



An
Bord
Pleanála

Inspector's Report ABP-303453-19

Development

PROTECTED STRUCTURE:

Construction of hotel with
bar/restaurant & retail/cafe
development.

Location

Nos. 22, 23 (incorporating 23A), and
24 Aungier Street (Protected
Structures), and No. 40 Bow Lane
East, Dublin 2

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

4170/18

Applicant(s)

The Dolphin

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party V Refusal

Appellant(s)

The Dolphin

Observer(s)

None

Date of Site Inspection

30th April 2019

Inspector

Ronan O'Connor

Contents

1.0 Site Location and Description	4
2.0 Proposed Development	4
3.0 Planning Authority Decision	5
3.1. Decision	5
3.2. Planning Authority Reports	6
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy and Context.....	8
5.2. Development Plan.....	8
5.3. Natural Heritage Designations	9
5.4. EIA Screening	9
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Planning Authority Response.....	12
6.3. Observations	12
7.0 Assessment.....	12
8.0 Recommendation.....	17
9.0 Reasons and Considerations.....	17

1.0 Site Location and Description

- 1.1. The appeal site is principally located along Aungier Street. It is bounded to the north by No. 21 Aungier Street, to the east by No Name Lane and Mercer Street Lower, to the west by Aungier Street and to the south by No. 25 Aungier Street and York Street.
- 1.2. Nos. 22, 23 and 24 Aungier Street each comprise a 4 storey over basement mid-terraced building. Each building is a Protected Structure (RPS Nos. 301, 302 and 303 respectively). No 22 has a retail unit at ground floor level and residential on the upper levels. There is an archway access that will lead to a basement car park for the hotel that is currently under construction.
- 1.3. No. 23 is currently subdivided at ground floor into two separate units. The upper floors are in residential use.
- 1.4. No. 24 comprises of a vacant/gutted retail unit at ground floor and vacant residential space on the upper floors.

2.0 Proposed Development

- 2.1. Construction of hotel with bar/restaurant & retail/cafe development. The development can be summarised as follows:
 - Demolition of extensions to the rear of Nos. 22 and 24 Aungier Street;
 - New build part 1.5/part 2 storey over basement bar/restaurant to the rear of No. 23 and 24 Aungier Street and No. 40 Bow Lane East comprising basement, ground and first floor accommodation (391 sq. m.) linking into the proposed restaurant/bar floor area in Nos. 23 and 24 Aungier Street;
 - Change of use of part of the ground floor of Nos. 23 Aungier Street and basement and ground floor of Nos. 24 Aungier Street from retail/non-retail services/storage to bar/restaurant, providing an overall bar/restaurant measuring 700 sq. m;
 - Use of existing basement at No. 22 Aungier Street as retail or café (32 sq. m.) and access to the upper Hotel Floor accommodation;

- Change of use of No. 23A Aungier Street from retail to internal guest route for Hotel residents linking to the Hotel under construction;
- Change of use of residential accommodation and vacant floorspace to No. 20 Hotel suites/bedrooms from first to third floor levels of Nos 22-24 Aungier Street ranging in size from 15.8 sq. m. to 40.1 sq. m.;
- Refurbishment works to the Protected Structures;
- New shopfronts to No. 22-24 Aungier Street;
- External terrace for the bar restaurant.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for three reasons as follows:

1. The proposed development, by itself and by the precedent for which a grant of permission for it would set, would be contrary to the stated provisions of the Core Strategy of the City Development Plan 2016-2022 which recognises residential units as a scarce resource and which need to be managed in a sustainable manner so that the housing needs of the city are met. The proposed development, resulting in the loss of upper floor apartments for residential use, would also be contrary to the core principles of the Dublin Housing Strategy 2016-2022 which requires that the planning and building of housing and residential space in the city contributes to sustainable and balanced development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed creation of a basement level within the proposed extension to the rear of No.24 Aungier St is contrary to Chapter 16.10.15 in the Dublin City Development Plan 2016-2022, as it is the policy of Dublin City Council to discourage any significant underground or basement development or excavations below ground level of, or adjacent to, residential properties in Conservation Areas or properties which are listed on the Record of Protected Structures. The proposed basement level within the proposal is considered to be a significant

contravention to Section 16.10.15 of the Development Plan, an overdevelopment of the subject site and would create a precedent for similar type unwanted development. The proposal would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3. Having regard for Section 11.1.5.1(a) (c) (d) of the Dublin City Council Development Plan 2016-2022, the proposal would seriously injure the special architectural character and integrity of these significant Protected Structures. The proposed development would comprise a series of unsympathetic and inappropriate interventions which would result in a significant and unacceptable loss of original historic fabric; in a compromise of the reading of the historic internal plan forms; and the short term use proposed would compromise the long term sustainable use of the building and animation of the wider streetscape – which forms the main thoroughfare of the historic Aungier Estate. The proposal would therefore be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

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:

- Proposed demolition of extensions to the rear of No. 22 and No. 23 is considered acceptable.
- Proposed basement level, within the curtilage of a Protected Structure and within a Conservation Area is in contravention of Section 16.10.15 of the Development Plan/overdevelopment of site/create a precedent.
- Also concerns in relation to the interconnection at ground floor level between No. 23 & 24 Aungier Street/likely to compromise the original plan form of the Protected Structures/adverse impact on the historic integrity and special interest of both structures.
- Proposed retail/cafe unit at No. 22 is considered acceptable.

- Shopfronts considered acceptable.
- Proposal would result in the loss of apartments in the city centre/area is a rent pressure zone where there is a high demand for long term residential properties/contrary to the core strategy.
- Would result in an unwanted precedent for similar type development in the area.
- Large hotel will likely ensure adequate short-term/hotel accommodation in the area.
- Recommendation that permission be refused.

3.2.2. Other Technical Reports

Conservation – Recommend refusal.

Drainage – No objection subject to conditions.

Waste – No objection subject to conditions.

Archaeology – No objection subject to conditions.

3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland – no objection.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

19-22 Aungier Street

4122/18 – Grant – Amendment to previously permitted hotel development (PA Reg Ref 2651/08; ABP Ref 231043).

3309/16 – Grant – Amendment to previously permitted hotel development (PA Reg Ref 2651/08; ABP Ref 231043).

Ref 2651/08; ABP Ref 231043 – Grant – 9 storey Hotel Development over double basement.

5.0 Policy and Context

5.1. Project Ireland 2040: 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, 2, 4, 6, 9, 10 and 11.
- 5.1.2. The following is a list of Section 28 Ministerial Guidelines considered of relevance to the proposed development.
- 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011)

5.2. Development Plan

- 5.2.1. The subject site is zoned objective Z5 – To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity.
- 5.2.2. Nos. 22, 23 and 24 Augier Street are Protected Structures.
- 5.2.3. The site lies partly within a Conservation Area.
- 5.2.4. Relevant provisions of the Development Plan include:
- Chapter 2 Vision and Core Strategy – s.2.2 Core
 - Chapter 5 Quality Housing including Policy QH 24 – To resist the loss of residential use on upper floors
 - Policy SC25: promotes high quality design
 - Policy CEE12 (i): seeks to promote & facilitate tourism as one of the key economic pillars of the city's economy & a major generator of employment & to support the provision of necessary significant increase in facilities (hotels).
 - Policy CEE13 (iii): seeks to promote and support the development of additional tourism accommodation at appropriate locations.

- Policy CEE18: new growth sectors.
- Chapter 7 Retailing.
- Policy CHC1: seeks the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- Policy CHC2/4 seeks to ensure the protection of the special interest of Protected Structures, and the special interest and character of all Conservation Areas is protected.
- Section 16.2: Design, Principles and Standards.
- Section 16.4/5/6: Density Standards/Plot Ratio/Site Coverage/Building Height.
- Appendix 24 Protected Structures and Buildings in Conservation Areas.

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, a change of use, basement development and extension, 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**

The Grounds of Appeal, as submitted by Thornton O'Connor Town Planning on behalf of the First Party Appellants are as follows:

Reason for Refusal 1 – Loss of Housing.

- Buildings are currently in a very poor state of repair and offer very poor residential amenity to the current occupiers.

- Work of the Irish Landmark Trust demonstrates that historic buildings can be successfully, sustainably and sensitively adopted to provide short-stay accommodation.
- Cost of restoration will be a minimum of €5.5m/does not support the use of the buildings as long-term residential accommodation as preferred by the planning authority/investment will not be recouped.
- No 24 cannot be split into individual units due to location of the staircore.
- Funding to restore these buildings will therefore not be forthcoming.
- The only viable use therefore is short-stay accommodation.
- By linking the buildings to the hotel, they will be continually maintained to the highest standard.
- Development provides the opportunity to open up the rear of these properties to the public.
- Creation of a high-quality public realm is supported by the Development Plan/is acknowledged in the Planner's report.
- Reason for refusal refers only to the Core Strategy – However Development Plan also contains equally weighted policies in respect of tourism development in the City.
- This proposal offers visitors the opportunity to stay in historic accommodation.
- The subject site is located in the historic core of the City Centre and as such is perfectly suited to the provision of tourism accommodation in the City.
- Planning Authority has only considered one potential suitable use for the subject site which it has been shown is not economically viable.
- Dublin is experiencing a shortfall of bedspaces as reported by Failte Ireland.

Reason for Refusal No. 2 – Basement

- Basement Policy is not relevant to the characteristics of the subject site.
- Policy on basements is clearly written in reference to the provision of basements in standard residential gardens.

- Permission has already been granted for a substantial double level basement on the adjoining hotel site – which is to the rear of No's 19-21 Aungier Street and No. 22 Aungier Street – These are also Protected Structures.
- Conservation Officer did not raise an objection to the basement.
- The provision of the basement to the rear makes the provision of the basements of No.'s 23 and 24 Aungier Street usable.

Reason for Refusal No. 3 – Impact on Protected Structures

- Planning Authority did not detail the specific interventions that were considered inappropriate or unsympathetic
- It is assumed they relating to the removal of existing partitions in No. 22 and the insertion of partitions in all three buildings.
- This was considered in detail as part of the proposal – Partitions which showed evidence of historic date have been retained – where it is proposed to remove partitions justification has been provided.
- Happy to accept a condition that the applicant liaison with the Conservation Officer on site during the survey and construction period.
- The level of interventions proposed would be no more than would be required for long-stay residential accommodation.
- Existing sub-standard accommodation has been formed by sub-division with non-significant partitions.
- Historic rooms and features such as staircases and chimneys have been emphasised in order to reinstate the legibility of the original plan form.
- Short-term accommodation and the bar/restaurant use would provide animation to the street.
- Facades will be completely restored bringing enormous benefit to the streetscape.
- Shopfront proposals will bring a significant improvement to the character of the Aungier Estate.
- Existing sub-standard accommodation is causing damage to the buildings.

- No. 24 is currently vacant and is in poor structural, relying on temporary works for stability.

6.1.1. A Report from Lotts Architecture and Urbanism is included with the appeal submission and I have had regard to same.

6.2. **Planning Authority Response**

6.2.1. None.

6.3. **Observations**

6.3.1. 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/Loss of Housing
- Design and Conservation/Impact on Protected Structures/Basement
- Other Issues
- Appropriate Assessment

7.2. **Principle of Development/Loss of Housing**

7.2.1. The appeal site is zoned Z5 (City Centre) – To consolidate and facilitate the development of the central area and to identify, reinforce, strengthen and protect its civic design character and dignity. The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development, by providing a dynamic mix of uses, which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. While a general mix of uses e.g. retail, commercial, residential etc. will be desirable throughout the area, retail will be the predominant use at ground floor on the principal shopping streets.

- 7.2.2. The hotel use, bar/restaurant use and retail/café use proposed all are permissible uses within the Z5 zoning and as such are acceptable in principle. Such uses are in line with the objectives for the Z5 areas, and the hotel use is in line with the council's policies on promoting and facilitating tourism.
- 7.2.3. A key concern of the planning authority, and a reason for refusal, was the loss of existing residential apartments at upper floor levels, and the precedent that would be set by allowing same, and reference is made to the Core Strategy and Housing Strategy as set out in the Development Plan.
- 7.2.4. The appellants have set out a number of reasons why the loss of housing should be allowed including the existing sub-standard accommodation on site, the financial cost of restoration, which would not be recovered by long-term rental properties and the physical layout of No. 24 Aungier Street, which does not allow for splitting into individual units that meet current residential standards. Furthermore it is stated that the change of use is in line with the council's policy on tourism, and it offers the opportunity to refurbish these buildings and to create a high-quality public realm.
- 7.2.5. The Core Strategy places a strong policy emphasis on the delivery of quality homes and sustainable neighbourhoods, and the Housing Strategy seeks to increase densities within the existing built footprint of the city. Policy QH24 of the Development Plan seeks to resist the loss of residential use on upper floors and actively support proposals that retain or bring upper floor above ground floor premises into residential use. It is further stated that residential development standards can be relaxed for refurbishment projects.
- 7.2.6. While the planning authority has not referred to this policy in the reason for refusal, I am satisfied that the issue of loss of housing in general has been considered both in the planner's report and is considered within the First Party Appeal submission.
- 7.2.7. There is no detailed schedule of existing residential accommodation provided which is unfortunate, but from an examination of the existing plans there appears to be at least one unit per floor at No. 22 Aungier Street (at least 3 units in total) and at least 3 units per floor at No. 23 Aungier Street, although an internal site visit indicated that at least some of these units may well be subdivided into separate self-contained studio units. At No. 24 Aungier Street the units are effectively gutted and are in a dilapidated state. From the plans there are a total of 6 residential units on the upper

floors of this building. Following an internal site visit to the upper unit of No. 23 Aungier Street, I concur with the view of the appellant that this unit, and likely the other units also within this building, are currently providing sub-standard levels of accommodation.

- 7.2.8. However, I am not satisfied that all avenues to reinstate and refurbish the long-term residential accommodation on the upper floors of all three buildings have been pursued in sufficient detail, and this has certainly not been set out in the application documents, nor in the appeal submissions, especially having regard to Policy QH24, which states that residential standards can be relaxed in the case of refurbishment. Policy QH24 is clear that loss of residential accommodation on the upper floors should be resisted in order to revitalise the social and physical fabric of the city. Furthermore, and as per the council's reason for refusal, the change of use results in the loss of long-term residential floor space at a time of housing need in the city, and would set an undesirable precedent for similar development.

7.3. Design and Conservation/Impact on the Protected Structures

- 7.3.1. Reason for refusal No. 3 of the decision of the planning authority refers to loss of original historic fabric as a result of the interventions, a compromise in the reading the historic internal plan forms and the short-term use compromising the long term sustainable use of the building.
- 7.3.2. The appellants state that only where necessary have partitions been removed and it is unlikely that these are historic and that the main structural walls have been retained. Furthermore it is stated that considerable refurbishment externally and internally is proposed and the use is bringing the Protected Structures back into use adding to the animation of the streetscape. Further justification for the interventions is provided within the report from Lotts Architecture and Urbanism submitted with the appeal submission, and is also set out in the Architectural Heritage Report submitted with application.
- 7.3.3. The planning authority has not raised objections to the demolition of the extensions to the rear of 22 and 24 Aungier Street, and has not raised any concerns in relation to the new build extension to the rear of No. 24. I am satisfied that the demolition of the extensions is justified, and the scale and appearance of the extension to the rear of No. 24 is acceptable.

7.3.4. In relation to the internal interventions to Nos. 22 and 23 Aungier Street, it is likely that any proposal, be it long-term residential accommodation, or short-term accommodation, would necessitate the removal of the partitioning in place, and it is likely that the majority of these partitions are relatively recent, and put in place to accommodate the layout of the residential units within Nos. 22 and 23. It is my view that with the overview of a conservation architect, the interventions to the historic fabric can be minimised yet allow for a meaningful refurbishment of these historic structures. Notwithstanding the issues relating to the loss of housing above, the proposed development does allow for the buildings to be brought back into viable uses, and results in extensive refurbishment both externally and internally, and is generally in line with the principles set out in the Architectural Heritage Protection Guidelines for Planning Authorities. Accordingly, I do not concur with the view of the planning authority that interventions would injure the architectural character of the Protected Structures, nor would the use itself compromise the long term sustainable use of the building, as per reason for refusal number 3.

Basement

- 7.3.5. Reason for refusal No. 2 of the decision of the planning authority refers to the basement and states the creation of a basement to the rear of No. 24 Augier Street is contrary to Chapter 16.10.15 which discourages significant underground or basement developments below or beside properties in conservation areas or properties which are Protected Structures.
- 7.3.6. The appellants state that this policy is clearly meant to refer to residential properties with gardens, and should not be applied in this instance. Furthermore the appellant states that significant basement development was allowed to the rear of 19-21 Aungier Street, which are also Protected Structures, therefore there is no justification not to allow it in this instance.
- 7.3.7. I concur with the view of the appellant in that the policy on basements refers to habitable basement accommodation associated with residential development, and the policy is set within Section 16.10 of the Development Plan, which considers standards for residential accommodation. As such I do not consider that the policy should be applied here, although the usual considerations for basement developments should apply such as ensuring the structural stability of the Protected

Structures via best practice construction measures, and consideration of flooding issues (see section 7.4.1 below).

- 7.3.8. Subject to a condition requiring best practice construction measures to be followed, thus ensuring the structural stability of the adjacent Protected Structures, I do not consider that the basement is in contravention of Development Plan policies.

7.4. **Other Issues**

- 7.4.1. Flooding – A Flood Risk Assessment is set out in Section 3 of the Infrastructure Report submitted with the planning application. The FRA states that there is no history of flooding in the vicinity of the site. Mapping on Floodinfo.ie¹ does not indicate that the appeal site lies in an area that is at risk of flooding.
- 7.4.2. Archaeology – Should the Board be minded to grant permission standard conditions in relation to Archaeology should be imposed.

7.5. **Appropriate Assessment**

- 7.5.1. 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.
- 7.5.2. The proposed development is not directly connected with or necessary to the management of any European site.
- 7.5.3. Stage 1 Screening
- 7.5.4. 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.

¹ Accessed 01/05/2019

- 7.5.5. 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
- 7.5.6. 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 3.2km to the east of the site. The closest SAC is the South Dublin Bay SAC which is 3.4km 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.
- 7.5.7. 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. Refuse permission.

9.0 Reasons and Considerations

The proposal has not demonstrated sufficiently that all options to reinstate and renovate the long-term residential accommodation on the upper levels of Nos. 22, 23 and 24 Aungier Street have been explored. Therefore, the proposed development, by itself, and by the precedent for which a grant of permission for it would set, would be contrary to the stated provisions of the City Development Plan 2016-2022, including that set out in the Core Strategy which places a strong policy emphasis on the delivery of quality homes and sustainable neighbourhoods, and that set out in the Housing Strategy which seeks to increase densities within the existing built footprint of the city, as well as Policy QH24 which has the explicit aim to resist the loss of residential floorspace on upper floors of premises. The proposed development would

therefore be contrary to the proper planning and sustainable development of the area.

Rónán O'Connor
Planning Inspector

2nd May 2019