



An
Bord
Pleanála

Inspector's Report ABP 301996-18

Development	Demolition of garages and construction of three storey apartment block.
Location	Stable Lane, Alexander Court, Upper Pembroke Street, Dublin 2.
Planning Authority	Dublin City Council.
P. A. Reg. Ref.	2189/18.
Applicant	Node, Dublin Ltd.
Type of Application	Permission.
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Appellant.	Node, Dublin Ltd.
Observer.	(1) Institute of Education, (2) Transportation Infrastructure Ireland.
Date of Site Inspection	15 th October, 2018
Inspector	Jane Dennehy.

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1.0 Site Location and Description

- 1.1. The site has a stated area of ninety-one square metres and it is located at rear of Nos. 22 and No 23 Upper Pembroke Street to the south west and to the north east of Lower Leeson Street from which it has vehicular and pedestrian access via a coach arch along Stable Lane. Stable Lane is used as an access lane, via a coach arch from Lower Leeson Street to the Institute of Education Buildings and a row of garages at the rear of houses facing onto Upper Pembroke Street which include the three at the rear of Nos 22 and 23 Upper Pembroke Street.
- 1.2. The site area is that of three adjoining garages with direct access onto Stable Lane and facing along Stable Lane which terminates at a gate to the Catholic University School and opposite a classroom building for the Institute of Education. There is an apartment development (Alexander Court) which is understood to be under the control of the applicant, at Nos 24 and 25 Upper Pembroke Street is to the north and east side of the appeal site garages. It comprises apartments let on six month to one year contracts and communal spaces and facilities for residents.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing garages and for construction of a three-storey apartment block with a total stated floor area of 172.8 square metres providing for a three-bed duplex unit and a one bed ground floor unit.
- 2.2. Additional information was requested to which a response was received on 16th May, 2018 in which it is stated that the existing garages are used for storage purposes, that the grant of permission under P. A. Reg. Ref. 3105/15, (see para 4. below) had not been implemented and, that the existing apartments at No 25 Upper Pembroke Street are let on twelve-month leases. The further information submission also included section drawings, a daylight analysis and shadow study and proposals for cycle parking and bin storage on the ground floor and second floor terraces and cycle parking on the first-floor landing.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated, 7th June, 2018 the planning authority decided to refuse permission based on: (1) lack of internal storage for bins and cycles as a result of which the development contravenes the Development Plan, (Section 16.10) and “*Design Standards for New Apartments: Guidelines for Planning Authorities*”, issued in 2018 and, (2) Material contravention of Policy Objective CHC2 of the CDP because the proposed development would, due to height and separation distances, be detrimental to the character and setting of the protected structures at Nos 22 and 23 Upper Pembroke Street, Dublin 2.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer notes the concerns in the Report of the Roads and Transportation Department, (See para 3.2.2 below) considered details submitted on the proposed balcony insufficient and queried the existing use of the garages to be demolished and existing uses at No 25 Upper Pembroke Street which led to issue of the request for additional information.

The planning officer in his final report indicated concern about having observed works being carried out at the site of No 25 Upper Leeson Street, overdevelopment, height and the proposed cycle parking arrangements.

3.2.2. Other Technical Reports

The report of the **Roads and Transportation Department** indicates confirmation that Stable Lane has been taken in charge by the local authority, the view that garages are ancillary to the development at Alexander Court (23 apartments) and concerns that no parking spaces within the site curtilage, (as required for mews development) are included, and that the cycle parking arrangement proposals are unsatisfactory.

- 3.2.3. The supplementary report of the **Roads and Transportation Department** dated 29th May, 2018 indicates no objection to the proposed development subject to conditions.

It indicates, willingness to accept the absence of any parking provision for the proposed development, acceptance to refuse collection from Leeson Street Lower and revise cycle parking facilities but it records objection to any zinc canopies at entrances overhanging the lane.

3.2.4. The report of the **Drainage Division** indicates no objection subject to conditions.

3.3. **Third Party Observations**

3.3.1. The objection received indicates concerns about the quality of the proposed development, overlooking and traffic and pedestrian safety.

4.0 **Planning History**

4.1.1. **P. A. Reg. Ref. 3104/015:** Permission was granted for serviced apartment/aparthotel development at No 25 Upper Pembroke Street incorporating garage space subject to the current application, including change of use from residential to aparthotel in the main building. The current application site area was to be used as a services unit within the development. The Grant of Permission was not taken up.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022, (CDP) according to which the site is within an area subject to the zoning objective: *'Z8: To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.'*

5.1.2. The location is within a "conservation area" and most of the historic properties on Upper Pembroke Street, including Nos 22 and 23 and, on Lower Leeson Street are included on the record of protected structures.

5.1.3. Policy Objective CHC 2 provides for protection of the special interest and enhancement of protected structures and their curtilages.

5.1.4. Guidance and standards for residential development are set out in section 16.10.

5.1.5. The location is within a “low-rise” inner city area for which there is a maximum building height for residential development of twenty-four metres.

5.2. **Section 28 Guidelines:** (2018 Guidelines.)

5.2.1. Statutory guidance and recommendations for new apartment development is set out in “*Design Standards for New Apartments: Guidelines for Planning Authorities*”, issued by the Department of Housing, Planning and Local Government in 2018.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged on 4th July, 2018 by Hughes Planning on behalf of the applicant according to which:

- The proposed development is a modest residential development in appropriate scale and design that does not affect the amenity of adjoining property or integrity of protected structures. There are no windows to habitable rooms on the rear elevation facing the rear of Nos 22 and 23 Upper Leeson Street, which is in commercial and restaurant use. The separation distance of thirteen metres is adequate.
- A revised design to address the planning authority concerns, provides for dedicated internal storage, cycles and refuse at ground floor level beneath the stairwell. Additional storage areas are through the building, as indicated on plans (Figure 5) in the submission. These revisions to the plans provide for 3 square metres storage for the one bed apartment and nine square metres storage for the three-bed apartment in accordance with the 2018 Guidelines.
- The height is reduced by 300 mm in the revised design to 22,275 m from 23,075 m which is sufficient to ensure minimal impact on Nos 22 and 23 Upper Pembroke Street. Design is to a high standard, reinforcing a subordinate relationship with the protected structures which is consistent with Policy Objective CHC2 of the CDP. It mirrors and references the form and finish of adjoining modern buildings on Stable Lane and the historical

properties and it replaces an inactive garage unit of poor architectural standard.

- There are numerous precedent developments. The appeal includes and detailed account and commentary on previously permitted developments to support this claim.
 - A four storey over basement mixed use block at No 1 Convent Place to the rear of No 23 Lower Leeson Street and adjacent to the boundary wall of No 4 Hatch Street Lower, (protected structures.) which is well screened from Leeson Street. (P. A. Reg. Ref. 2625/03 refers.)
 - Demolition of shed and construction of a five-storey retail and residential building with penthouse including balconies, cycle and storage space and a courtyard at rear of Nos 15 and 16 Gardiner Street at No 15 and 16 Kelly's Row. The proposed development contrasts with this development which it is contended, dramatically affects the visual amenity of the area, is too close to Nos 18-25 Upper Gardiner Street and is an incongruous mass that fails to respect carriages of protected structures and dominates Kelly's Row Development. (P.A. Reg. Ref. 4601/06 refers.) The current proposal provides a positive site-specific design response to the protected structures. (The proposed ridge height is considerably lower with the development not being visible above the Pembroke Street frontage) and modern units on Stable Lane.
 - Clear precedent can be taken from the permitted development of a change of use of Loreto Hall at No 77 St Stephen's Green, (protected structure) to a ninety-five-bedroom hotel with additional penthouse level along with construction of a new nine storey block at the rear at twenty-four metres in height on 'Z8' zoned lands. (P.A. Reg. Ref 4204/16 refers.) The current proposal is subordinate in height to the protected structures and is not within 'Z8' zoned lands.
- The proposed development has minimal impact in the area having regard to the extent of existing back land development comprising several large blocks to east of Lower Leeson Street which alter the setting of the protected structures leading to a varied landscape which should be considered for

comparison in considering the current proposal. The streetscape of Upper Pembroke Street has remained unaltered in spite of the back land developments at the rear. The submission contains several images to illustrate the case being made in the appeal.

- The proposed development accords with and, helps to deliver the policy objectives 3a, (delivery of residential development in built up footprints; 3b (target cities) and, 35 (densification and regeneration) in *Project Ireland 2040 – National Planning Framework* by providing an appropriate mix and good quality one bed and three bed residential units in the city centre infill site. The appeal contains a commentary on the framework regarding use of sites in built up urban areas.
- The proposed development is high in standards and compliant with both the quantitative and qualitative standards of the CDP, and all planning criteria.
- The proposed development has a density of 219 per hectares which is a suitable density for a city centre location which accords with policy on density within underutilised urban sites.
- The request for additional information did not indicate all the information required, thus generating a reason for refusal of permission without the applicant having prior opportunity to respond, having regard to the *Development Management Guidelines (2007)* in which it is stated that a request for further information should clearly indicate all the information required.

6.2. Planning Authority Response

There is no submission on file from the planning authority.

6.3. Observations

The Institute of Education and the Catholic University, Lower Leeson Street.

- 6.3.1. An Observer submission was received from O'Connor Whelan on behalf of the Institute of Education of Nos 82-85 Lower Leeson Street and the Catholic University of 89 Lower Leeson Street on 30th July, 2018 according to which the proposed

development at both construction and operational stages would have serious negative impact on the operation of the two schools which contribute to the vitality and vibrancy of the city.

6.3.2. This submission is detailed, and the objections are outlined in brief below:

- The proposed development, on the perimeter of the school campus is inappropriate and prevents normal operations of the schools. The planning authority failed to take security issues into account due to overlooking from the apartments. (Pupil ages range from 3 to 18).
- The site location is subject to conservation protection.
- No 25 Upper Pembroke Street is being developed though it is stated that the 2015 grant of permission was not taken up. There are serious concerns about the facilities ancillary to the permitted development that were to be located in the garage structures.
- The proposed development is ill conceived overdevelopment which is too high and too dense for the site and it fails to comply with the standards in the Guidelines.
- The separation distances are inadequate; windows will be little over eleven metres from the school windows and residents could video or photograph students in the classrooms or on the lane.
- The separation distances from Nos 22 and 23 Pembroke Street Upper are inadequate and residential amenities of the future occupants will be severely affected,
- The revised design highlights the efficiencies in the original design and do not accord with the Guidelines. Built in wardrobes take up a lot of the allocated storage space.
- The height reduction of 300 mm is minimal and is immaterial to the appearance and bulk and there are no reduced separation distances which along with lack of open space and the amalgamation of two plots contribute to negative impact on a conservation area.

- The application was afforded a proper opportunity in the additional information request to address the height and separation distance issue.
- The arguments on a case by case basis as to precedent have no bearing on the proposed development.
- Precedent in itself is not a valid justification in that every proposal must be considered on its own merits. The developments referred to in the appeal are of no relevance to the current proposal which is also at a location adjacent to school campuses.
- It is inappropriate to suggest that a two-unit apartment development will contribute to the objectives of the National Planning Framework. It does not comply with it.

Transportation Infrastructure Ireland.

- 6.3.3. In a letter received from Transportation Infrastructure Ireland, on 17th July, 2018 it is requested that a section 49 supplementary development contribution be attached if permission is granted unless the development is exempt in respect of The Luas Cross City project.

7.0 Assessment

- 7.1. The matters raised in the appeal and observer submission and the documentation available in connection with the application have been reviewed and taken into consideration in conjunction with a site inspection.
- 7.2. Some procedural matters have been raised in the documentation which are first considered below following which the issues identified as central to the determination of a decision are considered under the following subheadings:

Impact on Upper Pembroke Street buildings. (protected structures).

Precedent Developments.

Qualitative standards – residential amenities.

Impact on adjoining school buildings.

Environmental Impact Assessment and,

Appropriate Assessment.

7.3. Procedural Issues.

- 7.3.1. Firstly, it is submitted that the request for additional information was not sufficiently comprehensive and clear to allow the applicant to respond to all issues of concern prior to determination of a decision. However, on review of the description of the development proposal in the notices, the request for additional information and the applicant's response, it appears that there is no substantive basis for the applicant's claim and that the application is valid. However, this matter could be referred to the legal system for resolution should the applicant consider further investigation warranted.
- 7.3.2. Secondly, it is considered that the issues raised in relationship to ownership, contentions as to possible works and the use of Nos 24 and 25 Pembroke Street Upper which it is understood is an apartment complex incorporating communal areas and facilities and possible commencement and implementation of a prior grant of permission, to the applicant, Node, (Dublin Limited) and any possible enforcement issues are matters for the planning authority. It is therefore reasonable for the current proposal to be considered on an independent basis.

7.4. Impact on Upper Pembroke Street buildings. (protected structures.)

- 7.4.1. The application site which is that of three garage structures, is located at the rear end of the historic plots of Nos. 22 and 23 Upper Pembroke Street, (protected structures) with frontage and access onto Stable Lane. Stable Lane is the former service lane for the original Georgian houses on Lower Leeson Street and Upper Pembroke Street. Relative to the existing, low profile, although somewhat unsightly garage structures, the proposed block form apartment block does obstruct and dominate the views towards the rear facades of the Upper Pembroke Street houses. The setback of the block at the western end with reduced depth of the gable wall facing west to the approach from the Leeson Street coach arch have a minor ameliorative effect on the massing impact of the structure on views from the west.
- 7.4.2. This is regrettable, but, given the proposed use and rear service lane location, within the central business district of the city, in which densification is encouraged and the lack of interference with or intervention to fabric, favourable consideration of a lower profile structure would be reasonable, subject to good quality contemporary design

and compatibility with all other planning criteria. There is recognition in the front façade treatment of the two plots for Nos. 22 and 23 Upper Pembroke Street and the materials and finishes are subdued and compatible with the backdrop of the rear facades of the Upper Pembroke Street houses. The height of the original and marginally reduced height of the revised proposal are excessive and considerably greater than a standard height for a mews or for stables, coach house or workshop structure that would have been typical at the time of the development of the Georgian Squares and street network of townhouses.

- 7.4.3. In order to safeguard the setting and context of the Georgian houses on Upper Pembroke Street, given their protected structure status, and the policy objectives of Objective CHC2 of the CDP, significant deviation from the original profile and contextual relationship between structures at the rear of the historic curtilage of the structures in new development cannot be accepted. To this end, the height and massing to the parapet level is excessive in proportion to the existing houses. Consequently, the separation distance between the proposed block and the rear facades of the terrace of the existing houses, which would originally have been appropriate for a lower height lower profile structure would be insufficient. The proposed structure would be dominant and insubordinate to the terraced houses on Upper Pembroke Street in views from the public realm of the lane network.
- 7.4.4. In view of the foregoing, it is considered that the proposed development is excessive overdevelopment and, in addition to conflict with Objective CHC2, it is in material contravention of the zoning objective, '*Z8: To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.*') and the policy for encouragement of residential occupancy for the Georgian townhouses in the Georgian core, and, is not in accordance with the policy objectives for Conservation Areas in CHC4 of the CDP.
- 7.4.5. There is no issue of concern in terms of impact in streetscape views in either direction along Upper Pembroke Street and the statement in the appeal to this effect is fully accepted.
- 7.4.6. Regeneration in the lane networks of the Georgian Core is fully warranted and must be encouraged having regard to the site location within the central business district city centre area (between the two canals), as provided for in the the City Council's

national strategic policy objectives as provided for in *Project Ireland 2040 – National Planning Framework*. However, the achievement of intensification and densification in sensitive historic central locations such as the Georgian core must concurrently be balanced with consistency with the relevant applicable conservation designations and policy objectives. It is considered that the concerns as to the site location is likely to have capacity to accept a two-storey block in the form, design and finishes indicated for the current proposal which are considered acceptable.

7.5. Precedent Developments.

- 7.5.1. It is agreed with the Appellant that relevant precedent cannot be taken from the development proposals, the applications to which are referred to in the appeal. The planning context for these development proposals, notwithstanding some common elements such as protected structure status or similar zoning objectives are not comparable and the argument on the part of the Observer Party as to consideration on individual merits is reasonable.

7.6. Qualitative standards and residential amenities.

- 7.6.1. Views from the principle west facing rooms of the existing houses at which access to sunlight, from the west and daylight would be reduced resulting in a diminution in standards of attainable residential amenity for the occupants. The east facing balcony and terrace for the proposed block, due to orientation and relative proximity to the existing structure would not provide for an optimal attainable residential amenity for future occupants. In the event of residential use at the existing houses, there would be potential limited reciprocal overlooking and perceived overlooking.
- 7.6.2. It is agreed with the planning officer that the proposed arrangements for cycle storage for each unit are deficient and unsatisfactory having regard to set out in the section 28 guidelines: “*Design Standards for New Apartments: Guidelines for Planning Authorities*”, (2018). However, there may be scope for improvements by way of alternative options, with some adjustment to the floor plans. For example, the ground floor unit, provision for dedicated cycle storage should be feasible with adjustment of the floor plan adjacent to the entrance hall in enlarging it by amalgamating space from the Bedroom so that a dedicated and enclosed space,

possibly incorporating general storage space can be provided. For the three-bed unit, it is considered that adjustment and enlargement at the ground floor level entrance hall and staircase and, possible relocation of the adjoining store space for the ground floor unit might be feasible.

- 7.6.3. Although there is a significant deficiency regarding the current standards for cycle parking and storage, some flexibility with regard to the application of the standards in the Apartment Guidelines would be reasonable if some improvements are feasible.

7.7. Impact on adjoining school buildings.

- 7.7.1. Serious concern is expressed in the observer submission as to potential for adverse impact on security and safety of school pupils who use Stable Lane to access the classrooms and educational facilities on the adjoining campuses of the Institute of Education and the Catholic University School. Notwithstanding the limited nature of the proposed development, it would be reasonable for a construction management and construction traffic plan to be prepared and be subject to compliance with a condition should permission be granted, given the extensive pedestrian circulation and informal gathering on the lane network by those attending the educational institutions which it is stated, include small children thus ensuring clarity about arrangements for safety, pedestrian circulation, amenity and the normal and unobstructed operation of the educational institutions.
- 7.7.2. Serious concern is also expressed about potential adverse effects of residential use in a development directly opposite school classrooms on the other side of the laneway by reason of overlooking of the classrooms and the lane network. It is considered that two land-uses are totally compatible and mutually positive. The residential use allows for potential passive surveillance of the public realm particularly during evenings and weekends. Separately, there is no basis on which any assumption that the security and safety of school pupils using the public lane network or attending classes in classrooms with east facing windows opposite the proposed block would be at risk due to observation from the residential units.

7.8. **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.

7.9. **Appropriate Assessment.**

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 and that the appeal should be rejected based on the Draft Reasons and Considerations which follow:

9.0 **Reasons and Considerations**

- 9.1. Having regard to the Dublin City Development Plan, 2016-2022, according to which the site location is within an area subject to the zoning objective: *Z8 To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective*, within a conservation area and, within the historic curtilages of Nos 22 and 23 Upper Pembroke Street, which are included on the record or protected structures in respect of which Policy Objective CHC 2 provides for protection of the special interest and enhancement of protected structures and their curtilages, it is considered that the proposed apartment block within the historic curtilages of the houses on Upper Pembroke Street, by reason of insufficient separation distance owing to the proposed scale, mass and height which are excessive, visually obtrusive and overbearing in proportion would, as a result, seriously injure the integrity, character and setting of the protected structures on Pembroke Street Upper and materially contravene Policy

Objective CHC2 of the Dublin City Development Plan, 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
17th October, 2018.