



An
Bord
Pleanála

Inspector's Report ABP-303344-19

Development

Variation to previously approved application. Change of use of and extension of ground floor, approved for restaurant use, to Enterprise Centre.

Location

Site at Pembroke Row, known as 5/5A, Lad Lane, Dublin 2

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4070/18

Applicant(s)

Broadfield Development Ltd

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Anna Devlin

Observer(s)

Transport Infrastructure Ireland
South Georgian Core Residents
Association

Date of Site Inspection

9th April 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. The appeal site is currently a construction site, upon which permission was granted under Planning Authority Reg Ref 2952/17 for a six storey building to accommodate 25 residential units, restaurant and café. A Third Party Appeal against this decision was subsequently withdrawn (Appeal Reference 248982). Adjacent to the site, to the south-east is a single storey warehouse building on which there is a current appeal relating to the demolition of the warehouse and the construction of an aparthotel and art gallery (Appeal Ref 303202).
- 1.2. To the immediate north and north-east are properties on Hagan's Court. To the 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).
- 1.3. To the south-west, on the opposite side of Pembroke Row is a 6 storey office building with the top two floors setback (LinkedIn building). 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. Variation to previously approved application. Change of use of and extension of ground floor, approved for restaurant use, to Enterprise Centre. The application involves the following:
 - A change of use of the ground floor, 434 sq. m. in extent, approved for restaurant use, to that of an Enterprise Centre.
 - Permission is also sought to extend the ground floor by 452 sq. m. to the rear to be used as part of the Enterprise Centre. The total floor area of the Enterprise Centre will be 886 sq. m. and will have ancillary landscaping.

- The centre will provide 15 bicycle spaces and showering facilities at basement level.
- The amenity space to service the approved apartments will be amended as a consequence.
- The overhang to the front elevation is increased by approximately 0.5m.

3.0 Planning Authority Decision

3.1. Decision

Grant permission. Conditions of note are as follows:

Condition 3. All condition of permission 2952/17 shall be fully complied with, save as amended by this permission.

Condition 4. The development shall be revised to accommodate children's play spaces.

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:

- Residential and enterprise centre are both permission uses within the Z1 zoning.
- Site coverage and plot ratio are above standards.
- Guidance is moving away from prescriptive setting of densities.
- Development Plan does not set an actual upper density limit.
- Height or overall design has not changed.
- Proposed ground floor extension would replace the permitted rear communal open space.
- Permitted communal open space is a total of 582 sq. m.

- Applicant has proposed to relocate the communal open space to the roof of the rear extension and the total area will now be 440 sq. m.
- The minimum required communal open space is 175 sq. m. and therefore the proposed 1st floor communal open space is substantially above the minimum floor area.
- Considered that children's play area should be provided given the reduction in overall communal open space within the scheme.
- Recommendation was to grant permission.

3.2.2. Other Technical Reports

- Drainage – No objection subject to conditions.
- Archaeology – No objection subject to conditions.

3.3. Prescribed Bodies

- Transport Infrastructure Ireland – May be subject to Section 49 Levy.

3.4. Third Party Observations

- 3.4.1. 3 submissions were received. The issues raised are covered within the Grounds of Appeal and within the Observations on the appeal.

4.0 Planning History

Appeal Site

2953/17 – **Grant** – 6 storey building incl. 25 apartments, restaurant and café. (Appeal Ref 248982 was withdrawn). Conditions of note included:

- Condition 4 – Omission of the rear terrace serving the restaurant and the resultant space added to the communal open space serving the apartments.

Appeal site and part 8/9 Hagan's Court

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

Adjoining/Adjacent Sites

12 Pembroke Row

303202-18 **Current Appeal** following refusal (planning authority reg ref 3998/18) - Demolition of warehouse and construction of Art Gallery and Aparthotel

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

8-9 Hagan's Court

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.

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

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

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. The following is a list of Section 28 Ministerial Guidelines considered of relevance to the proposed development.

Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (March 2018)

‘The Planning System and Flood Risk Management’ (including the associated ‘Technical Appendices’) (2009)

‘Architectural Heritage Protection Guidelines for Planning Authorities’ (2011)

5.3. Development Plan

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.

Relevant provisions of the Development Plan include:

- Chapter 5 Quality Housing – QH6 (mixed-use neighbourhoods), QH7 (concerning promotion of sustainable densities).
- Chapter 6 City Economy and Enterprise including CEE1 (economy/competitiveness), CEE2 (economic impact), CEE4 (innovation/promote Dublin internationally), CEE6 (equality/diversity), CEE7 (clean/green/safe).
- Chapter 8 Movement and Transport.
- Chapter 9 Sustainable Infrastructure.
- Chapter 11 Built Heritage and Culture
- 14.7 Transitional Zone Areas
- Chapter 16 Development Standards: Design, Layout, Mix of Uses and Sustainable Design - s.16.2.1 Design Principles; s.16.2.1.2 Sustainable Design; s.16.2.1.3 Inclusive Design; s.16.3 Landscaping; s.16.4 Density Standards; s.16.5/6 Plot Ratio/Site Coverage s.16.7.2 Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development; s.16.8 Access for All, s.16.10 Standards for Residential Accommodation; Section 16.10.20 Development on Archaeological Sites and in Zones of Archaeological Interest

5.4. **Natural Heritage Designations**

5.4.1. None.

5.5. **EIA Screening**

5.5.1. Having regard to the nature and scale of the proposed 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 Grounds of Appeal, as submitted by the Third Party Appellant, can be summarised as follows:

- Enterprise Centre is not appropriate in this instance.
- Already extensive Z6 zoned areas adjacent to the site where such forms of use as an 'enterprise centre' can be carried out.
- Original planning application for the LinkedIn building on the old OPW site included the provision of an Enterprise Centre although this was subsequently changed.
- No links established with the local community or with community enterprise organisations.
- Likely that space will simply become ordinary offices.
- What is needed here is more residential amenity in an area that already predominantly caters for business.
- Many cafes of the convenience cafes operate only during the working week.
- Plenty of scope for new amenities.

- Amenity of the apartment building will be compromised by the extensive additional to the ground floor area to accommodate the Enterprise Unit.
- No provision for a children's playground in the application/not submitted by way of condition as required/development has commenced on the site.
- Proposed first floor garden is broken up by large roof lights.
- Elevated nature of the garden will allow overlooking and increased disturbance to the residences on Hagan's Court/will also compromise the privacy of the first floor apartments.
- Plot ratio and site coverage are dramatically exceeded without justification.
- Front of the building has been extended from the previous small set back to the edge of the site boundary on Pembroke Row.
- This revision is not referred to or justified in the application documents.
- Parapet height has also been increased.
- Proposed apartments will be significantly overlooked by workers in the LinkedIn Building.
- Building next door is already set back from the building line of the proposed development.
- Development description is therefore misleading- according to the plans there are no changes to the upper floor levels.
- The area of the roof plan has been increased and the area of Green roof has been decreased. There is no reason given for this. /already an unpleasant degree of overlooking which results from open-air terraces on top of office buildings.
- Residents can now only access the garden area through an access corridor – requires them to exit the building and re-enter through a narrow laneway to the side of the building.
- Proposal is in a transitional zone/need to protect amenity.
- Applicant appears to have no appreciation of this city centre residential area and the real need to provide proper residential amenity in the Z1 zones.

6.2. Applicant Response

6.2.1. The applicant's response to the Third Party Grounds of Appeal are set out below:

- Planner found no issue with the principle of development.
- Detailed explanation of density standards in relation to the wider context in the planner's report.
- Communal open space in compliance with National and Local Policy.
- Planner has stated that proposed is unlikely to lead to privacy or overlooking issues.
- Appellant concedes that use is a permissible use.
- It is intended to have a close relationship with the local community
- No obligations to develop links in advance of lodging a planning application/future rent is not an issue for planning.
- Claims that there insufficient local infrastructure/residential amenity to serve residents are not borne out by evidence.
- No requirement to include children's play areas in the previous application on this site.
- Screening of the communal area to prevent overlooking/area raised and therefore reduces the extent of overshadowing.
- Access to the amenity area was always through a corridor/all units have internal access to the communal open space.
- Enterprise centre will have a lesser impact on amenity than a restaurant would have.
- Applicant's main objective on the site is to provide 25 residential units which will contribute towards achieving the objectives of the Z1 zone.
- Have taken account of the location when proposing an Enterprise Centre.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. An Observation has been received from the South Georgian Core Residents Association. This can be summarised as follows:

- Transitional Zone Areas are particularly vulnerable and need specific protection as per Section 14.7 of the Development Plan.
- DCDP encourages more residential development in the South Georgian Core.
- Enterprise Centre is an unnecessary addition due to the amount of office space.
- More residential space or community amenity is the priority.
- Height, scale and design of the building proposed is far more visually obtrusive and unduly overbearing compared to the previous refusal.
- Ground floor use is key to providing residential amenities for both residents in the building and surrounding areas.
- Issues of daylight and sunlight have not been properly addressed.
- Incompatible with zoning objectives.
- Overdevelopment of site.

6.5. Further Responses

6.5.1. 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 / general policy
- Residential Standards
- Impact on surrounding residential amenity
- Built heritage/Visual impact/Impact on the setting of Protected Structures

- Transport Issues
- Other Issues
- Appropriate Assessment

7.2. Principle of Development

- 7.2.1. The appellant, and the observer on the appeal, raise concern in relation to the enterprise centre use and do not consider that is appropriate for the area. Concerns are also raised that it may become general office use. The omission of the restaurant use from the proposal is an area of concern also and it is contended that the area is poorly served with such uses.
- 7.2.2. The applicant contends that the proposed enterprise centre is a permissible use and is ideally located adjacent to the LinkedIn building and other commercial uses. The applicant further states that claims the area is not well served by supporting residential amenities are not borne out by any evidence.
- 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'. 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.
- 7.2.4. An Enterprise Centre is defined within Appendix 21 of the development plan as 'Use of a building, or part thereof, or land for small-scale 'starter type' industries and services usually sharing grouped service facilities'. Such a use is listed as a 'permissible use' within Z1 zoned areas. The site is located in a highly accessible and well serviced location within the city, allowing good access to the employment element of the proposal. I do not concur that the area is poorly served by shops, cafes/restaurants and other services, and there are many examples of such uses on Baggot Street Upper and Lower and surrounding areas, within walking distance from the appeal site.

7.2.5. As such the proposed change of use from the permitted restaurant use to enterprise centre is acceptable in principle, subject to the detailed considerations below.

7.3. Residential Amenity

7.3.1. The communal amenity space serving the residential units is now at first floor level, rather than previously proposed at ground floor level. This raises the possibility of additional impacts on surrounding residential amenity, including overlooking and additional noise impacts.

7.3.2. In relation to overlooking, a 1.8m high screen is proposed for the communal open space, to the eastern, southern and western boundaries, providing screening from the proposed residential units. I note the level of the communal open space is set below the level of the existing boundary wall to the north and north-east of the site, which is to be retained, and as such no overlooking of the properties on Hagan's Court will occur. As such, no material overlooking, of either existing or proposed residential units, results from the communal area.

7.3.3. In relation to additional noise impacts, the communal area is now positioned adjacent to the residential units and associated private open space at first floor level. I have had regard to the number of units within the scheme which will limit the intensity of use of the communal open space, which will in turn limit any noise impacts. In any case, I do not consider that any noise impacts from the communal open space would be materially greater than if the open space were located at ground floor level. The omission of the restaurant use will result in an overall reduction in noise levels, in my view.

7.4. Development Standards

7.4.1. In relation to the quantum of overall communal amenity space proposed, the minimum standards are significantly exceeded (175 sq. m. required, 571.6 sq. m. provided, including space at roof level), although there is a reduction of 20 sq. m. relative to the area previously proposed. In view of this reduction the planning authority have conditioned that children's play areas be provided, as this was not previously conditioned. I have no objection to this condition and the provision of play space will improve the overall usability of the space. Overall, the quality and quantity of the communal open space provided is of high standard.

7.5. Design

- 7.5.1. In relation the extension at ground floor level to accommodate the larger floor area of the enterprise centre, this does increase the site coverage and plot ratio. The overhang on the upper floor has increased by approximately 0.5m, and there is no reference or justification for this within the application documentation. However, there is little material impact on the overall design and appearance of the proposal, as a result of the ground floor extension nor as a result of the increased overhang, as viewed from Pembroke Row, and the amenity of surrounding properties is maintained. The drawings do however appear to show the overhang extending beyond the red line boundary. Should the Board be minded to grant permission, this should be amended by way of condition.

7.6. Appropriate Assessment

- 7.6.1. 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.
- 7.6.2. The proposed development is not directly connected with or necessary to the management of any European site.

Stage 1 Screening

- 7.6.3. 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.
- 7.6.4. 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.

- 7.6.5. Having regard to the nature and scale of the proposed development, an enterprise centre and 25 residential units, 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. 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. All conditions of permission 2952/17 shall be fully complied with, save as amended by this permission.

Reason: To ensure a satisfactory standard of development.

3. No element of the proposed design shall oversail the red line site boundary.

Reason: In the interest of orderly development.

4. The development shall be revised as follows:

a) A play space or series of play spaces with a combined total area of 85-100 sq.m, which is suitable for toddlers and children up to the age of six, with suitable play equipment, seating for parents/ guardians, and within sight of the apartment building, shall be introduced to the proposed communal open space. Above-ground works shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In the interests of residential amenity.

5. 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.

6. 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.

Rónán O'Connor
Planning Inspector

9th April 2019