



An  
Bord  
Pleanála

## Inspector's Report ABP 304254-19.

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<b>Development</b>	Temporary change of use to short term letting for six apartments on top three floors of existing five storey building. (4 No one bed and 2 No two bed units.)
<b>Location</b>	Nos 43 and 44 Clarendon Street
<b>Planning Authority</b>	Dublin City Council.
<b>P.A. Reg. Ref.</b>	2165/19
<b>Applicant</b>	Friends First Life Assurance Company.
<b>Type of Application</b>	Permission (one year).
<b>Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party X Refusal
<b>Appellant</b>	Friends First Life Assurance Company
<b>Observer</b>	Transportation Infrastructure Ireland.
<b>Date of Site Inspection</b>	24 <sup>th</sup> July, 2019.
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

1.1. The application site is that of Nos 43 and 44 Clarendon Street, Dublin. The two buildings are on the west side of Clarendon Street south of the junction with Coppinger Row. The ground floor and basement levels are in retail use (A hair salon (Tony and Guy), a bookshop, (Clarendon Medical) and a gym (Paul Byrne) is located at first floor level. There is a separate entrance to the side of No 43 for the gym off which there is also a rear access to the salon at No 44. The entrance and passage leading to the internal staircase to the apartments overhead on the top three floors is located in at the southern end of the front façade of No 44. At the entrance door there is an electronically controlled security code keypad, a set of doorbells and a set of letterboxes for the apartments for which the unit numbers/occupant names are not displayed. At the time of inspection, it appeared that all or some of the accommodation was were in short term letting use.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicate proposals for permission for change of use of the six apartments to short term letting use, for a period of one year. No alterations to internal layouts, fabric or proposals for external signage are included in the application.
- 2.2. The application is accompanied by a comprehensive document entitled Planning Compliance Report prepared on behalf of the applicant.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 22<sup>nd</sup> March, 2019 the planning authority decided to refuse permission on the basis of the following reason:

*“The proposed development, by itself and by the precedent for which a grant of permission would set, would be contrary t the stated provisions of the Core Strategy of the City Development Plan, 2016-2022, which recognises residential units as a scarce resource for 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 temporary loss of 6 apartment units for residential use, would also be contrary to the core principles of the Dublin Housing Strategy 2016-2022 which requires that the planning and abuilding of hosing and residential space in the city contribute to sustainable and balanced development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.”*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planning officer commented on the need to balance the competing demands in the central city acknowledging the promotion of tourism for which accommodation must be provided, as an economic driver. However, he concluded that the loss of available permanent, long term residential accommodation within the rent pressure zone outweighs these benefits and concern about potential precedent is also expressed. The application was lodged and assessed by the planning authority prior to the bringing into effect, on 1<sup>st</sup> July 2019 of new legislative provisions regarding requirements for planning permission for “short term letting” of residential accommodation in designated “rent protection zones”, (RPZs) details of which are outlined in section 5.2 below.

### **4.0 Planning History**

**Under P. A. Reg. Ref.1636/97:** For No 43 Clarendon Street, Permission was originally granted for change of use of the second and third floor levels to residential use. For No 44 Clarendon Street, Permission was granted for demolition of an existing building and for construction of a new four storey over basement building incorporating a roof loft over Nos 43 and 44 with apartments (9 No.) on the upper floors.

**Under P. A. Reg. Ref.2415/10:** Permission was granted for change of use from hair salon to a personal fitness studio and for construction of changing and shower rooms at No 44 Clarendon Street.

**Under P. A. Reg. Ref.3970/18:** Permission was refused for change of use from to short term letting for the six apartments subject of the current application based on reasoning similar to the reason attached to the decision to refuse permission for the current proposal by the planning authority.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site location is within an area subject to the zoning 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.”*

Clarendon Street is a Category 2 Shopping Street in the Grafton Street and Environs. The Grafton Street and Environs Architectural Conservation Area. (ACA)

No 43 and No 44 Clarendon Street are not included on the record of protected structures. The adjoining property at No 45 Clarendon Street is included on the record of protected structures.

### 5.2. National Guidance and Legislative Framework (Short Term Letting)

- Action 18 of the Strategy for the Rental Sector, (December 2016) provided for establishment of a Working Group to advise the Oireachtas Committee and Minister for Housing Planning and Local Government on Short term lettings. A legislative framework providing for regularisation of short term letting was announced by the Minister in October, 2018. The “rent pressure zones” (RPZs) were announced as being subject to additional requirements for planning permission for short term letting include the administrative area of Dublin City Council.
- Section 38 of The Residential Tenancies (Amendment) Act, 2019, No 14 of 2019 provides for designation of RPZs and it is supplemented by the amendment to the Planning and Development Act, 2000, as amended by way of insertion of section 3A. It includes a description of “Short Term Lettings” and provision is made for the making of Regulations by the Minister for the purposes of section 3A. thereof.

- The Planning and Development Act, 2000 (Exempted Development) (No 2) Regulations, 2019.(SI No 235 of 2019.) were brought into effect on 1<sup>st</sup> July, 2019. Within designated RPZs, planning permission is required for “short term letting” which is precluded from exempt development. However, short term letting within the owner/occupier’s principle place of residence in RPZs is exempt development and excluded from a requirement for planning permission subject to certain limitations and conditions.
- Circular Letter No. PL 4 /2019: (Department of Housing, Planning and Local Government.) provides for an advisory note of the legislative reforms on regulation of short term letting.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal was received from the applicant on its own behalf on 18<sup>th</sup> April 2019 according to which the proposed development is consistent with delivery of oversight, enforceable short term letting for visitors and is consistent with the promotion of tourism and range of visitor accommodation. According to the appeal, to this end:

- The proposed change of use will not undermine or interfere with existing or planned land uses for the area, is reasonable and is acceptable having regard to the CDP. A balance of housing categories including short term let accommodation which encourages and promotes tourism including business tourism is required. The short-term letting element would promote economic investment and the tourism objectives of the CDP’s. The proposed development allows active management and site-specific oversight of the use over the period of the year for which permission is sought and possible subsequent years.
- The applicant recognises the conflict between unregulated removal of rental properties and the supply of long-term rental accommodation for permanent occupancy the national policy on housing and homelessness is accepted. Reference is made to the response to the Key Action 18 in the “*Strategy for*

*the Rental Sector*” (DOHPLG) (December, 2016) and: Circulars PL 12/2016 and APH 6/2016, (Recent An Bord Pleanála Decision on Short Term Lettings) Circular PL 10/2017 and APH 3.2017 *Guidance on Planning Applications for Short Term Lettings* and the (then forthcoming) Regulations announced in 2018 relating to short term letting without planning permission for principle private residences of occupiers and owners.

- However, the applicant also considers that to put regularised short term letting of non-owner-occupied residential accommodation beyond the reach of all landlords defeat the purpose of the policy objectives at city and regional level of encouragement of short-term business and leisure visitors from international destinations in promoting a competitive and resilient economic base. Short term rental accommodation can be delivered on a ‘case by case’ basis having regard to prioritisation of housing supply over short term rental which should not be precluded outright.
- The six apartments are not located adjacent to other residential units in the area. Short term letting in the area which is zoned Z5 City Centre is consistent with permissible uses which include Guesthouse, B and B and Hotel.
- The decision to refuse permission is not supported by regional or national policy objectives as set out in the CDP or Housing Strategy in which the policies to not preclude short term letting with, in the Core Strategy in the CDP all land use typologies being promoted. The one-year period allows for oversight. The proposed short term letting is reasonable complementary and suitable at the location.
- Precedent would not be set by the proposed development as each application for short term letting should be subject to individual assessment. The dedicated entrance for the six units is unique in the city centre city’s core and inner city. Having regard to the requirement under Circular 10/2017 to have regard to the rental residential stock in the area, there are no short-term rental apartments in the area that are authorised, and the proposal would have no material impact.
- The proposal accords with the Draft Regional Spatial and Economic Strategy for the EMRA in which attraction of visitors and tourism is recognised as key

to the spatial and economic strategies. The dominance of Dublin in this regard must be encouraged and as Dublin is the premier destination with primary visitor attractions and short term let accommodation, especially at the site location are integral to the range of guest accommodation on offer. This outlook is also reflected in the objectives of the Dublin City Region Economic Strategy Within the Core Strategy in which tourism is prioritised as an enterprise within the city core.

- With regard to the Housing Strategy. (Appendices 2A and 2B of the CDP) it is submitted that there is no conflict in the proposed development with the three stated principles and objectives of the strategy.

## **6.2. Planning Authority Response**

6.2.1. There is no submission from the planning authority on file.

## **6.3. Observations**

6.3.1. Transportation Infrastructure Ireland (TII) in a letter dated, 8<sup>th</sup> May, 2019 indicates a request, that a Section 49 Supplementary Development Contribution condition be attached, if applicable, if permission is granted.

## **7.0 Assessment**

7.1. There is no dispute that the proposed development is a material change of use within the meaning of the recently amended legislative framework on short term letting accommodation as represented in Section 38 of The Residential Tenancies (Amendment) Act, 2019, No 14 of 2019, which is supplemented by the amendment to the Planning and Development Act, 2000, as amended, by way of insertion of section 3A in which there is a description of “Short Term Lettings” in which provision is also made for the making of Regulations by the Minister for the purposes of section 3A. thereof and, the Planning and Development Act, 2000 (Exempted Development) (No 2) Regulations, 2019.(SI No 235 of 2019.) which were brought into effect on 1<sup>st</sup> July, 2019. (Outline details of which are available for Short Term Letting under Section 5.2: (National Guidance and Legislative Framework.)



- 7.2. The case made in the appeal as to the need for careful consideration and recognition, having regard to relevant national, regional and local policies and objectives, of the contribution of short-term letting accommodation within the business and leisure accommodation offer for short term visits, especially from overseas in connection with business and leisure and, the pivotal role of tourism within the historic core of Dublin City is acknowledged and appreciated. It is therefore agreed that even though it is advised that in view of the housing supply issues within the identified “rent pressure zones” that applications for change of use of housing stock from permanent or long-term residential use to accommodation for short term letting warrants careful consideration as opposed to an outright blanket ban.
- 7.3. However, it should be borne in mind that national policy and the amended legislative framework clearly indicate a presumption of prioritisation for the achievement of reversal of the decline in supply of rental properties in use as permanent residential accommodation, within the identified RPZs among the range of very creditable and worthy competing interests contributing to sustainable economic viability and vitality within the central city.
- 7.4. As indicated in the appeal, the six apartments subject of the application are stated to be the only self-contained apartments, authorised for permanent residential use on Clarendon Street, and possibly within the immediate environs on the adjoining street network. The area also has hotel accommodation, the closest being at The Westbury and there is an extensive range of hotel accommodation including budget hotel accommodation and hostel accommodation within a short distance which is significantly increasing in supply and which is supplemented by guest house and bed and breakfast accommodation within the wider environs of the city centre.
- 7.5. The proposed change of use is incompatible with the lack of available permanent residential accommodation, a reversal of which is essential, having regard to the CDP policies as reflected in the City’s Housing and Core Strategies. These policies seek to secure national policy and legislation in meeting the housing needs of the City, to ensure a speedy effective and sustainable ‘step up’ in future housing supply, to reverse the scale of unmet housing needs and, to ensure delivery of the CDP policy objectives for encouragement of permanent residential communities in mixed use sustainable neighbourhoods within a socially inclusive city, which includes the

centre of the city. The proposed change of use is incompatible with and contrary to these strategic policies within the CDP and the bringing about of effective reversal of the decline in permanent housing supply within the 'RPZs. The proposed removal of the six apartment units from the the limited availability of long-term rental properties, even for a temporary period is incompatible with national policy as reflected within the relevant amended legislative framework.

7.6. Bearing in mind the temporary duration of the grant of permission sought by the applicant, it was noted, during the inspection it appeared that accommodation subject to the application for permission for temporary change of use is, at present in short term letting use to visitors. Presumably, if this is indeed the case, the applicant is seeking authorisation to continue the short term letting use which in RPZs constitutes a material change of use from permanent residential accommodation units, having regard to the bringing into effect of the legislative framework provided for in the Planning and Development Act, 2000 (Exempted Development) (No 2) Regulations, 2019.(SI No 235 of 2019.) on 1<sup>st</sup> July, 2019.

#### 7.7. **Environmental Impact Assessment Screening.**

7.7.1. Having regard to the nature of the proposed development and its location in a serviced central city area, involving minimal works and removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### 7.8. **Appropriate Assessment Screening.**

7.8.1. Having regard to the small-scale nature of the proposed development and, to the serviced central city location involving minimal works no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 8.0 **Recommendation**

8.1. In view of the foregoing, it is recommended that the planning authority decision be upheld, and that permission be refused based on the draft reasons and considerations which follow:

## 9.0 Reasons and Considerations

The proposed change of use to short term letting for a temporary period would result in the six apartments being withdrawn, (for a temporary period) from the available supply of long-term rental residential accommodation available for permanent occupation within a designated “Rent Pressure Zone” and, would exacerbate the existing shortage in supply and availability residential accommodation in the rental market for permanent occupation within Dublin City Centre. As a result, the proposed development would be contrary to the Housing Strategy and Core Strategy which seeks to secure national policy and legislation in meeting the housing needs of the City and to ensure a speedy effective and sustainable step up in future housing supply and to reverse the scale of unmet housing needs inclusive of the supply of residential accommodation in the rental market for permanent occupation and, delivery of the CDP policy objectives for encouragement of permanent residential communities in mixed use sustainable neighbourhoods. The proposed development would therefore be contrary to national policy, would materially contravene the development objectives of the Dublin City Development Plan, 2016-2022 and, would be to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
29<sup>th</sup> July, 2019.