



An
Bord
Pleanála

Inspector's Report

ABP-305692-19

Development	Revisions to previously approved development (Reg. Ref. 4303/16; ABP Ref. PL29S.248921 and previously amended under Reg. Ref. 2328/19) for change of use at fifth floor from 'media associated use' to 'office use'.
Location	6 & 13 Pembroke Row, Baggot Street Lower, Dublin 2.
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3615/19
Applicant(s)	Davy Properties Holdings.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Davy Properties Holdings.
Observer(s)	None.
Date of Site Inspection	9 th January 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1 The appeal site comprises no 6 and 13 Pembroke Row located on the southern side of Pembroke Row, Baggott Street Lower in Dublin 2. The site is currently under development with the construction of a contemporary six storey building (4 storeys with 2 setback penthouse levels) over single level basement comprising 5 levels of office use from ground to fourth floor levels inclusive and media associated use at fifth floor level. The surrounding area is undergoing significant redevelopment including the adjoining Kildress House to the west. Further to the west along Pembroke Row is the six storey LinkedIn HQ. To the rear of the site are Wilton Court Apartments. To the east of the site is a two-storey office building.

2.0 Proposed Development

2.1 Permission is sought for change of use of the fifth-floor level of new development previously granted under Ref 4303/16 ABP Ref PL29S248921 and as further amended by 2328/19 to consist of change of use from previously permitted 'media associated uses' to 'office' use. The proposed change of use does not result in any change to the overall size, scale, design or external appearance of the previously permitted development. Furthermore, the change of use would not require any internal alterations to the permitted floor plan or footprint of the building.

2.2 Application details outline that the dual nature of the permission whereby part of the building (fifth floor) is restricted to 'media associated uses' places a restriction on the marketability of the building. It is asserted that the change of use of the fifth floor would add to the marketability of the development and thus improve its long-term viability.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 19/9/2019 Dublin City Council decided to refuse permission for the following reason:

“The site is partially zoned Z6 : To provide for the creation and protection of enterprise and facilitate opportunities for employment creation and partially zoned Z1: To protect, provide and improve residential amenities. Office use is neither permissible nor open for consideration in Z1 zoning, therefore the proposed development for all office use does not comply with the dual zoning objectives of the site. The proposed development would therefore materially contravene section 14.4 of the Development Plan which states that uses not listed under the permissible or open for consideration categories will be deemed not to be permissible uses in Z1 zones. The proposed development is therefore contrary to the provisions of the Dublin City Development Plan 2016-2022 and to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner’s report notes the planning history on site and notes that the initial proposal for dual use sought to address mixed Z1 and Z6 zoning. When assessing the parent permission, the Planning Authority accepted the site constraints in relation to providing residential on the site and the fact that the proposal did not remove existing residential (Office and retail use previously occupied the site). The horizontal differentiation of the land use was accepted to comply with the two zonings. The proposed change of use has not been adequately justified. Refusal was recommended.

3.2.2. Other Technical Reports

3.2.2.1 Engineering Department Drainage Division – No objection.

3.3. Prescribed Bodies

3.3.1 Transport Infrastructure Ireland. Notes location within area for adopted S49 Supplementary Development Contribution Scheme - Luas Cross City (St Stephen’s Green to Broombridge Line) under S49 of the Planning and Development Act as amended.

3.4. Third Party Observations

3.4.1 None

4.0 Planning History

2328/19 Planning Permission granted for minor amendments to previously approved development PL29S248921 4303/16 to provide an ESB substation at ground floor level facing onto Pembroke Row. Alterations to permitted internal layout. Elevational changes together with associated site services and development works necessary to facilitate the development.

PL29S248921 4303/16 Permission for demolition of existing three storey building at 13 Pembroke Row and the two storey building at 6 Pembroke Row and all their associated structures and the construction of a new six-storey (four storey with two setback penthouse levels) over single level basement building comprising of five levels of office use from ground to fourth floor levels inclusive and media associated use at fifth floor level. I note that Board in its decision did not accept the Inspector's recommendation to increase the setback of the fourth and fifth floors.

5.0 Policy Context

5.1. Development Plan

- The Dublin City Development Plan 2016-2022 refers.
- The site is mainly zoned Z6 *“To provide for the creation and protection of enterprise and facilitate opportunities for employment creation”* while part of the site (No 6 Pembroke Row) is zoned Z1 - *“To protect, provide and improve residential amenities.”*
- Z1 areas adjoin to the south and east.
- The site is located within a conservation area.
- Section 14.1 Zoning Principles. Dublin City Council recognises that a mix of uses is often more appropriate in urban areas than the more traditional single-use zoning,

and that a mixed-use or three-dimensional approach by way of horizontal and vertical differentiation in land-uses results in urban areas of greater vitality. This approach is particularly appropriate in some central locations, in identified mix-use zones, and in areas well served by public transport.

S14.6 Non-Conforming Uses When extensions to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

S14.4 Uses not listed under the 'permissible' or 'open for consideration' categories will be deemed not to be permissible uses in principle in zones Z1, Z2, Z8, Z9 and Z15.

5.2. **Natural Heritage Designations**

None

5.3. **EIA Screening**

Having regard to the limited nature of the proposed development which relates to a change of use of the fifth floor of a permitted development and to the nature of the receiving environment, 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 appeal is submitted by Downey Planning on behalf of the first party, Grounds of appeal are summarised as follows:

- Refute assertion that the proposal materially contravenes the land use zoning of the Development Plan.

- Proposal is in keeping with the overall pattern of development in the area.
- Previous uses were commercial and there is no evidence of any residential use ever having existed on the site.
- Overall site can reasonably be considered as a Transitional Zone Area. Proposal can be considered positively in the light of Section 14.7 of the Development Plan in relation to transitional zones.
- Development Plan does not provide a definition for ‘media associated use’. It can reasonably be interpreted that the ‘media-associated’ nature of the land use would include office based elements that are primality associated with the media industry which in itself is wide ranging particularly as technology continues to evolve.
- Planning Precedent. – cases to be considered include
 - 1426/05 /PL29S211959.** Permission granted for two storey extension over existing ground floor offices at the rear of existing three storey office development at 5 Pembroke Row. Site was zoned Z1 under the development plan. In overturning the Council’s decision to refuse the Planning Inspector stated noted although the proposal does not conform with the zoning objective, it warrants favourable consideration under section 14.7 of the Development Plan concerning non-conforming uses”.
 - 4989/07 PL29S228224** Former Veterinary College Site, Ballsbridge. Mixed use development permitted on site zoned Z1 and Z6. Principle of permitting office use on Z1 zoned lands in certain instances whereby such a use would not be considered to constitute a material contravention of the development plan.
 - Kildress House. 4153/16 248831 4488/18.** Permission granted by Dublin City Council and upheld by An Bord Pleanála for demolition of 2 dwellings to facilitate office development.
- The surrounding area is undergoing significant change with mixed use commercial office and residential development under construction on corner of Pembroke Row and 5/5a Lad Lane, LinkedIn HQ on the corner of Pembroke Row and Lad Lane and mixed-use office development on Wilton Terrace. It is evident from review of recent permissions and developments that Pembroke Row and the adjacent area are currently undergoing significant redevelopment with a particular

emphasis on office developments. In this context the proposed change of use would appear minor.

- Application should be granted permission by the Board in light of 37(2)(b)(ii) of the Act as the objectives are not clearly stated within the development Plan as the proposed development is concerns. While media associated uses are specifically listed as open for consideration under the Z1 zoning of the Plan, the plan itself does not provide any specific definition of what the use is. In the current business and working environment, the vast majority of businesses operate in the “media” environment through their marketing and sales departments having online and social media sales and marketing campaigns, and these departments operate as part of their overall operation within their offices.
- A grant of permission would add to the employment generation of the building. The potential of the building is hampered by the current permission pertaining to the fifth floor and the Board would be entitled to grant permission having regard to Section 37(2)(b)(iii) of the Act and Section 37(2)(b)(iv) of the Act which states permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the development plan.
- The appeal is accompanied by correspondence from Savills which notes the lack of clarity regarding ‘media associated uses’ and encourages a change of use to office use to reassure potential tenants.

6.2. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.0 Assessment

- 7.1. As outlined above there are two land use zonings pertaining to the site within the Dublin City Development Plan 2016-2022. The majority of the site is zoned Objective Z6 Employment Enterprise while part of the site zoned Z1 - Residential. The Council's grounds for refusal referred to the Z1 zoning on part of the site and

contended that the proposal would materially contravene the development plan as office use is neither open for consideration nor permissible within the Z1 zoning. The Planner's report noted that within the original application the case was made for assessment of the overall proposal as a planning unit and horizontal differentiation of the land use to comply with the two zoning objectives. "Media associated uses" is open for consideration within Z1 zoning and this was proposed for the fifth floor. ('Media associated uses' is neither open for consideration nor permissible within the Z6 Zoning). I note that both the City Council Planner and the Board's reporting Inspector in consideration of the governing permission (which was determined under the provisions of the current development plan 2016-2022) also noted that the development did not displace an existing residential use (lands zoned Z1 were previously occupied by restaurant) and having regard to the site specific constraints considered that the delivery of a residential use on the site would be problematic. On this basis permission was recommended. I note that the Board's Inspector also commented that 'media associated use' is employment generating and has many similarities with a general office use and therefore did not consider that a material contravention of the zoning arose.

- 7.2. I note also Section 14.6 of the Development Plan regarding non-conforming uses where consideration of extensions or improvements of premises accommodating such uses shall be considered on their merits where a proposal does not adversely affect the amenities of premises in the vicinity or does not prejudice the proper planning and sustainable development of the area. In the context of the zoning objective Z1 "To protect, provide and improve residential amenities" the proposed change of use from "media associated use" to office use is neutral in terms of impact. On this basis I do not consider that the proposed change of use from media associated uses to office use constitutes a material contravention of the Development Plan.
- 7.3. As the Planning Authority refused permission on the basis of its determination that the proposal represented a material contravention of the development plan the first party appellant refers to the provisions of Section 37(2)(b) and alleges that a number of the conditions whereby the Board may grant permission even if the proposed development contravenes materially the development plan arise. In the context of Section 37(2)(b)(ii) It is contended that that there are conflicting objectives in the

development plan or the objectives are not clearly stated insofar as the proposed development is concerned. Specifically, it is noted that “media associated uses” are not defined within the within the development plan and there is a general lack of clarity with regard what would qualify as such. The first party notes that in the current business and working environment, the vast majority of businesses operate in the “media” environment in terms of their marketing and sales department.

- 7.4. As regards 37(2)(b)(ii), it is asserted that permission should be granted having regard to regional planning guidelines for the area, guidelines under Section 28 Policy Directives under Section 29, the statutory obligations of any local authority area or any relevant policy of the Government, the Minister or any Minister of the Government 37(2)(b)(iii). Finally, it is asserted that permission for the proposed development should be granted having regard to the pattern of development and permissions granted in the area since the making of the development plan.
- 37(2)(b)(iv). A number of recent permissions are cited in this regard. I note that on review of the referenced cases PL29S228224 Veterinary College was granted under the Dublin City Development Plan 2005-2011 as was Extension to Offices at 5 Pembroke Row PL29S211959. As regards Kildress House PL.29S248831 the issue of material contravention of the zoning objective did not arise as the Z6 zoning applied to the site. On this basis I consider that the cited cases do not raise the same issues as the current case. I note that no argument is put forward to suggest that the proposed development is of strategic or national importance Section 37(2)(b)(i) and indeed it would be difficult to make such a case.
- 7.5. The submissions of the first party outline that the current potential of the building is hampered by the uncertainty with regard to the current permission pertaining to the fifth floor and having considered this matter it is my view the change of use has been justified. I also consider that in light of the governing permission on the site and based on the considerations of the planning implications of the proposed change of use of the fifth floor from “media associated use” to “office use” that a material contravention of the zoning objective Z1 “*To protect, provide and improve residential amenities*” does not arise. On this basis I consider that a grant of permission for change of use is appropriate.

7.6 On the matter of appropriate assessment, having regard to the nature and scale of the proposed development the fully serviced nature of the site and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7 Recommendation

Grant Permission subject to the following conditions.

8 Reasons and Considerations

Having regard to the planning history on the site and to the provisions of the Dublin City Development Plan 2016-2022, it is considered, that the proposed change of use of the fifth floor from 'media associated uses' to office use would not materially contravene the objectives of the Development Plan and would thus accord with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 6th day of April 2018 under reg ref no

PL29S248921 4303/16 and amending permission granted on 20th May 2019 under reg ref 2328/19 and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permissions.

Bríd Maxwell
Planning Inspector

28th January 2020