



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304872-19

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<b>Development</b>	Change of use of 3 units to tenant amenity rooms.
<b>Location</b>	Apartments 7, 14, and 21 of The Brokerage, Townsend Street, Dublin 2
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	2857/19
<b>Applicant(s)</b>	Atlas GP Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	1. Denis Anthony and Elaine Anthony 2. Mark Conan
<b>Observer(s)</b>	TII
<b>Date of Site Inspection</b>	23 <sup>rd</sup> September 2019
<b>Inspector</b>	Irené McCormack

## 1.0 Site Location and Description

- 1.1. The subject site is located in Dublin City Centre to the immediate south, of the River Liffey. The site forms the south-eastern quarter of an urban city centre block bounded by Poolbeg Street, Hawkins Street, Townsend Street and Tara Street. The subject site is located at the junction of Townsend Street and Tara Street. Pedestrian access to the site is from Townsend Street.
- 1.2. Lands to the immediate north and west of the site are active building sites, including the former Apollo House site at the junction of Poolbeg Street and Tara Street and the former 'College House' site located to the immediate west of the site. 'Hawkins House' a large office building dating from the late 1960s accommodating offices associated with the Department of Health is located to the northwest of the site.
- 1.3. The surrounding area accommodates institutional and commercial uses associated with the city centre.
- 1.4. The existing apartment block is a 4-storey structure with ground floor commercial units, including a retail unit and two public houses. Apartments 7, 14, and 21 of The Brokerage, Townsend Street, Dublin 2 are located towards the rear of the Apartment Block facing north. The apartment block contains a total of 21 apartments.

## 2.0 Proposed Development

- 2.1. The development will comprise:
  - The development consists of the change of use of the three units namely apartments 7, 14 and 21 to tenant amenity rooms.
  - The proposed works relate to internal remodelling and fit out only.
- 2.1.1. It is intended that apartment 7 will become a "TV amenity" space and apartments 14 and 21 will be used for "Games and Social" use.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

3.1.1. The planning authority granted permission subject to 6 conditions. The following condition is of note:

2) a) During the construction and demolition phases, the proposed development shall comply with British Standard 5228 " Noise Control on Construction and open sites Part 1. Code of practice for basic information and procedures for noise control." b) Noise levels from the proposed development shall not be so loud, so continuous, so repeated, of such duration or pitch or occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place. In particular, the rated noise levels from the proposed development shall not constitute reasonable grounds for complaint as provided for in B.S. 4142. Method for rating industrial noise affecting mixed residential and industrial areas.

c) Before the conversion of the tenant amenity rooms is enabled, detailed plans and indicating sound-proofing, including the acoustic flooring and sound management, to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority. An acoustic analysis shall be included with this submission to the planning authority.

d) The agreed sound proofing shall be installed before the use of the tenant amenity rooms is enabled.

Reason: In order to ensure a satisfactory standard of development, in the interests of residential amenity

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

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

The report of the Planning Officer reflects the decision of the planning authority. The Planning Officer notes the planning history and the zoning objectives for the area. It is considered that the proposed development will significantly regenerate and likely rejuvenate the existing apartment block and the proposal will add communal amenity

space for existing and future residents. It is considered that the proposed development would not injure the amenity of property in the vicinity, and it is considered that the proposed development accords with both the City Development Plan and the proper planning and sustainable development of the area.

### 3.2.2. **Other Technical Reports**

Engineering Department – Drainage Division (Report dated 27<sup>th</sup> May 2019) – No objection.

### 3.3. **Prescribed Bodies**

Transport Infrastructure Ireland – In their report dated 20<sup>th</sup> May 2019 the TII state that the site falls within the area covered by the Supplementary Development Contribution Scheme (Section 49, Planning & Development Act, 2000 as amended). Luas Cross City (St. Stephen's Green to Broombridge Line). The works should not have an adverse impact of Luas operation and safety.

### 3.4. **Third Party Observations**

A total of two submissions were made in relation to the development. A brief summary of the issues raised in the submission to the Planning Authority are set out below:

- The proposed change of use is unnecessary and will give rise to residential amenity issues
- The residents of the apartment block have not requested amenity/recreation rooms for the apartment block
  - Concern that the annual maintenance and service costs for the apartment scheme will rise significantly
- The removal of three units from the City centre housing stock is not justified.

## 4.0 **Planning History**

*Site*

**DCC Reg. 1466/96 / PL 29S100094** -Permission granted in 1997 for the demolition of existing buildings and construction of new 4 storey over basement and ground floor mixed use development comprising ground and part basement pub of area 508 sq.m. ground and part basement shop of area 145 sq.m; and 15 no. 2 bed. and 13 no. 1 bed. apartments, all on 4 floors over ground level (total 28 no.).

#### *Surrounding*

**DCC Reg. 2907/19** Current Application: Permission for development at a site of 0.5 ha at Apollo House, Tara St. The development consists of the amendment of previous permissions relating to College House and the former Screen Cinema (DCC Reg. Ref. 3637/17, ABP Ref: PL29S.300709) and the former Apollo House (DCC Reg. Ref.: 3036/16, ABP Ref: PL29S.247907).

**DCC Reg. 2415/19** Planning Permission granted in 2019 for development at a site of 0.5 ha at Apollo House, Tara Street. The development consists of the amendment of previous permissions relating to College House and the former Screen Cinema (DCC Reg. Ref: 3637/17, ABP Ref: PL29S.300709) and the former Apollo House (DCC Reg. Ref: 3036/16, ABP Ref: PL29S.247907) DCC Reg. Ref: 3637/17, ABP Ref: PL29S.300709.

**DCC Reg.3637/17 / PL.29S.300709** – Permission granted in 2018 for the demolition of 9-storey building, including multi-storey car park and cinema building and construction of a 10-storey over two-level basement commercial mixed-use office building with café/restaurant and a 500-seater entertainment venue with all associated site works.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

#### **George's Quay Local Area Plan**

This local area plan is a statutory plan adopted in 2012. The plan area is bounded by Pearse Street to the south, the quays to the north, Hawkins Street to the west and Lombard Street to the east. The overall land use strategy for the George's Quay area is for the promotion of a mixed-use character to support the creation of a vibrant

central city district by ensuring that each urban block contains a mix of land uses and promote the area as an attractive location for headquarter buildings.

Section 4.5 Housing Objectives seeks to promote the renewal and refurbishment of existing housing schemes while protecting the built heritage of social housing in the George's Quay area.

## **Dublin City Development Plan 2016 – 2022**

The subject site is governed by the zoning objective Z5 which seeks to “consolidate and facilitate the development of the central area, to identify, reinforce, strengthen and protect its civic design character and dignity”. In terms of permissible uses cultural, office, open space, restaurant, retail, artistic and recreational buildings and uses are permissible uses under this zoning objective.

Dublin City Council’s policy regarding such developments is set down in the Dublin City Development Plan 2016-2022 and The Dept of Housing, Planning & Local Government Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities.

The following sections of the Development Plan, amongst others apply:

### **Chapter 2 – Vision and Core Strategy**

**Section 2.2.3. Settlement Strategy:** “For the inner city, the plan seeks to strengthen and consolidate the robust city-centre mixed-use zoning (Z5), with active promotion of the inner city as an attractive place for urban living, working and visiting...”

**Section 2.3.3 Promoting Quality Homes:** “Consistent with creating a compact city and with Dublin’s role in the region, the continued, sustainable management of land zoned for housing is a central element of the core strategy. This will be done in a way that reduces urban sprawl and provides for a quality compact city of mixed-tenure neighbourhoods...”

**Objective QH01:** To undertake a study to examine the potential for existing low to medium density residential development to accommodate additional residential development in a manner which optimises residential density whilst respecting residential amenities.

### **Chapter 4 – Shape and Structure of the City**

Section 4.4 - The Strategic Approach - The creation of a more compact city, where residents can live close to their places of work or study, and can easily traverse the city, thereby reducing urban sprawl and unsustainable travel patterns.

#### Section 4.5.3 Making a more Compact Sustainable City

##### 4.5.3.1 Urban Density

This plan will continue to physically consolidate the city and to optimise the efficient use of urban land. This will minimise wastage of scarce urban land, reduce urban sprawl and provide for a compact city....

### **Chapter 5 – Quality Housing policy**

**QH1:** To have regard to the DoEHLG Guidelines on ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007); ‘Delivering Homes Sustaining Communities – Statement on Housing Policy’ (2007), ‘Sustainable Urban Housing: Design Standards for New Apartments’ (2007) and ‘Sustainable Residential Development in Urban Areas’ and the accompanying Urban Design Manual: A Best Practice Guide (2009)

**QH7:** To promote residential development at sustainable urban densities throughout the city in accordance with the core strategy, having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area.

**QH18:** To promote the provision of high-quality apartments within sustainable neighbourhoods by achieving suitable levels of amenity within individual apartments, and within each apartment development, and ensuring that suitable social infrastructure and other support facilities are available in the neighbourhood, in accordance with the standards for residential accommodation

**QH19:** To promote the optimum quality and supply of apartments for a range of needs and aspirations, including households with children, in attractive, sustainable mixed-income, mixed-use neighbourhoods supported by appropriate social and other infrastructure.

**QH24:** To resist the loss of residential use on upper floors and actively support proposals that retain or bring upper floors above ground floor premises into residential use in order to revitalise the social and physical fabric of the city through measures

such as the Living City Initiative, and allowing scope for the residential development standards to be relaxed for refurbishment projects subject to the provision of good quality accommodation as outlined in the development standards. To proactively promote and market the Living City Initiative in Dublin city in order to attract and encourage investment in the city's valuable building fabric within the designated Living City Initiative area.

**16.10 Standards for Residential Accommodation** - The provision and protection of residential amenities is a primary concern of Dublin City Council. This will be achieved through the relevant objectives of the Dublin City Development Plan.

As outlined in the 'Quality Housing' chapter 5, it is an aim of Dublin City Council to encourage and foster living at sustainable urban densities through the creation of attractive mixed-use sustainable neighbourhoods. It is critical that new residential development is sufficiently flexible to allow for changing circumstances (e.g. aging, disability, growing family) and sufficiently spacious with all the necessary facilities to provide a level of residential amenity attractive to families with children on a long term basis

## 5.2. National Policy and Guidelines

- 5.2.1. **National Planning Framework** – Encourages increased densities in urban areas subject to appropriate design.

National Policy Objective 11: In meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth.

**Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities (2018)**

## 5.3. Natural Heritage Designations

There are two designed sites within 2.5Km of the site.

- South Dublin Bay SAC (site code 00210) is located 2.2km east of the site.
- South Dublin Bay and River Tolka Estuary SPA (site code 004024) is located 2.5km northeast of the site.



## 5.4. EIA Screening

Having regard to the nature and scale of the proposed development, the receiving environment, and to the nature, extent, characteristics and likely duration of potential impacts, I conclude that the proposed development is not likely to have significant effects on the environment and that the submission of an Environmental Impact Statement is not required. The need for environmental impact assessment can, therefore, be excluded at preliminary examination. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. Two third-party appeal submissions were made in relation to the development.

1. Denis Anthony of 31 Sycamore Road, Mount Merrion, Dublin and Elaine Anthony of 39 Clarinda Park East, Dun Laoghaire, Dublin. Denis Anthony and Elaine Anthony are the owners of apartment no. 8 The Brokerage Building, Townsend Street.

The grounds of appeal can be summarised as follows:

- It is stated that there are 21 apartments in total and not 24 as referred to by the applicants.
- It is set out that the development will have a serious and significant negative consequence for the peaceful and enjoyment use and occupation by the owners of apartment 8 and their tenants.
- There is no justification for the development having regard to city centre location and the abundance of amenities in the vicinity of the site.
- The development is unjustified at a time of an acknowledged housing crisis.
- It is set out that there has never been an issues raised by apartment owners or tenants in relation to the need to provide “tenant amenities”.
- It is also set out the Brokerage Management Company who manage the development and who will manage the “amenity rooms” rejected the proposal

for the change of 3 units to amenity rooms at the AGM in May 2019. It is noted also that the residents rejected that proposal at the AGM.

- It is noted that the need to sound proof the rooms is a clear acknowledgment that the development will have a negative impact on the remaining apartments affecting their right to peaceful and quiet possessions.
- It is set out that the existing apartments are in compliance with the Apartment Guidelines (2018) in terms of floor area provision and the north facing aspect of the apartments is not relevant as they overlook the communal amenity area provided as part of the development.
- Recent adjoining planning history is referenced and whether the objective of the development is to remove the obstacle of protecting the established residential amenity of these apartment so as to negate concerns with respect to increased height associated with any adjoining redevelopment. It is argued that by removing the apartments, you eliminate the need to protect the established amenity of the apartments.
- It is set out that the development would be in breach of the lease in which the apartments in the Brokerage are held which sets out that apartments not be used for “any purpose other than as single private apartments for residential purposes”.

2. Mark Conan, 3 Wilfield Park, Sandymount, Dublin 4. Mark Conan is the owner of apartment no. 11 The Brokerage Building, Townsend Street.

The grounds of appeal can be summarised as follows:

- It is set out at the newspaper failed to refer to the cinema and gym and accordingly the newspaper advertisement is deficient, and the proposal should be re-advertised.
- It is stated that there are 21 apartments in total and not 24 as referred to by the applicants. The loss of 3 units represents 14% of the housing stock within the complex.
- It is noted that the pre-planning record was not submitted with the planning application and that both pre-planning meetings for DCC Ref. Ref. 2857/19

(subject site) and DCC Reg. Ref. 2907/19 (Apollo House site) took place on the same day.

- Re-building Ireland has as its key objective the requirement to ensure that existing housing stock is used to the maximum degree. Reference is made to Vacant Homes Action Plan which the appellant could not access from Dublin City Council.
- Policy QH24 of the Development Plan seeks to resist the loss of residential use on upper floors and actively support residential use at above ground floor level.... In accordance with the living City Initiative.
- It is set out the proposal was rejected by all members at the AGM in May 2019.
- It is not clear from the documentation what rights and fees the owners/tenants of the 18 remaining apartments maybe subject to. The planning conditions do not cover a new management agreement.
- It is set out that based on the average occupancy of the apartment building the proposal is not viable.
- It is stated that the Planning Authority failed to consider its own Development Plan and Ministerial Guidance relating to housing provision.
- There has been no consideration to noise impact on the shared patio and the habitable rooms facing onto it.
- It is set out that the planning history review of the parent planning permission 1466/96 was not carried out and not available when requested.
- The lease in which the apartments in the Brokerage are held sets out that apartments not be used for “any purpose other than as a single private apartments for residential purposes”. The applicants claim that the Brokerage Management Plan can be altered to accommodate the development is queried.
- It is set out that the development is unsafe until the floor level location of the gym and other proposed uses clarified and show on scaled plans.
- It is considered that the argument that the change of use be considered because the building/units are vacant undermines the basis of planning law and could have disastrous consequences for the local and national housing stock.

- The guidelines for “New Apartments” should not be used to justify the retrofit of facilities that are currently freely available in the immediate vicinity of the city centre.

## 6.2. Applicant Response

- It is set out that most of the apartments are rented and not owner occupied.
- Notwithstanding the excellent location, the applicant considers that the residential amenity of the apartments could be improved for existing tenants in order to bring the apartment complex in line with current amenity standards. There is currently no internal residential amenity space.
- The proposal seeks to change the use of three north facing units to amenity spaces ranging in use from cinema, games room and social spaces.
- The tenant amenities are being proposed to be operated and managed by The Brokerage Management Company. Hours of opening, access control, monitoring and maintenance will be addressed by the management company’s operations manual following completion of the remodelling and fitout.
- The spaces are provided solely for the use of the residents in the building and not for external use. The spaces will be managed by the management company and the hours of use will be controlled. The potential for noise or impacts on residential amenity is minimal.
- A formal application will be made to the management company should planning be granted.
- It is noted that there are 24 apartments and not 21 as set out in the original planning application submission.

## 6.3. Planning Authority Response

The Planning Authority made a submission on the 28<sup>th</sup> August 2019. The email received refers to the preplanning meetings held in relation to the site and the adjoining site. It is noted that the applicant is also the owner of the adjoining (Apollo House) site. A copy of the issues discussed accompanied the submission.

## 6.4. Further Responses

A further response was received from Mark Conan on 8<sup>th</sup> August 2019.

- The submission notes the contents of the original appeal submission to An Board Pleanála.
- It is that there is no need for any tenant amenities and that tenants have not requested such tenant amenities.
- There was no prior consultation.
- The proposed changes will cause annoyance.
- A reduction in housing stock should not be allowed.
- The vacant apartments can be let at any stage as there is no issue with finding tenants.
- The apartment sizes exceed industry standards.

## 6.5. Observations

**Transport Infrastructure Ireland** - The submission reiterates the contents of the original submission made to the planning authority on the 20<sup>th</sup> May 2019.

## 7.0 Assessment

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Impact on Residential Amenity
- Other Matters
- Appropriate Assessment

## 7.2. Principle of Development

7.2.1. This application consists of the change of use of three units namely apartments 7, 14 and 21 to tenant amenity rooms ranging in use from cinema, games room and social

spaces. The apartment complex consists of a total of 21 apartments known as “The Brokerage” reflecting a mix of one and two-bedroom units over three floor with ground floor commercial use.

- 7.2.2. The site is located in the city centre on lands zoned Z5 which seeks to consolidate and facilitate the development of the central area, to identify, reinforce, strengthen and protect its civic design character and dignity. As outlined in Chapter 5 ‘Quality Housing’ of the Dublin City Development Plan 2016-2022, it is an aim of Dublin City Council to encourage and foster living at sustainable urban densities and to expediate housing supply in the city. This is reinforced in Section 2.2.3 *Settlement Strategy* of the Plan which states for the “inner city, the plan seeks to strengthen and consolidate the robust city-centre mixed-use zoning (Z5), with active promotion of the inner city as an attractive place for urban living, working and visiting...”
- 7.2.3. The first party contends that the development would improve the residential amenity of the apartments and bring the apartment complex in line with current amenity standards. In this regard, I note the site is located in the heart of the city centre with access to an abundance of services and amenities on their doorstep. Furthermore, there is no requirement to provide additional amenities for the apartment complex.
- 7.2.4. It is a key objective of the National Planning Framework to secure compact and sustainable urban development. National Policy Objective 11 states that “in meeting urban development requirements, there will be a presumption in favour of development that can encourage more people and generate more jobs and activity within existing cities, towns and villages, subject to development meeting appropriate planning standards and achieving targeted growth”. It is the policy of Dublin City Council as set out in Chapter 4 ‘Shape and Structure of the City’ to promote a compact and sustainable city. In this regard, I am not satisfied that the principle of converting three apartments in an apartment complex of 21 apartments, located in the city centre into amenity room is justified having regard to the current acknowledged housing crisis. I further consider the development contrary to policy QH24 of the development plan to resist the loss of residential use on upper floors and actively support proposals that retain or bring upper floors above ground floor premises into residential use in order to revitalise the social and physical fabric of the city through measures such as the Living City Initiative, and Objective QH01 which states that it is an objective of the Council to undertake a study to examine the potential for existing low to medium

density residential development to accommodate additional residential development in a manner which optimises residential density whilst respecting residential amenities.

7.2.5. In conclusion, I am not satisfied that the first party has provided adequate justification for the proposed amenity rooms. I do not consider the loss of three apartments in the city centre is outweighed by any tangible planning gain for the residents of the apartment complex having regard to the city centre location. I consider the development contrary to the settlement strategy as set out in the of Dublin City Development Plan 2016-2022 and the National Planning Framework to promote increased residential density in the city centre promote a compact and sustainable city.

### **7.3. Residential Amenity**

7.3.1. The appellants argue that the development will have a negative impact on residential amenity in terms of potential noise, activity and general management of the amenity rooms. In this regard, I note that the first party state that it is the intention that the tenant amenities be operated and managed by The Brokerage Management Company. Hours of opening, access control, monitoring and maintenance will be addressed by the management company's operations manual following completion of the remodelling and fitout.

7.3.2. The apartments are located in the north western corner of the a complex and sit one above the other. I note that the apartments do not immediately abut any other apartments in so far as the stair core and lift core and a corridor separate the apartments from the other apartments on each floor.

7.3.3. I note the amenity rooms will be for the use of the residents of "The Brokerage" only and I am satisfied that subject to appropriate management and noise mitigation measures, the use of the apartments as amenity rooms will not have a significant detrimental impact on the established amenity of the remaining apartments by reason of noise, activity or hours of operation.

### **7.4. Other Matters**

7.4.1. The appellants argue that the first party would be in breach of the lease agreements associated with the management of the apartment complex which requires that each apartment be used as a single private apartment for residential purposes only. In this

regard, I note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Should planning permission be granted and should the appellants or any other party consider that the planning permission granted by the Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant.

7.4.2. It is the appellants contention that the objective of the development is to remove the obstacle of protecting the established residential amenity of the apartments so as to eliminate concerns with respect to increased height associated with adjoining redevelopment proposals. In this regard, I note this appeal is limited to the subject site only.

7.4.3. It is asserted in the appeal that the newspaper notice failed to refer to the cinema and gym use and accordingly the newspaper advertisement is deficient and should be re-advertised. In this regard, I note the public notices including the site notice, newspaper notice, and the relevant planning documentation submitted with the application are consistent in the development description. The works are internal works to the individual apartments only and a development statement accompanied the planning application. I am satisfied that the description of the development is adequate.

#### 7.5. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### 8.0 **Recommendation**

I recommend that planning permission for the proposed development should be refused for the reason and considerations, as set out below.



## 9.0 Reasons and Considerations

The proposal to change the use of three apartments in the city centre to amenity rooms is contrary to Section 2.2.3 *Settlement Strategy* of the Dublin City Development Plan 2016-2022 which states for the “inner city, the plan seeks to strengthen and consolidate the robust city-centre mixed-use zoning (Z5), with active promotion of the inner city as an attractive place for urban living, working and visiting...” .The Board is not satisfied that the developer has provided adequate justification for the proposed amenity rooms and that the loss of three apartments in the city centre is outweighed by any planning gain for the residents of the apartment complex having regard to the city centre location. It is considered that the proposed development is contrary to the settlement strategy as set out in the Dublin City Development Plan 2016-2022 and the National Planning Framework to promote increased residential density in the city centre and a compact and sustainable city. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.

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Irené McCormack

Planning Inspector

30<sup>th</sup> September 2019