



An
Bord
Pleanála

Inspector's Report ABP 301920 -18

Development	Additional storey over three storey over basement structure and a new five storey building facing Denzille Lane at 15.4 metres in height connected to the existing building, courtyard providing for ten units: 6 studios, 3 double bed apartments and one duplex.
Location	No 24 & 25 Fenian Street and lands facing Denzille Lane, Dublin 2.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	2177/18.
Applicant	Fowler's Public House Ltd.
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	First Party
Appellant	Fowler's Public House
Observers	(1) Transportation Infrastructure Ireland, (Prescribed Body.) (2) John Devlin, Erne Street.
Date of Site Inspection	3 rd October, 2018
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site of the proposed development is that of Nos 24 and 25 Fenian Street and space to the rear facing onto Denville Lane which has a stated area of 191.6 square metres. The building at Nos 24 and 25 Fenian Street is an early Georgian period three storey over basement villa belonging to an early seventeenth century Dublin mansion typology and part of the evolution of the city, (according to Conservation Officer).
- 1.2. The house resembles a country house, or farmhouse, a precursor to the development of Merrion Square. It has been vacant for several years and is in poor condition. The house has brickwork construction with stone cills, external render finish and there is no surviving parapet. There are surviving cast iron railings on a low plinth wall on the east side of the front entrance on the Fenian Street frontage enclosing the basement area which is accessed by steps. The basement forecourt on Fenian Street is covered over. A shopfront is located on the west side of the entrance. There are two chimney stacks, returns to the rear where there is a yard and a wall enclosing the site on the Denzille Lane frontage. The interior of the house, the footprint of which is shallow in depth, has a central staircase with one room to each side on the ground, first and second floors which are constructed in timber on timber joists.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for stabilisation works for the house and conservation repair works along with adaptation for contemporary aparthotel use with, for example, installation of bathroom and kitchen facilities and construction of an additional floor above the second floor. Ten units are to be accommodated in the existing and new build and provision is made concierge/reception facilities, staffed on a twenty-four basis. The proposals include reinstatement of the front access vis steps to the basement where staff facilities, storage and plant are to be located, and the railings and repair and alterations to the front façade.

- 2.2. A new block is to be constructed in the former rear yard area with frontage onto Denzille Lane. This block is to be interconnected with the original house via link corridors, one at three storeys and the other at four storeys to the returns using a powder coated metal sheeting and glazing.
- 2.3. The total stated floor area of existing and new build within the development proposal is 653.75 square metres with a stated site coverage of 86% and plot ratio of 2.412
- 2.4. The application is accompanied by an archaeological assessment report, report on inspections of the existing structure, flood risk assessment report, architectural visualisation and photomontages, appropriate assessment screening report, architect's report, historical appraisal report, civil and structural engineering reports, and a drainage report.
- 2.5. A multiple item additional information was requested and, a response received on 8th May, 2018 prior to the determination of the decision which included proposals for redesign of the proposed new block at the rear of the existing building facing towards Denville Lane.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission by order dated, 24th May, 2018 subject to eighteen conditions most of which are of a standard nature in their requirements.

Under Condition No 5 there is a requirement for omission of a floor from the new block facing Denville Lane. The reason provided is to ameliorate impact on the setting and character of the existing building.

Condition No 6 contains several requirements relating to historic building conservation requirements, having regard to the protected structure status of the original building.

- 3.1.2. In a further information submitted on 2nd May, 2018 in response to an additional information request, some modifications are made to the design. It is submitted that the intended character is a “*palimpsest of ages*” restoring the character of the elevations and, internally conserving and restoring what remains of the original joinery including the staircase and using replacements to joinery which is simple and modern. It is confirmed that vibration from the DART underground would not cause damage or disturbance and confirmation that there is no business relationship between the appeal site property and the adjoining business at No 26 Fenian Street, a public house.

4.0 Planning Authority Reports

4.1. Planning Reports

- 4.1.1. The planning officer had indicated concerns about the relationship between the new ‘tower’ block, lack of subservience in relationship to the original in height and, taking into account the limited depth of the footprint of the latter and the adjoining corner site building. The additional floor to the existing structure is acceptable to the planning officer in that it is not overly visible. Further information was requested regarding the foregoing, the close proximity to the Dart Underground alignment and the relationship with the public house operated at the adjoining corner site property. In his final report the planning officer concludes that the proposed development represents planning gain. The planning officer having taken into consideration the comprehensive assessment and recommendations of the conservation officer was satisfied with the revisions proposed and information within further information. Permission was subsequently granted as referred to under para 3.1 above.

4.2. Other Technical Reports

- 4.2.1. The **Conservation Officer’s** reports which are comprehensive and detailed refer to acknowledgement of conservation and planning again attributable to the proposed development and, the acceptance of the revised proposals within the further information submission.
- 4.2.2. The **Dart Underground Office** and **Iarnrod Eireann** reports refer to the location over the Dart Underground Tunnels and Pearce Underground Station.

- 4.2.3. The supplementary **Roads and Traffic** report indicated satisfaction with the details and proposals in response to the issues raised in the initial report, (requested in the request for additional information) indicating arrangements for finalisation of details in relation to the Dart Underground, an undertaking by way of compliance with conditions to prepare and comply with a Servicing Management Plan, incorporating proposals for servicing of the accommodation by arrangement with a hotel in the vicinity, refuse storage arrangements and cycle parking facilities.
- 4.2.4. The reports of the **Drainage Division, City Archaeologist** and **Waste Management Division** indicate no objection subject to standard conditions.

4.3. **Third Party Observations.**

Points made in the submissions include support for the restoration of the building having particular regard to its special interest and origin, predating the development of Merrion Square but concerns as to the adequacy of the assessments of the structure and the proposed works to the structure and additional new build.

5.0 **Planning History**

- 5.1.1. **P. A. Reg. Ref. 2837/17** Permission was refused for a five storey over basement, (15 unit/32 bedspace aparthotel) incorporating a five storey block to the rear facing Denzille Lane, addition of two floors over the existing three storey over basement building and, associated development and site development works on grounds of dominating impact on the protected structure and its cultural significance and setting which is in conflict with Policy CHC2 and section 11.1.5.3 of the CDP which seeks to ensure protection of the special interest of protected structures.
- 5.1.2. **P. A. Reg. Ref. 2510/16:** Permission was granted for stabilisation works, part demolition of the returns, removal and replacement of shopfront, reinstatement of a void over basement level and railings to the front. Change of use to office use in the existing buildings Construction of a four storey over basemen office block to the rear connecting to the existing buildings by glazed bridge and vehicular access and on-site parking. This grant of permission expired without being taken up.

6.0 Policy Context

6.1. Development Plan

6.1.1. 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: Z4: *To provide for and improve mixed services facilities.*

6.1.2. The existing structure at Nos 24 and 25 Fenian Street is included on the record of protected structures.

6.1.3. Policy Objective CHC2 is reproduced below:

“To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest.*
- a) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances*
- b) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials*
- c) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure.*
- d) Protect architectural items of interest from damage or theft while buildings are empty.*
- e) Have regard to ecological considerations for example, protection of species such as bats.*

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.”

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. An appeal was received from GVA Planning on behalf of the applicant on 25th June, 2018. It is submitted in the appeal that the requirements of Condition No 5 attached to the planning authority's decision only are at issue and reference is made to the provisions of section 139 of the Planning and Development Act, 2000 as amended. (The Act) and to the remarks in the planning officer's report as to planning gain from the proposed development by way of the bringing the historic building, (a protected structure) back into use.

7.1.2. Condition No 5 is reproduced in full below:

“The development shall be revised as follows:

The new rear extension shall be reduced by one full storey (middle floor).

Development shall not commence until revised plans, drawings and particulars showing the above amendment has been submitted to and agreed in writing by the Planning Authority.

Reason: To reduce the impact of the new building on the setting and character of the Protected Structure.

It is the view of the applicant that the proposed development in entirety, inclusive of the five-storey extension comprehensively addresses the potential visual impact issues on the protected structure and its curtilage. It is pointed out that the conservation officer recommended omission of the top floor, (of the new building to reduce the height) but the reason attached to the decision required removal of a middle floor.

7.1.3. According to the appeal:

- Removal of one floor, (as required by the condition) would result in omission of a unit. This reduction from ten to nine units would undermine the sustainability and viability of the project due to:

- High cost in delivery of the refurbishment of the existing structure to a high conservation standard. There is beneficial impact in the careful conservation repairs and the consolidation of the protected structure which includes reinstatement of the natural slate roof and its role within the streetscape. The project brings back the structure into active use with innovative and reversible conservation solutions and with the new building a combined use as an apart hotel is achieved.
- An innovative and appropriate design solution has been drawn up in which the ten units utilise the existing structure as extended at roof level along with the separate five storey new build to which it is linked. The potential impacts on setting and character are addressed and a complementary rather than dominating result is achieved having regard to the context of surrounding varied roof heights. A critical balance has been reached between the sensitive extension and the conservation interest of the structure. It provides for the required quantum of visitor accommodation for a viable development supporting the fully service reception and concierge service required in Appendix 16 of the CDP on standards for aparthotels.
- The five-storey new build is at an offset of circa 1.5 metre and 4.2 metres across the courtyard and oblique to the extended roof of the existing building. It is clad in perforated brick with glass screen behind rather than a slate finished as proposed which provides for differentiation and contrast. The current proposal addresses the reasons for refusal of permission for the prior proposal under P. A. Reg. Ref. 2837/17.
- The planning gain must be balanced with delivery of a sustainable and commercially viable development. The scheme proposed was reduced to ten units from fourteen originally intended prior to consultations with the planning authority in advance of lodgement of the application.
- The omission of the second floor in the new build undermines serviceability and viability. There is a requirement for provision of a fully serviced reception and concierge for a small scale apart hotel.

- The submission includes an account and commentary on the application, the observations of the conservation officer and its assessment by the planning authority, prior to lodgement of the appeal. It is stated that the further information revisions address the visual impact issues, the relationship between the new build and existing structure and that the planning officer and conservation officer accepted the revised proposals. It is stated that:

(1) The new block was redesigned so that the uppermost level facing the courtyard is, 'folded back' to reduce the bulk beside the protected structure and to enliven the profile in the urban context. This sloped section matches the brick work on the elevation and is less overbearing in impact on the courtyard and existing structure.

(2) The cross views of rear elevation of the protected structure from the linking corridor and staircase are improved. The space between the blocks opened up, with the proposal for the link corridors to be externalised to reduce bulk and external walling. The link landings are no longer supported by the protected structure but are supported off the new structure or ground.

7.2. Planning Authority Response

There is no submission from the planning authority on file.

7.3. Observations

7.3.1. A submission was received from Transportation Infrastructure Ireland, (Prescribed Body), (TII) on 23rd July, 2018 in which it is requested, should permission be granted, that a condition with a requirement for payment of a section 49 Development contribution (in respect of the LUAS Cross City project) be attached.

7.3.2. A submission was received John Devlin of 4 Erne Terrace, on 23rd July, 2018 in which it is requested that the decision to grant permission be upheld. Mr Devlin states that he has resided on Erne Street for thirty years and has witnessed the building falling to disrepair and being boarded up and are now in danger of collapse. He describes it as the last remaining Georgian building on the side of the street and that it is two hundred and eight years old. He considers the development proposal

to be a boost to the community and an enhancement to the streetscape. He also states that it is important to find new uses for historic buildings, giving them a new lease of life.

8.0 Assessment

- 8.1. The appeal is solely against the requirement, under Condition No 5 attached to the planning authority decision to grant permission, for reduction in height of the proposed new block facing Denville Lane by omission of a middle, (second) floor from the new block. The reason provided is, *“to reduce the impact on the new building on the setting and character of the protected structure.”*
- 8.2. The application and further information submissions are thorough and comprehensive, allowing for sufficient detail clarity regarding building survey and condition, the works to the protected structure the proposed new building and, the interconnectivity between the two structures as well as regarding management and security arrangements. Having reviewed the application and the planning authority’ assessment the submissions made in connection with the appeal and, having inspected the site, it is considered that *de novo* consideration, that is, as if the application had been made to the board in the first instance, is not warranted. It is therefore considered reasonable that the determination of the decision be in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended and, confined to review of the requirement, under Condition No 5, for omission of a middle floor from the proposed new block facing Denzille Lane.
- 8.3. There is no dispute among the parties that the proposed development does constitute significant planning gain in terms of the conservation interest and survival of the existing house which it is evident, is of major conservation merit and special interest. However, is the applicant’s case that the omission of the floor required by condition has serious implications for the ability delivery of a viable development on the site, the proposed intensity of which is argued to be essential having regard to the investment costs involved of the conservation element in particular. In this regard, reference is also made to the proposed arrangements for twenty-four hours on- site reception/concierge services which is a requirement for aparthotel development according to Appendix 16 of the CDP. (It is stated on behalf of the

applicant that an initial proposal, for fourteen units in total was reduced to ten following discussions with the planning authority officials prior to lodgement of the application.)

- 8.4. While the historic building itself is isolated in so far as it is not surrounded by protected structures or other historic structures of special interest, is not in an area subject to statutory or development plan architectural heritage protection designations, the built environment of Fenian Street and Denzille Place is very prominent in views on approach from the east within the public realm. Furthermore, it was noted during the inspection that properties on Denzille Lane are subject of redevelopment proposals which would contribute to the regeneration of the area. It would be inappropriate to dismiss or, give little weight to visual impact of new development in the streetscape and to solely concentrate on the impact of the proposed new build and interrelationship with the historic building, designated, a protected structure within the site.
- 8.5. It is considered that the revised design for the new block provided within the further information submission where by the top section is “folded back” is acceptable in the views on approach from Westland Row/Lincoln Place. It ameliorates the volume and bulk of the tower shape shown in the original proposal which dominates and detracts from the protected structure and dominance of the public house building on the corner at No 26 Fenian Street.
- 8.6. The revised “fold back” design provides for a feature of interest in shape and ameliorates the bulkiness and scale of the tower above the roof as a feature of interest on approach in public views while, simultaneously being positioned at a sufficient distance from the original historic building to which the block is to be connected. The sloped ‘fold back’ element would constitute a backdrop element to the views protected structure from the front but the setback and slopes upwards and away, is sufficiently ameliorative. As a result, although marginal with regard to acceptability, it is considered that the new build block, incorporated the “folded back” element can, contrary to the view of the conservation officer, be accepted in that it does not give rise to undue adverse impact on the setting and character of the protected structure without a requirement for omission of a middle floor, There is no objection to the views of the “folded back” element in views from the east on approach along Denzille Lane or Fenian Street.

8.7. **Environmental Impact Assessment Screening.**

Having regard to the minor nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.8. **Appropriate Assessment.**

A screening assessment report prepared by Scott Cawley has been included in the application submission which has been consulted in conducting the appropriate assessment screening.

9.0 **Recommendation**

- 9.1. In view of the foregoing, it is recommended that the appeal be upheld and that the planning authority should be directed, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended to Delete Condition No 5 attached to the planning authority decision to grant permission.

10.0 **Reasons and Considerations**

Having regard to the inclusion of No 24 and 25 Fenian Street on the record of protected structures and, to the location of the site of No 8 Herbert Street within an area subject to the zoning objective, Z4 *to provide for and improve mixed use service facilities* according to the Dublin City Development Plan, 2016-2022, the proposed development incorporating the five storey, new build block indicated in the amended design proposal included in the further information submission to the planning authority on 3rd May, 2018, would not seriously injure the character and setting of the existing historic building, a protected structure, including features of special interest within the curtilage or the visual amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector.
5th October, 2018.