



An  
Bord  
Pleanála

## Inspector's Report ABP 301282-18

---

<b>Development</b>	Four storey over basement mixed use retail and student accommodation development with a roof terrace and site development works.
<b>Location</b>	Nos. 13-14 Exchange Street, Dublin 2.
<b>Planning Authority</b>	Dublin City Council
<b>P. A. Reg. Ref.</b>	4652/17
<b>Applicant</b>	Ningaloo Dublin Properties Ltd.
<b>Type of Application</b>	Permission
<b>Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party X Refusal
<b>Appellant</b>	Ningaloo Dublin Properties Ltd.
<b>Observer</b>	Temple Bar Residents' Association
<b>Date of Site Inspection</b>	11 <sup>th</sup> July, 2018.
<b>Inspector</b>	Jane Dennehy

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. Development Plan.....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Planning Authority Response .....	10
6.3. Observations.....	10
7.0 Assessment.....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15

## **1.0 Site Location and Description**

- 1.1. The application site which is derelict and has a stated area of seventy-three square metres is located at the corner of Essex Street West and Exchange Street Lower which is a short distance to the west of Parliament Street and south of Essex Quay at the edge of the Temple Bar District. It is enclosed by hoardings along the 6.5 metres long frontage onto Essex Gate and twenty metres long frontage on Exchange Street Lower.
- 1.2. Immediately to the north side there is a derelict site and immediately to the west is a single storey building part of which is occupied by a locksmith business. To the east side of this premises is a three storey building occupied by the Gaiety School of Acting. On the east side of Lower Exchange Street there is a four storey building which is in apartment use on the upper floors and by a bar at ground floor level. The area is generally characterised by mixed use development and by a variety of historic and contemporary buildings.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for construction of a four storey over basement building, following site clearance. A retail unit along with a waste storage room is proposed at ground floor level with three student accommodation units, one on each of the three upper floors and provision is also made for communal open space on a roof terrace overhead. A communal storage room is shown at basement level. The total stated gross floor area of the proposed development is 191.5 square metres. The stated plot ratio is 2.1 and site coverage is 47%
- 2.2. The application includes a “Heritage Impact Statement” prepared by Five Seven Architects, a “Planning Application Report”, Drainage report which includes proposals for attenuation and hydro-brake flow restriction, a Statement by the applicant’s architect.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 23<sup>rd</sup> February, 2018, the planning authority decided to refuse permission based on three reasons.

According to Reason 1 the proposed development is piecemeal, compromises the development potential of the site to the north side. An integrated development approach is required, given the archaeological significance of the location and the proposed development sets undesirable precedent and is seriously injurious to the amenities of properties in the vicinity.

According to Reason 2 the proposed development is visually incongruous and with the blank elevations has a poor relationship with the street context. It would set undesirable precedent and is seriously injurious to the amenities of the area.

According to Reason 3 the proposed development is not in accordance with standards for student accommodation set out in section 16.10.7 of the Dublin City Development Plan, 2016-2011 (CDP) due to lack of provision for communal facilities for the accommodation, substandard accommodation, undesirable precedent and is seriously injurious to the amenities of properties in the vicinity.

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

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

The planning officer noted the constraints of the site configuration, the prominence of the location and the archaeological significance, commented that there is a predominance of circulation space within the interior and concluded that the

proposed development was unacceptable based on the reasoning attached to the decision to refuse permission.

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

The report of the **City Archaeologist** notes recorded monuments and the archaeological significance of the site and the location, prior archaeological investigations and potential for disturbance of archaeological material by the proposed development. A request for additional information is recommended to comprise preparation of a comprehensive archaeological impact assessment to include trial testing as appropriate and omission of the basement level is recommended should permission be granted.

The reports of the **Roads Planning and Transportation Division** and the report of the **Drainage Division** and the **Waste Management Division** indicate no objection to the proposed development subject to conditions.

### 3.3. **Prescribed Bodies**

- 3.3.1. The submission of the **Department of Culture, Heritage and the Gaeltacht** (National Monuments Division) notes recorded monuments and the archaeological significance of the site and the location, prior archaeological investigations and potential for disturbance of archaeological material by the proposed development. It is indicated that that proposed development is incompatible with preservation of archaeological remains, and that a comprehensive archaeological impact assessment is required and should be submitted as further information to facilitate informed archaeological assessment and recommendations, prior to the determination of a decision. It is also noted that refusal of permission could be recommended or that further monitoring and excavation works could be required.
- 3.3.2. The submission of **Transportation Infrastructure Ireland** (TII) requests attachment of a section 49 development contribution condition in respect of the LUAS Cross City), unless the proposed development is exempt, according to the adopted scheme.

### 3.4. Third Party Observations

- 3.4.1. Submissions lodged with the planning authority indicate concerns about potential for short term letting of the proposed residential accommodation, potential noise and nuisance and adverse impact on residential amenities, the desirability of permanent residential accommodation, negative visual impact, having regard to scale, height and design and about the desirability of sustainable development on derelict sites.

## 4.0 Planning History

- 4.1. Permission was granted, subject to conditions for temporary street art at the site subject to conditions under P. A. Reg. Refs. 6082/07 and 1745/05. Permission had previously granted for development of a two storey oratory building under P. A. Reg. Ref. 2430/03. The grant of permission was not implemented. Permission for a prior proposal for a two storey oratory had previously been refused under P. A. Reg. Ref. 02/0373 on grounds of inappropriate scale height and design and adverse visual impact.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022. (CDP) according to which the site location is within an area subject to the zoning objective: Z1: *“To protect and improve residential amenities.”*

Policies and objectives for student accommodation are set out under Objective CEE19 (ii) and Section 5.5.12, Infill development under Section 16.2.2.2 and Regeneration/Vacant Land/ Active and Management under Section 6.5.4

The site location comes within an Area of Archaeological Interest and the zone of archaeological potential for several monuments on the Record of Monuments and Places. Two monuments are recorded as being within the area of the site. (DU018 020538 and DU018 020539 refer.)

The site location is within the City Walls for the mediaeval core of the city in respect of which Policy CHC10 provides for preservation and enhancement of the surviving

sections in accordance with recommendations in the *City Walls Conservation Plan, 2015* and *National Policy on Town Defences* prepared by the Department of the Environment, Heritage and Local Government in 2008.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Brock McClure on behalf of the applicant on 22<sup>nd</sup> March, 2018. It includes a detailed planning appeal document, a comprehensive Archaeological Assessment report prepared by Irish Archaeological Consultancy Ltd., a Design Statement prepared by the applicant's architects. (ODOS) and a statement indicating support for the proposed development and willingness to attain the student accommodation for its students who could avail of the communal facilities at the school.
- 6.1.2. The planning appeal document includes a detailed description of the planning background and context and of the proposed development and commentary on the planning authority assessment which it is submitted is flawed. It is stated that the proposed development is in a bespoke design and represents significant planning gain in reversing the vacancy of the site, and anti-social behaviour, providing for student accommodation and reinstatement the street corner and visual amenity.
- 6.1.3. In response to Reason 1 attached to the planning authority decision it is submitted that:
- The significant and historic nature and configuration of the site, its visibility at the corner site location in the context of the historic mediaeval narrow streets, having regard to the location at Essex Gate and section 7.6 of the City Wall Conservation Plan, 2004 with tall buildings is recognised in the proposal. Reference is made to the caption therein under Plate 16 indicating that a tall building marking Essex Gate could be accommodated on the site. The proposed development is not piecemeal and haphazard as indicated in the reason provided by the planning authority. Instead, in height it would reinstate the enclosure of the mediaeval streets and is innovative as a design solution.

- The proposed basement can be omitted in accordance with the recommendations in the archaeological impact assessment report included with the appeal and all works will be designed and monitored by a suitably qualified architect. The submitted archaeological impact assessment report is outlined in Section 6.1.7 below.

6.1.4. In response to Reason 2 attached to the planning authority decision it is submitted that:

- The Heritage Impact Assessment submitted with the application indicates that the proposed development is acceptable from a conservation perspective.
- The planning authority decision is based on an inappropriate reliance the adjoining site to provide acceptable solutions for development for the application site. This is a misunderstanding of the site and is beyond the planning remit.
- The circulation areas on north side provides for easy connection, if required, to future development on the adjoining site. No windows overlook it. Shared circulation and access ensures an integrated and coherent approach. The design approach also stands on its own merit without hampering development potential of adjoining land. The design requirements are addressed as specified in detail in the accompanying Design statement by ODOS Architects. This statement is outlined in section 6.1.6 below.

6.1.5. In response to Reason 3 attached to the planning authority decision it is submitted that:

- The design merits are demonstrated in the accompanying Design statement and the standards in section 16.10.7 of the CDP are addressed in the at the student accommodation as sufficient access to sunlight and daylight communal open space at the roof top terrace which is 25.5 square metres in area. The sole requirement not met is that of internal communal facilities' provision. In view of the site location there is adequate opportunity for communal interaction within the area and there is no case based on usage to justify communal space for three students. The location adjacent to the Gaiety School of Acting and the willingness indicated in the accompanying letter from the Director of the School to acquire the accommodation units for



its students who can avail of the communal facilities within the school premises which would facilitate logical design for the proposed development and provides for activation of the street and sustainable development practice as provided for in section 16.10.7 of the CDP according to which communal facilities should be assessed on a case by case basis where accommodation is provided on campus

- 6.1.6. According to the accompanying statement by ODOS Architects the proposed development is a response to a unique opportunity for notable and high-quality, contemporary architecture on an overlooked site. Reference is made to the blank facades for the upper levels, preventing overlooking, and to the glazed ground level street frontage at the junction. It submitted that due to the limitations of the site an optimal development solution was sought in which student accommodation is proposed because standards for residential apartments cannot be met but that the floor plan allows for circulation on the northern side of the site.
- 6.1.7. According to the accompanying archaeological impact assessment report, the site comes within the Zone of Archaeological Interest for Dublin City (DU018-020) and for several Recorded Monuments, two of which, (DU018-020538 and DU018-020539) are within the footprint of the proposed development. Their nature and extent are unknown and no evidence was encountered during the archaeological testing undertaken in 2003 by Helen Keogh under License 03E1844. A mediaeval kiln was encountered, at +2.10m OD during this archaeological testing.
- 6.1.8. The archaeological assessment undertaken in connection with the current application involved desk studies of topographical files and cartographic documentation and the previous archaeological test excavations carried out in 2003 which covered twenty per cent of the site area. It was decided that additional trenching was not feasible or necessary but a brief site inspection, without access to the interior was undertaken in March 2018.
- 6.1.9. It was concluded that as a means of mitigation, insertion of a basement level at +2.08m OD, foundations and service trenching would result in removal of a minimum of 0.8 metres of potential archaeological material.
- 6.1.10. According to the report on the assessment, the applicant agrees with and accepts the recommendation for omission of the proposed basement in order to mitigate

potential interference with the recorded monuments, the *in-situ* medieval kiln and thirteenth century reclamation silts and any unknown features or structures of significance.

6.1.11. Additional recommendations in the assessment are for monitoring of all demolition and ground works by a suitably qualified archaeologist with the developer facilitating resolution of any archaeological features and deposits if any are discovered and, for the detailed design for all subsurface works too be carried out in consultation with a suitably qualified archaeologist.

## 6.2. Planning Authority Response

6.2.1. There is no submission from the planning authority on file.

## 6.3. Observations

6.3.1. An observer submission was received from Frank McDonald on behalf of Temple Bar Residents on 13<sup>th</sup> April 2018 according to which:

- Student housing is an inappropriate use for the proposed development site and there is a strong likelihood that short term summer lets would take place. The area is already 'plagued' by the illegal conversion of apartments to commercial short term letting units. A requirement for planning permission for change of use was established in the determination of a decision on the Referral considered under RL 3490. Many countries are taking actions to reverse illegal conversion of apartments to short term commercial lets. It is incumbent on planning authorities to ensure that a balanced mix of land uses is achieved.
- The proposed use is substandard due to the restricted site and established pattern of residential development. The roof terrace would become a gathering place for students which would be particularly unacceptable as regards social nuisance. The lack of a concierge service raises a serious prospect of anti-social behaviour.

- Use of the roof terrace for social activity would adversely impact on the views to the site attainable over a long distance along East Essex Street. The ground floor café would have a very low floor to ceiling height.
- A new building at the junction consisting of residential units for long term occupation over a ground floor retail unit up to five storeys in height, reflecting the crucial corner and the sites to the north side and west side on which there is a single storey building at present would be acceptable to Temple Bar Residents.
- The proposed development is ad hoc and haphazard this it is conceded to by the applicant. It is premature. It leaves the option for future development on the north side to use the same entrance, lift and staircase on the northern boundary.

## 7.0 Assessment

7.1. The issues central to the decision to refuse permission and to the determination of the decision can be considered below under the following sub-categories.

Archaeology

Design, form and height and Visual Impact.

Nature of Use

Appropriate Assessment

### 7.2. Archaeology

7.2.1. Given the location within the Zone of Archaeological Interest, in which there are several recorded monuments including two within the footprint of the proposed development, the prior testing under License in 2003 during which a mediaeval kiln was encountered and which remains *in situ* on the site and, the likelihood of presence of significant archaeological matter within the site the recommended requirements for omission of the basement level and for monitoring of demolition and excavation works and, with regard to design for foundations and services trenches, consultation with a suitably qualified archaeologist would be minimal requirements which are consistent with the recommendations of the City Archaeologist. It is noted

that it is the view of the National Monuments Service, (Department of Arts, Culture and the Gaeltacht) that comprehensive test trenching should be undertaken prior to determination of a decision in that the results of an assessment report could indicate that development on the site would be incompatible with archaeological protection and preservation. Such an outcome could be necessary having regard to the provisions of the National Monuments Acts 1994 as amended. No site investigative works were undertaken to facilitate the archaeological assessment submitted with the appeal which is solely reliant on desk research which includes the reports on the site investigations undertaken in 2003 by Helen Keogh under License 03E1844 in the immediate area.

- 7.2.2. It is with some reservation that the attachment of a condition containing the recommended requirements which would be acceptable to the City Archaeologist could at a minimum be regarded as sufficient. However, this approach would not be sufficient to meet the Department of Arts, Culture and the Gaeltacht's requirements for comprehensive investigative works to be completed prior to the determination of the decision, In this regard, it appears that the prior investigations undertaken in 2003 included a partial rather than comprehensive investigative works in the site area in which the footprint of the proposed development would be located.

7.3. **Design, form and height and Visual Impact.**

- 7.3.1. The site of the proposed development is at a prominent location within the irregular and narrow mediaeval street pattern and partially closes the vista on approach along Essex Street West over a considerable distance. It is a prominent corner site at the southern end of Exchange Street Lower which is also revealed, along the somewhat irregular and narrow Essex Gate along the line of the City Walls. There is no dispute between the parties as to the desirability of a strongly defined, interesting tall building at this corner site that integrates with the established streetscape of tall buildings and vertical emphasis to the façade detail.
- 7.3.2. The adjoining site to the north adjacent to the Gaiety School of Acting building is under-utilised and is not a sustainable use of serviced land at the centre of the city, being occupied solely by a single storey building. Furthermore, the adjoining site to the north side is entirely derelict. While coordinated site assembly or integrated and compatible development on all three sites agreeable to the landowners is ideal and

desirable it is not the case. The current scenario is predisposed towards potential for haphazard and piecemeal development such as is referred to in the reason for refusal of permission attached to the planning authority decision. However, it is considered that there is an insufficient case to support the view as to adverse impact on development potential of the adjoining lands to the north side of the appeal site.

7.3.3. The form of the proposed structure which follows the narrow site frontage on Essex Gate and longer frontage onto Exchange Street at full height and which roughly slightly exceeds (at 0.5 metres) the ridge height of the structure on the corner of Essex Street East to the east is acceptable. Furthermore, contrary to the view of the planning officer the timber façade finish and fins, a distribution of glazing, the concrete band above the shopfront and treatment at roof level contrasts with and complements the predominant five storey street frontage buildings in the surrounding area. It results in an insertion of a landmark corner site statement building of interest to all views on approach especially the most significant views on approach along Essex Street. Subject to finalisation of materials finishes and colours through compliance with a condition the design, height and form of the proposed structure is acceptable and the contentions as to the opportunity to provide for an appropriate bespoke building within the submissions made on behalf of the applicant to this end are reasonable. Given the unique site configuration and environs, there is no concern as to relevant undesirable precedent in this regard.

7.3.4. It is agreed with the planning officer that there is an excessive proportion of circulation space by way of the corridors, lift, staircase and storage space but it is also accepted that the options in this regard are limited due to the site configuration and building footprint. The allocation of this space to the northern side of the interior, to allow scope for connectivity in the event of possible future development of the adjoining site on the north side is reasonable. However, it is considered that there is scope for some reduction in the proportion of space allocated for such purposes in the internal layout if alternative proposals for the use of the internal accommodation are considered.

#### 7.4. **Nature of Use.**

7.4.1. While the comments in the planning officer report and in the observer submission as to undesirable implications of over concentration of residential development within

the Temple Bar Area that is used for short term letting purposes are fully appreciated, it is considered that the nature of use of the proposed development itself should be considered on its own merits.

- 7.4.2. To this end, the view of the planning officer as to the substandard nature of the proposed student units having regard to the development plan standards set out in Section 16.10.7 of the CDP although the internal layout of each unit is indicative of a small self-contained, open plan studio apartment. Nevertheless, the sole communal facility is the proposed roof terrace and no on-site concierge or management is incorporated in the proposal which is fully understandable given that for three units only is to be provided.
- 7.4.3. The written statement from the Gaiety School of Acting is not sufficient for assurances as to management and control of the occupancy of the units so the possible future use is confined to the use proposed in the application and so that any scope for short term letting occurring at a future date, without a prior grant of planning permission is eliminated. Substitution for the three single dwellings units with a single dwelling unit or, at the most two units might be more acceptable vis a vis scope to reduce the proportion of circulation of ancillary space, to encourage long term residential occupancy, to allow for achievement of a high standard of attainable residential amenity for the future occupants and, for sustaining the protection of residential amenities of the area as provided for under the Z1 zoning objective which is to provide for the protection and improvement of residential amenities. It can be concluded that the proposed development would therefore materially contravene the zoning objective
- 7.4.4. The description on the public notices indicate a retail unit at ground floor level within the proposed development whereas the application drawings and written submission indicate a café/commercial unit. There is no objection to a café/commercial unit or a retail unit at ground floor level subject to the standard requirements with regard to the shopfront and signage and external illumination. The section drawings provided with the application indicate sufficient internal floor to ceiling heights. This clarification addresses the concerns of the Observer Party as to insufficiencies in this regard with reference to the concrete banding on the façade.

## 7.5. **Appropriate Assessment.**

- 7.5.1. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. 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.

## 8.0 **Recommendation**

- 8.1. In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld based on reasoning relating to the nature of use. Should permission be granted, archaeological issues would need to be satisfactorily and fully resolved under the direction of a suitably qualified archaeologist and the basement would need to be omitted. There is no objection to the proposed bespoke design, form and height of the proposed structure subject to resolution of final detail by compliance with conditions. A section 49 development contribution condition should also be attached if permission is granted. Draft Reasons and Considerations are set out below:

## 9.0 **Reasons and Considerations**

Having regard to the Dublin City Development Plan, 2016-2022. (CDP) according to which the site location is within an area subject to the zoning objective: Z1: *To protect and improve residential amenities* and to the standards for student accommodation development provided for in section 16.10.7 thereof which requires such accommodation to incorporate appropriate indoor and outdoor communal and recreational and shared kitchen/living/dining facilities it is considered that the proposed student accommodation units which lack such facilities apart from the roof terrace and which are on separate floors and isolated from each other and lacks management facilities constitutes substandard development which would result in serious injury to the residential amenities for the future occupants and the residential amenities of property in the vicinity. As a result, the proposed development would

materially contravene a development objective of the development plan and would be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
12<sup>th</sup> July, 2018.