



An
Bord
Pleanála

Inspector's Report

ABP-303896-19

Development	Demolition of industrial building, and construction of 5-storey building providing 5 apartments
Location	8-9, Hagan's Court, Lower Baggot Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4579/18
Applicant(s)	Pat Lynch
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Pat Lynch
Observer(s)	TII Anna Devlin
Date of Site Inspection	12 th June 2019
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The appeal site comprises of a warehouse building and ancillary offices, and a two-storey residential building comprising a 2 bed apartment. The apartment unit has access to a small yard which is utilised as outdoor amenity space. The warehouse building and associated offices are currently vacant.
- 1.2. To the rear of the site is 12 Pembroke Row which has permission for a 6 storey aparthotel and art gallery (ABP Appeal Reg Ref 303202). There is also a previous permission on 12 Pembroke Row for a 5 storey development which included 4 no. residential units, a café and art gallery (Planning Authority Reg Ref 2014/15). To the south-west of the site is a larger site known as 5/5a Lad Lane which has a permission for a six storey building to include 25 apartments, restaurant and café (Planning Authority Reg Ref 2953/17). There was a follow up application, and associated appeal, to change the use of the restaurant to an enterprise centre which was granted permission (Appeal Reg Ref 303344/Planning Authority Reg. Ref 4070/16).
- 1.3. Adjacent to the site to the north-west is No.'s 6 and 7 Hagan's Court, which are two-storey residential mews buildings. Further to the south-west is the IMRO building which is a larger scale part 2/part 3 storey building, with access to the car park further to the south-west along the lane. The north-eastern side of Hagan's Court, to the rear of the Georgian properties on Baggot Street Lower, is generally two-storey in scale. The corner of Hagan's Court and Lad Lane is occupied by 4A Lad Lane, a substantial part 3 story, part 2 storey office building.

2.0 Proposed Development

- 2.1. Demolition of industrial building, and construction of 5-storey building providing 5 apartments.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Refuse permission for 3 no. reasons relating to (i) substandard apartment sizes, overdevelopment of the site (ii) impact on amenity in terms of enclosure, outlook,

overshadowing and provision of natural light (iii) bulk, scale, mass and height, visual impact.

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 use is in accordance with the Z1 Zoning.
- Site coverage and plot ratio are above Development Plan Standards.
- Proposed height would not be considered acceptable in this instance as it is likely to have a detrimental visual impact on the subject site, the streetscape of the mews and the conservation area.
- Proposed design of the apartment block is considered appropriate subject to conditions relating to materials.
- Reservations regarding the density of the proposed scheme and there is concern in relation to overdevelopment of the site.
- Four of the five units do not comply with minimum space standards.
- Dual aspect and private amenity space provision are in line with standards.
- Omission of communal amenity space is considered acceptable given the proximity of the site to Merrion Square, Fitzwilliam Square and the Canal.
- Impact on approved scheme at 12 Pembroke Row – would affect outlook and result in an increased sense of enclosure.
- A daylight and sunlight study in keeping with BRE guidance would be required for any future applications.
- Recommendation was to refuse permission.

3.2.2. Other Technical Reports

Drainage – No objection subject to conditions.

Transport – No objection subject to conditions.

Conservation Officer – Recommends refusal (verbal).

3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland (TII) – Recommends conditions.

3.4. Third Party Observations

3.4.1. 1 No. submission was received. The issues raised are covered within the observation on the appeal.

4.0 Planning History

Appeal Site

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

3053/17 – **Refuse** - 3 storey residential building (6 residential units). This was refused for two reasons relating to (i) overdevelopment, development standards, and proximity to rear boundary (ii) substandard residential amenity for future occupants.

Appeal site (Part of) and 5/5A Lad Lane

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

5/5A Lad Lane

Appeal Ref 303344 (4070/18) – Grant - Variation to previously approved application. Change of use of and extension of ground floor, approved for restaurant use, to Enterprise Centre.

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.

12 Pembroke Row

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

5.0 Policy Context

5.1. Development Plan

5.2. 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).

5.3. The following Section 28 Ministerial Guidelines are of relevance to the proposed development.

- Urban Development and Building Height - Guidelines for Planning Authorities (December 2018)
- Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (March 2018)
- Sustainable Residential Development in Urban Areas (May 2009)

5.4. Development Plan

5.4.1. 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.

5.4.2. Relevant provisions of the Development Plan include:

- Chapter 5 Quality Housing – QH6 (mixed-use neighbourhoods), QH7 (concerning promotion of sustainable densities).
- 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; Natural Heritage Designations

5.4.3. 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 the First Party Appeal are summarised below:

General

- Proposal goes towards meeting housing needs.
- Provides a sustainable residential density.
- Will help to consolidate the metropolitan area in line with Regional Planning Guidelines.
- Complies with residential standards.
- Proposed mix is compliant.
- Would ensure that this area remains partly residential
- The proposal fits in with the mixed character and building heights in the area.

- Height complies with Development Plan standards/Is in keeping with the scale of development along Pembroke Row
- Accords with the housing objectives set out in the Development Plan.
- Quantum of private open space is in excess of requirements.
- The appeal site is not a 'mews' site given the context.
- Photomontages show that the proposal will not have an unreasonable impact on the visual amenity of the area and is visually compatible with recent grants of permission and proposal currently on appeal at 12 Pembroke Row.
- Does not unduly overshadow neighbouring sites.
- Negligible increase in traffic.
- Further Information would have allowed applicants to address the design concerns of DCC.

Reason for Refusal No. 1 - Apartment sizes, overdevelopment of the site

- Application drawings erroneously depicted 4 bedspaces. Each two bed apartment has in fact only 3 bedspaces (1 double and 1 single) – Revised drawings submitted.
- DCC did not raise any concerns in respect of the proposed development's compliance with relevant strategic policies.
- Apartments meet the apartment standards with respect to bedroom sizes, dual aspect design, private open space provision, storage space requirements and refuse storage.
- Difficult to understand how this scheme could provide an unsatisfactory standard of residential amenity for future occupants.
- The provision of a lift would improve the quality of the scheme by ensuring accessibility.
- Proposed height is acceptable having regard to the permissions on 5/5A Lad Lane and at 12 Pembroke Row.
- The consented scheme would be dwarfed by these planning permissions.

- Actual height of building is less than most 5 storey buildings/also has a flat roof to minimise height – height is just 13.39m – close to the height of a four storey building.
- Proposed development should be assessed in the context of developments on the east side of Lad Lane, on the south side of Hagan’s Court and on Pembroke Row.
- Incorrect to assess the building height in the context of 16.10.16 ‘Mews Dwellings’ – there is no ‘main building’ to which the main building can be subordinate to. – Asks the Board to assess the proposal without reference to Policy 16.10.16.
- None of the reasons refers to density but there is reference to overdevelopment.
- Emerging pattern of development in the area is for schemes that exceed Development Plan plot ratio standards.

Reason for Refusal No. 2 – Impact on Amenity

- Would not impact on the existing and future amenity of dwellings located on neighbouring sites.
- The additional 2 apartments would provide future residents with considerable residential amenity.
- Any adjacent development site should not be given priority over applicant’s site/setback of 6m from the permitted scheme to the north-west.
- Mews dwellings on Hagan’s Court will be impacted by other developments granted permission.
- Appears that DCC accepts that permissions on other sites will impact on appeal site and vice versa/is unreasonable.
- The three storey permitted scheme would experience more impact on natural light levels than the currently proposed scheme.
- Stated in Planner’s report that there is no impact on Hagan’s Court/Reason for refusal includes reference to these impacts.
- No FI request for a BRE study/Such a study was not required in the assessment of 2643/18.
- Impact of overshadowing would be slight.

Reason for Refusal No. 3 - Bulk, scale, mass and height, visual impact.

- Visual context of the site is increasingly 5 storeys.
- Only issue appears to be how the building would look from Lad Lane or within Hagan's Court itself.
- Visual Impact Assessment and CGI architectural images submitted with the appeal.
- Overall impact is that the impact of the proposed development is moderate, neutral and long-term.

6.2. Planning Authority Response

- 6.2.1. Reasoning of Planning Authority's decision is set out in Planner's report/Amended drawings were considered/would not alter the views of the Planning Authority.

6.3. Observations

- 6.3.1. Observations on the appeal were received from:

Anna Devlin, 25 Fitzwilliam Street Upper, Dublin 2, DO2 K235

- The building's architectural significance is part of a run of original buildings on a Georgian mews lane.
- The height, bulk and mass of the proposed five storey building is inappropriate given the context of the site.
- In contrast to the permission for the three storey building, the proposed new building can clearly be seen from the mews lane.
- Development Plan recognises that the Georgian mews lanes are particularly vulnerable to inappropriate change.
- Overshadowing and loss of natural light for the surrounding buildings is inevitable.
- Residents will not be entitled to parking permits.

- Proximity to the proposal on Pembroke Row, at the back of the subject site, needs to be considered/will be negative impact on this development.
- Allowing this development would set a precedent for other mews developments on confined sites/three storeys appears to be the current limit in this area for this type of mews site.
- Development is incompatible with the established character and height of the mews lanes.
- Contrary to Z1 zoning/deleterious impact on the adjacent Z8 zoned Georgian buildings.

Transport Infrastructure Ireland (TII)

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

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 Standards
- Impact on surrounding residential amenity
- Visual impact
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. 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.

- 7.3. The principle of a residential development on this site is in accordance with the zoning and has already been established by the previous grant of permission (Planning Authority Ref 2643/18) for a three-storey residential building accommodating 3 no. units (1 X 1 bed and 2 x 2 beds).
- 7.4. As such the principle of development as proposed here is acceptable subject to the detailed considerations below.
- 7.5. **Residential Standards**
- 7.5.1. Reason for Refusal No. 1 of the decision of the Planning Authority refers to substandard apartment sizes, overdevelopment of the site and an unsatisfactory standard of residential amenity for future occupiers of the site.
- 7.5.2. The First Party Appellant states that the application drawings erroneously depicted 4 bedspaces. Each two bed apartment has in fact only 3 bedspaces (1 double and 1 single). Revised drawings have been submitted with the appeal. The appellant states that the apartments meet the apartment standards with respect to bedroom sizes, dual aspect design, private open space provision, storage space requirements and refuse storage. The provision of a lift would improve the quality of the scheme by ensuring accessibility.
- 7.5.3. It is further stated that the proposed development should be assessed in the context of the permitted developments along Pembroke Row. The appellant also contends that it is incorrect to assess the building height in the context of 16.10.16 'Mews Dwellings'.
- 7.5.4. The Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities (March 2018) sets out minimum floor areas for apartments. Planning authorities and An Bord Pleanála are required to have regard to these Section 28 guidelines and are also required to apply any specific planning policy requirements (SPPRs) of the guidelines. SPPR 3 sets out minimum floor areas for apartments - for 1 bed units (2 persons) the minimum standard is 45 sq. m. and for a 2 bed unit (4 persons) the minimum standard is 73.sq. m. The Guidelines note that planning authorities may also consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 square metres. This type of unit may be particularly suited to certain social housing schemes such as sheltered housing. Appendix 1 of the Guidelines reiterate that this standard is only permissible in limited circumstances, such as those referred to above. I do not consider that this lower standard is appropriate in this instance, and the higher

standard of 73 sq. m. should apply, notwithstanding the applicant's revised drawings indicating that the units are in fact 2 bed 3 person units.

- 7.5.5. Accordingly the floor area of the proposed 2 bed units (65 sq. m.) falls below the minimum standard as noted above. The 1 bed unit (50.81 sq. m.) exceeds the minimum standard.
- 7.5.6. In relation to private amenity space, the ground floor unit is served by a courtyard, with the upper units served by balconies, all of which exceed the minimum standards. No designated communal space is provided. I note the constraints of the site, however, and its proximity to Merrion Square and St. Stephen's Green, and to the amenity of the canal walkway, and therefore the lack of communal amenity space is justified in this instance.
- 7.5.7. All of the units are dual aspect. While no BRE report has been provided, it is likely that the units will receive sufficient daylight and sunlight, given the orientation of the windows and the locations, and are similar in orientation to the approved 3 unit scheme.
- 7.5.8. In conclusion, while many of the other standards as set out in the Guidelines have been met, the minimum floor area standard for the 2 bed units have not been achieved and therefore the proposal would provide substandard accommodation for the future occupiers of the 2 bed apartments.

7.6. Impact on Residential Amenity

- 7.6.1. Reason for refusal No. 2 of the decision of the Planning Authority cites concerns in relation the impact on amenity of future occupants of the permitted apartments located in proximity to the site, in terms of sense of enclosure, outlook, overshadow and the provision of natural light. It does not refer to the impact on the amenity of the existing residents on this, or on surrounding sites.
- 7.6.2. An Observation has been received from Anna Devlin which raises the issue of surrounding residential amenity.
- 7.6.3. The appellant contends that the proposal would not impact on the existing and future amenity of dwellings located on neighbouring sites. It is further stated that any adjacent development site should not be given priority over applicant's site. A Shadow Study, submitted at application stage, is resubmitted with the appeal submission, with the appeal submission providing a commentary and conclusion on same.

- 7.6.4. I note that there is an existing 2 bed residential unit on the site, with windows at first floor level facing north-east, over the existing warehouse on the site, and south-west towards No. 12 Pembroke Row, as well as windows facing onto Hagan's Court. While there will be impacts on the daylight/sunlight levels to this existing unit, it is currently impacted by the existing built form surrounding the site and would also be impacted to a degree by the permitted 3 storey development, and to a degree by the permitted developments at 12 Pembroke Row and 5/5a Lad Lane. I do not consider that the additional impact resulting from this development would be material. There will still be sufficient outlook from this residential unit from the rear windows, and the unit also has aspect onto Hagan's Court.
- 7.6.5. I note that the small courtyard serving the existing unit is removed to provide access to the proposed units. This is as per the existing grant of permission for the three unit scheme and is therefore acceptable.
- 7.6.6. In terms of the impact on the surrounding sites, the orientation of the proposed building relative to the sites on Pembroke Row and Lad Lane (12 Pembroke Row) and 5/5a Lad Lane) will ensure that no material impacts on daylight/sunlight will result from the development. The balconies of the proposed units face away from No. 12 Pembroke Row, on which there is a permission for both a residential scheme and an aparthotel scheme, so no material overlooking will result. There is sufficient setback (6m) from the permitted scheme to ensure that outlook is preserved.
- 7.6.7. I note the raised amenity space serving the approved residential units on the site to the south-west of the site (5/5a Lad Lane) is adjacent to the flank elevation of the 5 storey building. While the shadow analysis shows that there would be some impact on this space, I do not consider that this impact would be substantial enough to warrant a refusal in and of itself.

7.7. Visual Impact

- 7.7.1. Reason for Refusal No. 3 of the decision of the Planning Authority relates to the visual impact of the proposal.
- 7.7.2. An Observation has been received from Anna Devlin which also raised concern in relation to the impact on the character of the mews lane.
- 7.7.3. The appellant argues the visual context of the site is increasingly 5 storeys and that the only issue appears to be how the building would look from Lad Lane or within Hagan's Court itself. A Visual Impact Assessment and CGI architectural images are included with the appeal submission. The Visual Impact Assessment concludes that

the overall impact is that the impact of the proposed development is moderate, neutral and long-term.

- 7.7.4. The character of Hagan's Row is relatively mixed, with the south-western side comprising of frontages of varying character and heights, ranging from larger 3 storey commercial buildings to 2 storey mews dwellings. The north-eastern side more homogenous with a predominantly 2 storey character. No. 10 Hagan's Court, which is nearing completion, is the exception and is larger in scale with a setback second floor. However, the overall character of Hagan's Court is generally lower rise with a narrow street width, generally in line with other Mews Lanes within the city. The appeal site lies behind a row of two storey mews dwellings which contribute positively to the character of Hagan's Court.
- 7.7.5. While the narrow nature of Hagan's Court limits the extent of views towards the proposed building, from those points where the proposal would be visible from, it would be overbearing in appearance, and out of scale with the existing two-storey mews dwellings, and would result in a detrimental impact on the character of the streetscape.
- 7.7.6. I note that the applicant has drawn reference to the scale of the buildings that have been approved on Pembroke Row. These developments have a street frontage on Pembroke Row and contribute to the creation of a new streetscape. Pembroke Row, as a wider street, can accommodate such buildings of scale. This development, set in behind an existing 2 storey mews building, does not contribute to the streetscape and the narrowness of Hagan's Court exaggerates the overbearing nature of the proposed development.,
- 7.7.7. It is my view that allowing a building of such scale, on what is effectively a backland site, would set an undesirable precedent for development along Hagan's Row.

7.8. **Appropriate Assessment**

- 7.8.1. 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.

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

Stage 1 Screening

- 7.8.3. 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.
- 7.8.4. 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.
- 7.8.5. Having regard to the nature and scale of the proposed development, a five storey residential building, 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

1. The proposed 2-bed units do not meet the minimum floor area requirements as set out in Specific Planning Policy Requirement 3 of 'Design Standards for New Apartments – Guidelines for Planning Authorities' (December 2018). As such the proposed development would provide sub-standard residential

amenity for future occupiers of the proposed development. As such the proposal would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the height, scale, bulk and massing of the proposed development on a restricted site, and having regard to the existing character and prevailing pattern of development, the proposed development would appear as an overbearing structure with a detrimental impact on the character and streetscape of Hagan's Court. The proposed development would, therefore, seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

Rónán O'Connor
Planning Inspector

14th June 2019