



An
Bord
Pleanála

Inspector's Report ABP-303202-18

Development	Demolition of warehouse and construction of Art Gallery and Aparthotel
Location	12, Pembroke Row, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3998/18
Applicant(s)	Bryan and Kathryn Murphy
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Bryan and Kathryn Murphy
Observer(s)	Royal Hibernian Academy Transport Infrastructure Ireland Rita Hurson Anna Devlin
Date of Site Inspection	14 th March 2019

Inspector

Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The site is located to the north-east side of Pembroke Row. On site is a single storey warehouse building in commercial use. The appeal site has an extant permission for a gallery, café and 4 no. 2 bed residential units (Reg Ref 2043/15). To the southeast of the site is a two-storey commercial building. To the north-west is a construction site, upon which permission was granted under Reg Ref 2952/17 for six storey building to accommodate 25 residential units, restaurant and café. There is a current appeal (303344-19) that relates to a proposal to extend the ground floor and to change the use of the permitted restaurant to an enterprise centre. To the immediate north and north-east is 8-9 Hagan's Court, on which there is a current appeal relating to a residential development (Appeal ref 303896-19). There is also an existing permission for a three-storey building containing 3 residential units on this site (planning Reg Ref 2643/18).
- 1.2. To the south-west, on the opposite side of Pembroke Row is a 6 storey office building with the top two floors setback. Further to the south-east along Pembroke Row are 2 no. apartment blocks which range in height from 3-4 storeys - Baggot Bridge Court and Bagod Rath. To the southeast on the opposite side of Pembroke Row is a construction site and it appears the 6 storey office developments permitted under Appeal Refs 248831 and 248921 are being constructed.

2.0 Proposed Development

- 2.1. Demolition of warehouse and construction of Art Gallery and Aparthotel.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Refuse permission for one reason relating to the short-term nature of the use which was considered to be contrary to the Z1 zoning objective and injurious to residential amenity.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority.

Points of note are as follows:

- Serious concerns in relation to the proposed use as an aparthotel.
- The site and surrounding sites are Z1 and Z8 zoned where long term residential use is envisaged and promoted.
- Note is made of the housing need within the city.
- Height, scale and massing is similar to that previously approved/within development standards as set out in the development plan.
- Sun path diagram indicates proposal is unlikely to affect neighbouring sites.
- Recommendation that permission be refused.

3.2.2. Other Technical Reports

Roads – no objection subject to conditions.

Drainage – no objection subject to conditions.

Waste Management Division – no objection subject to conditions.

3.3. **Prescribed Bodies**

- Transport Infrastructure Ireland – No objection subject to conditions/may be subject to Section 49 levy.
- Failte Ireland – supports development/proposal would help to address accommodation shortage.

3.4. **Third Party Observations**

3.4.1. A number of third party observations were received raising the following issues:

- Inconsistency with zoning objective/with 'The Future of the South Georgian Core'
- Impact on residential amenity.

- Opportunistic proposal.
- Size of gallery is reduced/no café/roof garden/balcony space.
- Bin holding area to the front.
- Design
- Access to the lane/management of development.

4.0 Planning History

Appeal Site

- 4.1.1. 2043/15 – Grant – 5 storey mixed use – art gallery/café/4 no. residential units.

Adjoining/Adjacent Sites

5/5A, Lad Lane, to the rear of Hagan's Court, Dublin 2

- 4.1.2. 303344-19 (4070/16) – **Current Appeal** following Grant of Permission – Variation to 2953/17 – change of use and extension of ground floor from restaurant use to enterprise centre.

- 4.1.3. 2953/17 – Grant – 6 storey building incl. 25 apartments, restaurant and café.

5a Lad Lane and part 8/9 Hagan's Court

- 4.1.4. 2100/17 – Refuse – Mixed use development incl. 20 apartments, 5 mews dwellings and restaurant. This was refused for three reasons including (i) overdevelopment, inclusion of mews dwellings (ii) poor quality residential amenity for future occupants (iii) overlooking of mews dwellings from proposed apartments (iv) noise and disturbance impacts on the proposed mews dwellings from the proposed restaurant.

8-9 Hagan's Court (to rear of appeal site)

- 4.1.5. 303896-19 (4579/18) - **Current Appeal** following refusal - 5 storey residential building. This was refused for 3 no. reasons relating to (i) overdevelopment, development standards and height (ii) proximity to existing and future residential apartments (iii) visual impact/impact on amenity.

- 4.1.6. 2643/18 – Grant – 3 storey residential building (3 residential units).

- 4.1.7. 3053/17 – Refuse - 3 storey residential building. This was refused for two reasons relating to (i) overdevelopment, development standards, and proximity to rear boundary (ii) substandard residential amenity for future occupants.

5.0 Policy and Context

5.1. Project Ireland 2040: The National Planning Framework

- 5.1.1. From 16th February 2018, the National Planning Framework has replaced the National Spatial Strategy (NSS) and now represents the overarching national planning policy document. The National Planning Framework sets a new course for planning and development in Ireland, to achieve a shared set of goals for every community across the country, focused on ten National Strategic Outcomes. Chapters of particular relevance to this appeal include chapters 1 (The Vision), 2 (A New Way Forward), 4 (Making Stronger Urban Places), 6 (People, Homes and Communities), 9 (Realising Our Sustainable Future), 10 (Implementing the National Planning Framework) and 11 (Assessing Environmental Impact).

5.2. Dublin City Development Plan

- 5.2.1. The subject site is zoned objective Z1 – ‘To protect, provide and improve residential amenities’ under the Dublin City Development Plan 2016-2022. The zoning objective seeks to provide residential development within easy reach of services, open space and facilities and where public transport allows for good access to employment.
- 5.2.2. Relevant provisions of the Development Plan include:
- Chapter 2 Vision and Core Strategy – s.2.2 Core
 - Section 6.5.3 of Chapter 6 refers to Tourism and relevant policies include CEE12 (promote and facilitate tourism including hotels), CEE14/15 (tourism and regeneration areas), CEE18 (new growth sectors).
 - Policy SC25: promotes high quality design
 - Chapter 8 Movement and Transport.
 - Chapter 9 Sustainable Infrastructure.
 - Chapter 11 Built Heritage and Culture

- Chapter 16 Development Standards
- Appendix 16 Aparthotels

5.3. Natural Heritage Designations

5.3.1. None.

5.4. EIA Screening

5.4.1. Having regard to the nature and scale of the proposed development, an aparthotel development, and having regard to the separation distance to the nearest sensitive location (the appeal site is 200m north of the Grand Canal pNHA), there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The First Party Grounds of Appeal are as follows:

General/Principle/Zoning/Use

- Notable that no-one either living, working or owning property on Pembroke Row has objected to the application.
- Existing consent is not financially viable.
- Want to develop site in a way that would allow the reopening of the gallery.
- Planning report did not raise an objection to any aspect of the scheme.
- Reason for refusal related to Z1 zoning and housing crisis.
- Proposal does not contravene Development Plan.
- Z1 allows for a range of uses.
- Art gallery already established on site/proposal is to change the use from apartments to an aparthotel within the envelope of the approved scheme.

- DCC insist that nothing but housing can be permitted on this site/contrary to zoning objective which recognises the need for a range of uses
- Additional demand for short-term accommodation as a result of new office developments/still a shortfall in bed spaces.
- DCC report 'The Future of the South Georgian Core' highlights need for cultural tourism/is in favour of hotels/proposal here will be accessible to all/report supports complementary uses to residential.
- Implication that proposal would be a bad neighbour is entirely without merit.

Housing Supply

- Will not result in loss of housing/proposal is currently and always has been in commercial use.
- Amount of zoned lands provides well in excess of current units required/the appeal site represents 0.007% of the Z1 zoned land/4 apartments that have been granted permission represent 0.01% of the units needed.
- Permission granted to demolish 2 units across the street (4153/16)/recently submitted application to demolish 40 apartments on Lad Lane (4421/18).
- Both uses proposed here are allowed under the Z1 zoning.
- Site is constrained/surrounding by buildings on 3 sides.
- Use is compatible with the character of the area/redevelopment of an underutilised site/will improve the appearance of the public realm.
- Refusing permission for this scheme will effectively be closing down an established and well regarded Art Gallery.
- 12 letters of support are enclosed with the appeal submission/Design and Access Statement in Appendix 1
- Detailed Response to Dublin City Council's Planning Report is enclosed in Appendix 2.

6.2. Planning Authority Response

6.2.1. None.

6.3. Observations

6.3.1. 4 no. observations have been received in relation to the appeal from (i) Royal Hibernian Academy - supports (ii) Transport Infrastructure Ireland – refer to Section 49 levy (iii) Rita Hurson – supports and (iv) Anna Devlin - objects.

6.3.2. These observations are summarised as follows:

In Support

Use/Principal/Zoning

- Cultural use has been disregarded.
- Use is permitted under the zoning/no loss of housing.
- Permission granted for short stay accommodation at 8 Herbert Street and 8 Herbert Lane and upheld by APB (4542/17 and 301495)
- 40 room guest house at 22 Harcourt Terrace (4036/16 and 248310)
- Extant permission for residential does not preclude consideration of an alternative application to be considered on its own merits.
- Decision of DCC is at odds with the recent permissions cited above.
- No loss of residential amenity/large office development on Pembroke Row.
- Importance of vibrant network of Private Galleries/need to protect the city's remaining Galleries.
- Hotel use is desirable in Central City locations.
- Circular Letter PH 10/2017 'Guidance on Planning Applications for Short-term lettings.

Objecting

- Loss to long-term rental market or sales market
- Potential for residential development is obvious.
- Long-term residents are an essential component for the sustainable development of the city.

- Proposal will detract from the amenity of the area/will contravene objectives of the Z1 zoning/anti-social behaviour/will be in operation 24 hours a day.
- Other aparthotels granted in the city are not within Z1 zoned areas.
- Lack of facilities associated with the aparthotel.
- Development of short stay accommodation is a problem for the delivery of long-term housing.
- Within a Transitional Zone – need to protect amenity/Z1 zoned block is part of the hinterland and buffer for the Z8 zoned area.
- Design features that contributed to the approval of the previous application have been lost/proposed upper floor was set back from the front building line
- No cafe/reduction in residential amenity/bin holding area to the front/a further floor has been added and there is no setback.
- Cultural use comprises less than 10% of the development/however sympathetic to the desire to open a gallery/benefit of a new gallery in the area/however proposal would set a precedent.
- If gallery does not work out in the long term would likely be subsumed into the aparthotel use.
- Latest 2018 Bord Failte report does not indicate a need for further short-term accommodation in the area/need for the aparthotel is questioned.

Transport

- May be subject to Section 49 Levy (Luas Cross City)

6.4. Further Responses

- 6.4.1. None.

7.0 Assessment

- 7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of Development
- Residential Amenity
- Development Standards
- Design
- Access and Parking
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The planning authority refused permission for one reason relating to the short-term nature of the use which was considered to be contrary to the Z1 zoning objective and injurious to residential amenity. The planner's report makes reference to housing need within the city. One observation on the appeal has raised the issue of housing need.
- 7.2.2. The appellant contends that proposal does not contravene the Development Plan and the Z1 zoning allows for a range of uses, including aparthotels. Observations supporting the appeal also contend that the proposal is allowed under the zoning.
- 7.2.3. The site is in an area zoned Z1 'To protect, provide and improve residential amenities' under the Dublin City Development Plan 2016-2022'. A hotel use is 'open for consideration' within this zoning designation. An aparthotel is within the definition of a hotel, as defined within Appendix 21 of the Dublin City Development Plan. An open for consideration use is one which may be permitted where the planning authority is satisfied that the proposed development would be compatible with the overall policies and objectives for the zone, would not have undesirable effects on the permitted uses, and would otherwise be consistent with the proper planning and sustainable development of the area.
- 7.2.4. As outlined in the Development Plan, the vision for residential development in Z1 zoned areas in the city is one where a wide range of accommodation is available within sustainable communities where residents are within easy reach of services, open space and facilities such as shops, education, leisure, community facilities and amenities, on foot and by public transport and where adequate public transport provides good access to employment, the city centre and the key district centres.

- 7.2.5. I note there is a permission on the site for four residential units, an art gallery and café. This does not, however, preclude an assessment of a revised proposal however which should be considered on its own merits.
- 7.2.6. The proposal contributes towards the diverse range of accommodation that is sought after within Z1 zoned areas, and is located within a highly accessible and well serviced location within the city.
- 7.2.7. There is a historical commercial use on the site which continues to the present day and as such the proposal does not result in the loss of housing stock.
- 7.2.8. I have also had regard to the limited extent and the constraints of the Z1 zoned plot, which limits the potential for residential uses at scale, and therefore its potential to contribute to the overall housing stock is subsequently limited.
- 7.2.9. Furthermore, I do not consider the proposal would adversely impact the surrounding residential amenities (see also detailed consideration of residential amenity below).
- 7.2.10. In relation to the proposed gallery use, cultural/recreational uses are permissible uses within the Z1 zoning. I note a gallery use has been approved under the previous permission. As such no objection is raised to same.
- 7.2.11. Therefore having regard to the zoning objective for the site, within which hotels (including aparthotels) are 'open for consideration' and cultural/recreational uses (which includes galleries) are permissible uses, and having regard to the existing commercial use on the site, and having regard to the limited site area and constraints of the site, I have no objection to the principle of the proposed development subject to complying with other planning requirements as addressed in the following sections.

7.3. **Residential Amenity**

- 7.3.1. The local authority raised concern regarding amenity impacts, although have not specified which impacts in particular are of concern. An observer on the appeal has also raised concern in relation to anti-social behaviour and the 24hr a day operation of the hotel.
- 7.3.2. The First Party appellant states that it is notable that no-one either living, working or owning property on Pembroke Row has objected to the application and that the implication that proposal would be a bad neighbour is entirely without merit.

Observations in support of the appeal state that there will be no loss of residential amenity.

Use

- 7.3.3. I do not consider that the proposed use, in and of itself, would result in a loss of residential amenity. The area is a vibrant area which has a range of uses, and the introduction of an aparthotel use would support this diverse range of uses and would not necessarily lead to anti-social behaviour. There is no bar facility on site and there is a limited number of rooms on the site, with subsequent limited number of movements in and out of the aparthotel. While the aparthotel is in operation 24hrs a day, this is not unusual for such a use, and the arrival and departure of guests would generally be spread over the day, limiting the impacts.

Loss of Daylight/Sunlight/Overshadowing

- 7.3.4. In terms of loss of daylight and sunlight, I note the height, scale and massing is broadly similar to that permitted under Reg Ref 2043/15 and as such no daylight/sunlight/overshadowing impacts over and above the permitted proposal will result.

Overlooking

- 7.3.5. In terms of overlooking, impacts will be broadly similar to that approved under Reg Ref 2043/15. The proposal will be flush against the approved scheme to the north-west and will obscure glazing to the staircore on the south-east elevation. To the front and rear large areas of glazing are proposed to serve the aparthotel rooms. The upper floors are set back from the rear boundary by 6.7m. This situation is similar to that which has been previously approved, although in this instance the occupiers of the rooms will be aparthotel guests rather than occupiers of standard residential units. I do not consider that this will necessarily result in additional overlooking concerns. Furthermore the previous permission proposed a roof terrace, whereas this proposal does not, reducing any amenity impacts that may have resulted from same.

7.4. Development Standards

- 7.4.1. Guidance for aparthotels is listed in Appendix 16 of the Development Plan and includes the need for shared services, provision of family units and requirement for short –term leasing.
- 7.4.2. The proposal is for 28 rooms including a range of room sizes, some of which can be amalgamated to provide large family units. 4 of the units are accessible units. The ground floor consists of a reception lobby, luggage store and a keyless entry system. While no concierge is proposed, 24hr security will be provided, although the manner of this has not been set out. Appropriate management of the hotel can be secured by way of condition.

7.5. Design and Visual Amenity

- 7.5.1. The bulk, scale and massing is similar to that previously approved on this site. As such the precedent for the scale proposed here has been established.
- 7.5.2. In terms of detailed design, this has been amended significantly since the previous permission, with revised arrangements for all elevations.
- 7.5.3. Recessed windows are now proposed and this feature, and other design details, serve to break up the massing and contribute to the visual interest of the building. The development contributes to the visual amenity of the area and makes a positive contribution to the appearance of the streetscape.

7.6. Access and Parking

- 7.6.1. No car parking is proposed and this is considered appropriate given its inner-urban location well served by public transport. Pedestrian access to the aparthotel and to the gallery is via Pembroke Row.

7.7. Appropriate Assessment

- 7.7.1. Legal protection is provided for habitats and species of European importance under the Habitats Directive 92/43/EEC, which established a network of designated conservation areas known as Natura 2000 or European sites, which include Special Areas of Conservation (SAC) under the Habitats Directive and Special Protection Areas (SPA) under the Birds Directive (Directive 2009/147/EC). Article 6(3) of the Habitats Directive requires Appropriate Assessment to be carried out for any plan or project not directly connected with or necessary to the management of a European site (or sites) concerned, but that it likely to have a significant effect thereon, on its

own or in combination with other plans or projects, in view of its conservation objectives.

- 7.7.2. The proposed development is not directly connected with or necessary to the management of any European site.

Stage 1 Screening

- 7.7.3. Stage 1 is concerned with determining whether a described development, not being a development directly connected with or necessary to the management of a European site, in itself or in-combination with other described projects or plans, has the potential to have significant effects on any European site.
- 7.7.4. An Appropriate Assessment Screening report was submitted at application stage and this concludes that the proposed development will not have a significant effect on the Natura 2000 network and a Stage 2 Appropriate Assessment is not required. I note that this report refers to the previously proposed scheme of gallery, café and 4 no. 2 bed apartments, rather than the revised scheme under consideration here.
- 7.7.5. The site is neither in nor near to a Natura 2000 site. The closest SPA to the site is South Dublin Bay and River Tolka SPA which is 2.3km to the east of the site. The closest SAC is the South Dublin Bay SAC which is 2.3km to the east of the site. There is no obvious direct pathway from the appeal site to the above sites, nor to any other Natura 2000 sites beyond.
- 7.7.6. Having regard to the nature and scale of the proposed development, the nature of the receiving environment, a serviced inner-urban location, and the proximity to the nearest European Sites and the lack of an apparent pathway to same, it is reasonable to conclude on the basis of the information available on the file, which I consider adequate in order to issue a screening determination, that the development, individually or in combination with other plans or projects would not be likely to have a significant effect on the above listed European sites, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

- 8.1. Grant permission.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016 -2022, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and 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 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 out in accordance with the agreed particulars.

Reason: In the interests of clarity.

2. The apart-hotel units shall only be occupied for short-term letting periods of no more than two months and shall operate within the definition of aparthotel as set out in Appendix 16 of the Dublin City Development Plan, 2016-2022. The aparthotel shall be managed by a reception facility on the ground floor with 24hr reception and security facilities. The aparthotel units shall not be used as independent self- contained permanent residential units or student accommodation.

Reason: To ensure that the development would accord with the provisions of the Dublin City Development Plan, 2016-2022 and the proper planning and sustainable development of the area.

3. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment,

unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

7. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the

planning authority for such works and services.

Reason: In the interest of public health.

8. The developer shall pay to the planning authority a financial contribution in respect of the Luas Cross City (St. Stephen's Green to Broombridge) Contribution Scheme, in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the

matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Rónán O'Connor
Planning Inspector

21st March 2019