



An
Bord
Pleanála

Inspector's Report ABP 304654-19

Development	Alterations and Additions to Hotel Development Permitted under P. A. Reg. Ref. 4342/16.
Location	Nos 9-17 St Andrew's Lane, Dublin 2.
Planning Authority	Dublin City Council.
P. A. Reg. Ref. No.	2537/19
Applicant	Appalachian Property Holdings Ltd.
Type of Application	Permission.
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Appellant	Appalachian Property Holdings Ltd.
Observers	1. Philip O'Reilly, 2. Brian Rutledge 3. Transportation Infrastructure Ireland.
Date of Site Inspection	14 th August 2019.
Inspector	Jane Dennehy

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	5
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Development Plan.....	7
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	12
6.3. Observations	12
6.4. Further Responses.....	13
7.0 Assessment	14
8.0 Recommendation.....	17
9.0 Reasons and Considerations.....	17

1.0 Site Location and Description

- 1.1. The site formerly was that of a two-storey building, now demolished is located on the east side of St. Andrew's Lane to the north of Exchequer Street and south west of Trinity Street. Construction of the permitted development of a hotel building was well advanced at the time of inspection. (P. A. Reg. Ref. 4342/16/PL 248844 refers. Details are in Section 4 under "Planning History.")
- 1.2. St. Andrew's Lane is two way for traffic between Trinity Street and Exchequer Street and one way southwards from Exchequer Street. Vehicular access to the carpark along St. Andrew's Lane is from Trinity Street to the north and from Exchequer Street to the south. St Andrew's Lane services the Trinity Street Carpark (177 spaces) which adjoins the site on the north side. and the Eircom premises (65) spaces and is also used by service vehicles.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for alterations and additions to the previously permitted hotel development under P. A. Reg. Ref. 4342/16, the grant of permission for which was upheld following appeal. (PL 248844 refers. Details are available in Paragraph 4 below.) The current proposal provides for:
 - Reconfiguration of the internal layout at upper ground and first floor level; reconfiguration of the roof profile to include an additional storey involving an increase to nine storeys plus plant level over the lower ground floor from eight storey plus plant level.
 - An increase in hotel bedrooms from 136 to 156 in total.

The proposed height of the new building is indicated to be 26.1 metres.

- 2.2. According to the application, the permitted development under P. A. Reg Ref 4342/16 (See paragraph 4 below) in which a floor is omitted, is compromised in proportions and negative in visual impact. The slenderness of the original design should be reinstated in the current proposal and substitution of glazing is proposed

to address the applicant's concern that the permitted development undermines the definition of the parapet lines of the historic buildings on Wicklow Street and it is submitted that a greater yield by the city centre site is warranted. The application includes a visual impact assessment along with drawings and photomontages.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 13th May, 2019 the planning authority decided to refuse permission based on the two reasons reproduced in full below.

- (1) *"Having regard to the prominent and sensitive location of the subject site, by reason of its important location with the historic city core and its proximity to the South City Retail Quarter ACA, the proposed additional floor would have a significantly detrimental visual impact due to its scale and bulk on the adjacent South City Retail Quarter architectural conservation area. Furthermore, the proposal would by reason of visual intrusion have a significant and detrimental visual impact on a number of important views and vistas in the city including from Grafton Street towards Wicklow Street and from Drury Street towards Exchequer Street. The proposed development would, therefore seriously injure the urban character and visual amenities of the historic city core and would be contrary to the proper planning and sustainable development of the area."*

- (2) *"The proposed reconfiguration of the internal layout of the upper ground floor will result in hotel bedrooms fronting directly onto the main thoroughfare of St. Andrews Lane. The applicant has not demonstrated that an acceptable level of quality and amenity for visitors to Dublin shall be provided by the hotel rooms. The change of use would therefore be and would 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 indicates concerns in his report as to negative visual impact on streetscapes and the skyline in views from several of the vantage points provided for in the submitted CGI images, but he acknowledges that the maximum heights (28 metres) provided for in *“Urban and Building Heights: Guidelines for Planning Authorities”*, (2018) are not exceeded.

Concern is indicated as to negative impact on the public amenity potential of St Andrew’s Lane attributable to the proposal to located bedrooms at upper ground floor level overlooking it, at the ground level on the west side of the building. In addition, some minor changes noted on the lodged plans for the lower ground floor level details of which were omitted from the public notices were excluded from consideration by the planning officer. The planning office concluded that the proposed development was unacceptable based on the reasons attached to the decision. (See section 3.1 above.)

3.2.2. **Other Technical Reports**

The internal technical reports of the City Archaeologist, Roads Department and Drainage Divisions indicated no objection to the proposed development.

3.3. **Prescribed Bodies**

3.3.1. In a submission from **Faite Ireland**, reference is made to current peaks in hotel occupancy, and the desirability of additional bedroom capacity to accommodate increasing overseas visitor numbers.

3.3.2. In a submission from **Transportation Infrastructure Ireland**, reference is made the requirement for attachment, of a Section 49 Supplementary Development Contribution Condition.

3.4. Third Party Observations

The issues raised in the submissions raised include concerns as to conflict with a condition attached to the prior grant of permission for omission of one floor, the intensification proposed for the core bedroom facilities within the hotel whereby there is a lack of communal space and facilities including a food offering at ground level.

4.0 Planning History

P. A. Reg. Ref. 4342/16/PL 248844: The planning authority decided to grant of permission for demolition of the existing buildings and for construction of a hotel nine storey plus plant level, over lower ground floor, 155-bedroom hotel building to a height of 27.9 metres. Following appeal against Condition No 3 attached to the decision in which there was a requirement for omission of one floor, the decision of the planning authority was upheld. According to Condition No 2 attached to the Board's order for the permitted development, now under construction, there are requirements for:

- (a) omission of a mansard element,
- (b) top floor and roof design to accord with the proposals shown in the original application submission of 15th December, 2016 with plant room revisions to accord with the proposals shown in a supplementary submission of 18th May 2017;
- (c) omission of a middle level storey within the block and,
- (d) a setback along the building's eastern elevation by a depth of not less than one metre, for a distance of not less than 11.4 metres from the southern building line and it is to be for the full height of the building.

The reasoning provided relates to orderly development visual amenity, light and ventilation to internal rooms given proximity to adjoining structures to the east.

P. A. Reg. Ref. 2963/08: Permission was granted for removal of the existing building and for construction of a six storey over basement building incorporating a double basement theatre and an additional basement level for carparking with accesses from a car lift on St. Andrew's Lane.

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 is 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.”*

The Grafton Street and Environs Architectural Conservation Area is immediately to the south and it includes the buildings on the north side of Exchequer Street to the front of the site.

Policy Objective SC 7 provides for protection and preservation of views and views to and from the city and for preservation of landmarks.

Policy Objective SC 17 provides for protection and enhancement of the city skyline with development proposals being sensitive to the historic city and with mid-rise and taller buildings making a positive contribution to the urban character of the city.

Policy Objective CHC 4 in conjunction with section 11.1.5.4 provides for preservation and protection of the special interest and character of the city's conservation areas and encourages development that enhances and protects the character and settings of these areas where possible.

5.2. Section 28 Strategic Guidance:

“Urban and Building Heights: Guidelines for Planning Authorities” (2018)

Development plan policies, objective and standards are superseded by the guidance and recommendations and standards within these Guidelines which were issued further to the National Planning Framework providing for sustainable consolidation

and intensification of development as appropriate in serviced urban areas.
Development Management Criteria are set out in section 3.2.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was lodged with the Board on behalf of the applicant on 10th June, 2019 and it contains a detailed and extensive description and commentary on the planning background and contexts in with regard to the planning history. The appeal includes a Visual Impact Assessment with CGI images (Prepared by Model Works) and revised drawings and is accompanied by a separate statement prepared by Model Works on behalf of the applicant.
- 6.1.2. According to the submission the appeal is solely addressed to Reason One for the decision to refuse permission because it is the intention of the applicant to address the proposals for modifications to the internal layout by way of separate application.
- 6.1.3. The applicant seeks to address Reason One for the decision to refuse permission by way of modification to the original proposal and therefore it is proposed that the roof level height be reduced by 300-400 mm as a result of which the total height would be 29.6 metres inclusive of plant and screening. (The total height of the original proposal is thirty metres.)
- 6.1.4. It submitted with reference to extracts from the planning officer's report that the previously permitted height of 33.947 metres for a development on the site sets precedent. (P. A. Reg. Ref. 2963/08 refers.) Also, it is contended in the appeal that the visual impact of the development previously permitted under P.A. Reg. Ref. 4232/16 was not assessed either by the planning authority or the Board.
- 6.1.5. It is stated that the planning officer's view that the proposed development would constitute a negative alteration to the visual environment is rejected in entirety. It is claimed that the revised proposal as a reduced visual impact on the Architectural Conservation Area.
- With regard to the views in the Visual Impact study/CGIs, the assessments by the planning officer are refuted. The development does not automatically constitute negative impact on the heritage setting as set out in the visual

impact assessment report and in particular Section 4 an extract from which is included in the appeal. The planning officer's comments on some of the Views in the Visual Impact Statement are responded to in the appeal in and accompanying statement by Model Works as outlined below:

- Viewpoint 1: The effect is significant with positive change which accords with Policy CHC4 of the CDP. It is only view in which the full height is visible. But it is not excessively tall.
- Viewpoint 2: The effect is significant with neutral change with an appreciable contemporary new form added to the townscape. The effect is typical of the likely situation arising in response to the NPF and Height Guidelines. The building would add an element of interest above the roofline to the existing composition of buildings from various eras.
- Viewpoint 3: The effect is significant with positive change altering the composition and character of the view with benign effect, particularly with regard to the roofline to protected historic buildings. This view from Grafton Street would be negatively affected by the permitted development in that the redbrick material and height reduces the definition and legibility of the historic roofline. The vertical separation of the two rooflines in the proposed building design and height with the different material would stand out against it.
- Viewpoint 4: The high visibility as shown in View 3 only affect a short section of Wicklow Street with the extent of protrusion being minimal with no harm to the view composition or valued features.
- Viewpoint 10 and 11: The effects are significant with positive change altering the composition and character of the view with benign effect, particularly with the subject building being more prominent and distinctive regard to the roofline to protected historic buildings. Viewpoint 10, like Viewpoint 3 causes the building to protrude further above the historic roofline in contrasting material enhancing legibility of the existing historic buildings. At this vantage point the new roofline peaks and complements the peaked parapets of the existing

introducing an element of contemporary architecture and visual interest. The extent of protrusion is less in Viewpoint 11 than it is in Viewpoint 10 and adds an element of contemporary architecture as an enhancement that does not dominate or harm historic buildings in the view.

6.1.6. In the accompanying statement prepared by Modelworks it is submitted that the revised proposals in the application are a genuine response to the NPF and Height Guidelines which altered to policy context and the contended negative visual impacts referred to in the planning officer report: It is submitted that:|

- The policy context for building height in, *“Urban and Building Heights: Guidelines for Planning Authorities”* (2018) results in significant implications for the proposed development having regard to the assessment and decision on the original application under P A. Reg. Ref. 2963/08.
- The planning authority failed to consider the vertical extension of the structure and focussed solely on height and visibility above rooflines which if regarded as necessarily causing negative visual impact (universally) in the city centre development taller than historic buildings and ACAs would not be permitted This is unsustainable having regard to *Urban and Building Heights: Guidelines for Planning Authorities* (which supersede the CDP) and which anticipate the prospect of taller development in architecturally sensitive areas.
- The CDP on which the planning officer relies is at variance with the objectives of the NPF with the Height Guidelines support. An extract from page 13 thereof is included in which there is a requirement for sensitive development that integrates into and enhances of character and public realm having regard to topography and protection of setting of key landmarks and key views.

6.1.7. An outline summary of the other more general over-riding issues included in the appeal submission of the applicant’s agent follows:

- The overall height reduction shown in the proposal submitted with the appeal is a direct attempt to address the height issue within the reason for the

decision to refuse permission. The screening at roof plant from street level is maintained.

- The proposal is fully compliant with Section 28 Guidance: *“Urban Development and Building Heights, Guidelines for Planning Authorities,”* DOHPLG, 2018 (which takes precedence over the CDP.) The proposal satisfies the criteria within section 1.14: With regard to the criteria for:
 - “City/Town” in providing for comprehensive regeneration of the underutilised site at the centre of the city with connectivity to public transport. And has a positive impact on the surrounding neighbourhood.
 - District /Neighbourhood/Street It provides a good response to the urban neighbourhood and streetscape; avoids long uninterrupted walls; is well considered in fabric and materials; enhances the urban design context and the architectural heritage for public spaces and thoroughfares and improves legibility through the site with a pedestrian route to a laneway.

With regard to SPPR 1 it accords with policy to support building height and density increase in locations with good transport in town city cores.

With regard to SPPR 3 it accords with the National Planning Framework’s strategic and national policy for regeneration, compact development and integrated communities at the location with accessibility and functionality in hotel accommodation. The view of the planning authority that the development is not acceptable because it is visible above rooflines is an inappropriate application of established planning policy and it negatively prejudices numerous development opportunities for compact growth in city the centre.

The quantum of the development in height accords with maximum heights excluding plant of 28 metres and a height of 33.94 metres was previously permitted at the site under P. A. Reg. Ref. 2963/08. The revisions improve proportions of the building in the setting in the architectural conservation area and it accords with section 16.7.2 of the CDP. There is an opportunity for realisation of the aims and objectives

of the height guidelines and creation in evolving built environment context. of a compact city.

There is critical need for hotel accommodation. An account of reports and updates on supply of hotel rooms supply and on visitor accommodation including extracts from these documents are provided.

6.2. Planning Authority Response

There is no submission from the planning authority on file.

6.3. Observations

6.3.1. Brian Rutledge

In a submission lodged, on his own behalf, with the Board on 5th July, 2019. His objection relates to a vent or smoke extract fan shown for the east elevation which he states comes over directly into his property which he states that the applicant acknowledges is not authorised and fire safety requirements have yet to be clarified. but the constructed lower ground floor stairwell gives rise to a requirement for the vent. This vent should be part of the forthcoming application, included in the descriptions on the notices if it is required for layout amendments. As the vent which is proposed in connection with the proposed reconfiguration directly impacts on Mr. Rutledge's property it should form part of the application. There is interference with Mr Rutledge's property rights.

The changes to the internal configuration proposed were not noted in the development description or the planning officer report. Details are on the drawings but not referred to in writing. If permission is to be granted, a condition explicitly excluding the revisions or amendments to the internal layout on all floors should be included.

The applicant's intention to address ground floor layout revisions in a new application so that new layouts through the floors could be addressed in the new application. Otherwise an uncertainty over the status of the proposed lower ground floor changes arises.

Mr. Rutledge states that he has no comments or observations on the proposal for the additional storey, the height or visual impact.

6.3.2. Philip O'Reilly.

In a submission from Mr O'Reilly, on his own behalf, received on 20th June, 2019 in which it is stated that to overturn the decision to refuse permission by the planning authority would be in direct contravention of the principles of the proper planning and development having regard to the restricted size, traffic issues, the scale and visual impact on the city, the streetscape character and scale and the ACA designation

6.3.3. Transportation Infrastructure Ireland.

In a submission from Transportation Infrastructure Ireland, (TII) received on 20th June, 2019 in which it is stated that should permission be granted, the development is liable for a section 49 supplementary development contribution scheme contribution and that a condition should be attached although it is noted to some exemptions apply.

6.4. Further Responses

- 6.4.1. A further submission was received from the applicant's agent on 12th August, 2019 in which it is stated that the appeal is only related to the height whereas the issues in the observation of Mr Rutledge relates to the alterations and revisions to the layout. The statement in the appeal that a new application for this element would be subject of a future application and that a condition omitting this element of the proposed development in a grant of permission should be acceptable. It is also stated that the applicant is mindful of neighbouring business operations on the laneway adjoining the site. In response to Mr Rutledge's observations it is stated that the applicant intends to agree the position of the vent on the east elevation with Dublin City Council and that the vent is unrelated to any internal layout changes.

7.0 Assessment

- 7.1. The applicant's agent seeks to withdraw the proposals for reconfiguration of the internal layout at upper ground floor and the first-floor levels referred to in the description on the notices and to which the second reason for refusal of permission attached to the planning authority decision refers. It is the applicant's intention and to lodge a new application for this element at a future date. The appeal grounds are therefore solely against the first reason for refusal of permission.
- 7.2. This request would represent a significant material change to the application and, as the application has not been withdrawn the proposed development in entirety is subject to consideration although the applicant's intention to submit a new application in respect of this element is acknowledged.
- 7.3. With regard Reason 1 attached to the decision to refuse permission it is agreed that the planning context has been changed by way of the bringing into effect of the Section 20 Guidelines, "*Urban and Building Heights: Guidelines for Planning Authorities*" (2018) which supersedes the policies and objectives of the CDP, further to issue of National Planning Framework. The proposal is not in direct material conflict, in principle, with the prior grant of permission, and in particular, Condition No 2 (c) attached to it on foot of which construction is now well advanced.
- 7.4. The matter for consideration as to whether the current proposal involving a modest intensification of use which would in principle comply with the Height Guidelines, and the CDP, (which the Height Guidelines supersede,) can be accepted as a sensitive development of high quality that integrates into and enhances of established historic built environment in the central city area, as defined by the Architectural Conservation Area designation, the inclusion of many surrounding buildings on the record of protected structures and, setting of key structures and views and the amenities of the public realm. The matter to be considered is that of the impact of the current proposal relative to the permitted development under construction as a result of which visibility above the rooflines and or parapet lines of existing buildings in the Wicklow Street/Exchequer Street was accepted.
- 7.5. The proposal lodged with the planning authority provides for increased height, and a change in materials and form for the proposed set back additional storey. A height

reduction of 400 mm is shown as an option for consideration in the appeal submission.

- 7.6. Notwithstanding the case made as to the amelioration of visual impact due to vertical extension in the design and the selection of materials and finishes that contrast more significantly than the permitted finishes and materials, it is considered that the proposed development is less acceptable than the permitted development. The visibility of the current proposal above the parapet lines of the historic buildings of Exchequer Street/Wicklow Street would be increased and would be attainable over a wider area than the permitted lower profile and lower height development.
- 7.7. The visibility along Drury Street where the buildings on Exchequer Street in the foreground of the site of the proposed development terminate the vista would also be significantly increased relative to the permitted development and would also be attainable along Digges Lane, to the south of Drury Street and the intersection with Stephen Street. It is considered that the proposed development relative to the permitted development would have a greater visual impact and, notwithstanding the argument as to 'vertical extension' and the contrasting finishes, would detract to an undue degree from the context integrity and architectural character of the historic buildings in the streetscapes due to the increased visibility and visibility from a larger area, above the dominant parapet line above the facades of the buildings in the foreground.
- 7.8. There is no dispute that the permitted development, in respect of which the current proposal accommodates a modest intensification of use relative to that of the permitted development is functional to delivery of strategic objectives with regard to tourism infrastructure, especially hotel rooms and to consolidation of the central core of the city by way of sustainable development in appropriate land-use on brownfield sites. The case made in the statement accompanying the appeal by Modelworks as to the recent changes in policy context with regard to building height and the preservation of historic architectural character and context relative importance for facilitation of economic development consolidation and intensive sustainable development that responds, in this instance to the need for tourism infrastructure changed policy context as previously stated is acknowledged. However, it is considered that the proposed development as permitted, amounts to a significant and intensive development that is a very effective response to these policy

objectives. The additional intensification arising from the modest number of additional bedrooms provided for to this end are unwarranted in this regard and are not considered justifiable at the opportunity cost of the increased visual impact on the statutorily protected architectural heritage and character of the city centre.

7.9. In view of the foregoing, Reason One attached to the planning authority decision to refuse permission is supported.

7.10. With regard to Reason Two for the decision to refuse permission, the decision of the planning authority to refuse permission for the reconfiguration of the internal layout for the upper ground floor and first floor is supported. A particular concern in consideration in relation to a major new build and change of use at a location such as that proposed is enhancement rather than a deterioration on the quality and amenity potential of the adjoining street-work and public realm. While the permitted development has an element of enlivenment whereas the current proposal fails in entirety and, as stated in the planning officer report, the proposed modifications also result in poor outlook from the bedrooms. Reason 2 attached to the planning authority decision to refuse permission is supported.

7.11. The concerns in the Observer submission of Mr Rutledge as to potential adverse impact on his adjoining business premises due to the possible location of a vent in the east elevation have been noted. While this is primarily a matter for compliance with Building Regulation requirements is necessary, consideration for impact on adjoining properties, especially properties in residential use and should be taken into consideration.

7.12. **Environmental Impact Assessment Screening.**

Having regard to the nature of the proposed development and its location on a brownfield site in an inner suburban area, 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.

7.13. **Appropriate Assessment Screening.**

Having regard to the nature of the proposed development and, to the brownfield site in a serviced inner suburban area, 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.

In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld. Draft Reasons and Considerations follow.

9.0 Reasons and Considerations.

1. The proposed development by reason of height above the definitive parapet line of buildings in the historic streetscape on Exchequer Street and Wicklow Street included on the record of protected structures, within the Grafton Street and Environs Architectural Conservation Area and by the vertical extension in the design providing for additional height, the materials and finishes, would be visually conspicuous and incongruous, would detract from the historic character of the established streetscape and would therefore have a significant and adverse visual impact on the context and setting of the historic buildings and streetscape in important views along Wicklow Street and Exchequer Street on approach from Grafton Street and the terminating vista on Exchequer Street on approach along Drury Street. The proposed development would, therefore seriously injure the urban character and visual amenities of the historic city core and would be contrary to the proper planning and sustainable development of the area.”
2. The proposed reconfiguration of the internal layout of the upper ground floor would result in hotel bedrooms fronting directly onto the main thoroughfare of St. Andrews Lane as result of which the street frontage would lack animation and the amenity potential level of the hotel rooms would be substandard and, as a result, the proposed development would constitute substandard

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

Jane Dennehy
Senior Planning Inspector
20th August, 2019.