Inspection	17 th November 2018
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is the plot of a Georgian terraced house with fourth storeys over a basement. The house is vacant. According the details submitted by the applicant, the house has been divided in 14 separate dwellings which are described as flats. There are 3 flats each in the basement and on each of the ground, first and third floors, and 2 flats on the second floor. The stated area of site is 196m². It excludes the land between the back of the rear return and the laneway behind Harcourt Street that would have been part of the curtilage of the original house. That land has been incorporated into the adjoining plot to the north at No. 36. That plot is a building site. There is a mix of uses in the other Georgian houses in this terrace along Harcourt Street.

2.0 Proposed Development

- 2.1. The development for which permission is sought comprises –
- The refurbishment of flats Nos. 11, 12, 13 and 14 on the second and third floors that were damaged by fire
 - The reinstatement of the main roof over the building
 - The proposed alterations to flat No. 4 on the ground floor were omitted from the development at further information stage. Proposals for the restoration of the elevations of the house were submitted at this stage.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for one reason which stated that the applicant had not demonstrated that the house had been divided in 14 units prior to 1963, that the units do not meet the standards for residential development in the development plan, that the proposed use would not enhance the character of the protected structure and would seriously injure the amenities and depreciate the value of property in the vicinity of the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report on the initial application stated that all the proposed apartments were less than the minimum size of 40m² for studio apartments and notes that the architectural heritage impact assessment referred to the installation of self contained apartments in the 1990s. The report also noted the Conservation Officer's report. It recommended that further information be sought regarding the planning status of the apartments and additional details of the proposed conservaiton strategy. The report on the subsequent application stated that the planinng authority had to consider the development as described on the notices. The status of the apartments remained vague. It would be preferable if an application were made that would address the planning status and conservation of the entire house. It was recommended that permisison be refused.

3.2.2. Other Technical Reports

The Conservation Officer submitted a report on the initial application. It recommended that further information be sought clarifying the conservation strategy for the proposed works which should refer to the whole building and provide more details of works. No subsequent report from the Conservation Officer appears on the file.

4.0 Planning History

Reg. Ref. 3273/18 – the planning authority granted permisison in September 2018 to convert the ground floor of the house to a restaurant and to build a rear extension. That appliction was lodged after this application.

Reg. Ref. 3133/17 – the planning authority granted permission in September 2017 to convert the basement of the house on the site to a restaurant and to build a rear extension. That application was lodged after this application.

Reg. Ref. 0208/17 – the planning authority issued a declaration under section 5 of the planning act that works to the house on the site were not exempted development because they would materially affect the character of a protected structure.

5.0 Policy Context

5.1. Development Plan

The house on the site is a protected structure. The Dublin City Development Plan 2016-2022 includes policies to protect the built heritage of the city. The area is zoned under objective Z8 which is to protect the character of the area and allow limited expansion that is consistent with its conservation. Section 16.10 of the plan provides minimum standards for residential accommodation. It states that such standards will be sought in refurbishment schemes, but that this may not always be possible particularly in relation to historic buildings.

6.0 The Appeal

6.1. Grounds of Appeal

- The applicant has submitted information that demonstrates that the second and third floors, which are the subject of the current application, have been in residential use since at least the 1920s. The owner of the building in 1964 made a statutory declaration that its current configuration was in place at that time. The use and layout of the second and third floors is therefore established.
- A grant of permission would be in keeping with the proper planning and sustainable development of the area because it would secure the continued use of the property whose current poor condition detracts from the character of the street. The manner in which the property would be refurbished is described in detail in the architectural heritage assessment submitted by the applicant. It demonstrates that the proposed works have due regard to the original fabric of the building and its architectural and historic interest and will not adversely affect that interest. The planning authority has not provided any basis to support a conclusion to the contrary.
- With regard to the standards for apartments set down in the development plan, the planning authority has not had due regard to provision at 16.10 which recognises that it may not be possible to achieve them when historic

buildings are being refurbished. While the apartments on the second and third floors are compact, when refurbished they will provide a high standard of accommodation for people who seek 'studio' type accommodation in the city centre.

6.2. Planning Authority Response

- The decision of the planning authority should be upheld having regard to the vagueness in relation to the pre 1963 uses and the fact that the residential uses proposed are significantly below development plan standards.

7.0 Assessment

- 7.1. The flats shown on the submitted drawings would not provide the current standards of residential accommodation required by the development plan. However this application does not seek permission to divide the house into separate apartments or to retain such a division. The planning authority has powers under Part VIII of the planning act to take action if it considers that unauthorised development has occurred. It is not permissible for the planning authority or the board to use the power to determine applications for permission under Part III of the planning act to achieve the purpose of Part VIII of the act or to circumvent the procedures which are set down in that part of the act. A failure to observe this distinction between the two functions would be particularly unfortunate in this case of a protected structure that is part of a terrace along a street in the city centre, because the resulting confusion in the status of the structure would discourage investment in the upkeep or improvement of the property. It would therefore be likely to lead to vacancy and dereliction that would damage the character of the street and the architectural heritage of the city. The quality of accommodation that would be provided by the flats shown on the submitted drawings would not be so egregiously below that which might be reasonably expected in an historic building in this part of the city centre to justify setting aside this legal principle. The planning authority's reason for refusal is not justified, therefore.
- 7.2. The actual works that are proposed in this application would improve the condition of the protected structure. They would protect the architectural and historic character

by securing the integrity of the structure and by making it more likely to be occupied. An architectural heritage assessment has been submitted by the applicant and no basis has been submitted to dispute its conclusion that the works would have proper regard to the special interest of the protected structure. The amendments to the proposed works submitted by the applicant as further information are within the scope of the development described in the notices of the initial application and may be required by a grant of permission on foot of it. These amendments include works to restore the front façade which would significantly improve the character of the streetscape. The proposed development would therefore improve the character and amenity of the area and its architectural heritage, therefore.

- 7.3. The proposed development involves restoration works to a protected structure that would not result in additional floorspace or a change of use. It would not be liable, therefore, to a contribution under either the general scheme for the city or the supplementary scheme for the Luas cross city project.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the nature and extent of the proposed works to the protected structure, and to the details of its architectural heritage and the impact of the works submitted with the application and as further information, it is considered that, subject to compliance with the conditions set out below, the proposed development would protect the special interest of the protected structure, would enhance the character of Harcourt Street, and would not result in the provision of residential accommodation of an unacceptable standard. It would therefore be in keeping with the proper planning sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the

further plans and particulars submitted on the 23rd day of January 2018, 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. Prior to commencement of development, the developer shall provide for the following:-

(a) The appointment of a conservation expert, who shall manage, monitor and implement works on the site and ensure adequate protection of the historic fabric during those works.

(b) The submission of details of all finishes and of all existing original features to be retained and reused where possible, including interior and exterior fittings/features, joinery, fenestration, plasterwork, features (cornices and ceiling mouldings), roofs, staircases including balusters, handrail and skirting boards.

All repair/restoration works shall be carried out in accordance with best conservation practice as detailed in the application and the “Architectural Heritage Protection Guidelines for Planning Authorities” (Department of the Environment, Heritage and Local Government, 2004). The repair and restoration works shall retain the maximum amount possible of surviving historic fabric in-situ including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and fabric.

Reason: To ensure that the integrity of the historic structures is maintained and that the structures are protected from unnecessary damage or loss of

fabric.

Stephen J. O'Sullivan
Planning Inspector

17th November 2018