



An
Bord
Pleanála

Inspector's Report ABP-305879-19.

Development	Works and change of use to provide short-stay tourist accommodation.
Location	1 Fairview, Dublin 3.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3842/19.
Applicant	Simon Carthy.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant	Simon Carthy.
Observer	None.
Date of Site Inspection	2 nd February 2020.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is at a strategic location on the main coastal route out from the city centre and close to Fairview Park. The site is also at the junction of Fairview Strand, Annesley Bridge Road and Fairview and is situated in the middle of a commercial street, which I would describe as a vibrant local service area.
- 1.2. The subject site comprises a particularly narrow and long two-storey gable fronted building. It is stated to have been previously used in association with a nearby public house and to have been vacant for a period in excess of 15 years. Apart from the nearby public house, the commercial uses in the vicinity include bookmakers, barbershop, estate agent, café, restaurant, financial services, hardware store, charity shop and other uses.
- 1.3. The adjoining building to the west is a barbershop. My photographs show the view from the yard associated with that building. There are ventilation grills and window openings in the western façade of the subject building. The rear of the building provides access to a laneway which primarily serves garages and at the northern end of which there is a residential development under construction. The laneway is generally of sufficient width for two cars. The boundary between the subject building to the east (which is used for property services) has been removed at the rear of the site. At the time of inspection the rear of the site was in use as a surface car park, which appears to be associated with the adjoining building. There are two small windows to the side which face onto the property to the east. The building has a small rear return.
- 1.4. The site frontage marginally exceeds 4 m in width and the front building line is recessed relative to the shop to the west. Excluding the return the building depth is about 20m.

2.0 Proposed Development

- 2.1. Permission is sought for the following:
 - change of use to provide short-stay tourist accommodation
 - increase in roof ridge height and floor level by 150mm

- demolition of rear return
- the layout shows 1 no. bedroom and kitchen lounge and dining area at ground floor
- 4 no. bedrooms at first floor level
- The development includes alterations to the fenestration including front and east sides and retention of existing window openings at west side elevation and installation of new timber framed windows
- ancillary works.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for the reasons summarised below:

- Would cause overlooking of adjacent properties from habitable rooms and would adversely affect the development potential of adjoining sites and would provide for a poor standard of accommodation for occupants with regard to space standards, aspect and access to sunlight and daylight.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Amongst the points made in this report are:

- Uses such as guest house, breakfast, hotel, hostel and residential are all permitted in principle.
- The Z4 district centre zone is a mixed-use zoning intended to facilitate a mix of commercial and social services including tourist accommodation and residential. Given that the building is within a row of commercial premises on this site an active frontage use would be preferable as it would add to the vitality of the shopping streets.

- Circular letter PL 10/2017 notes in relation to short-term lettings proliferation of such uses has resulted in loss of standard residential housing and given rise to disruptive effects on full time residents. There is no loss of residential units in this case. The proposed use would not be more disruptive than previous use.
- The development could be a potential residential unit subject to compliance with development standards.
- A previous application was withdrawn following a request for additional information regarding management, overlooking, legal rights to install new windows, daylight and sunlight for the proposed development, cramped nature of the accommodation which does not appear to comply with Fáilte Ireland's standards for tourist accommodation, possible encroachment associated with a proposed ramp to the front.
- There remain serious concerns regarding existing and proposed windows on site boundaries which are directly onto neighbouring commercial properties.
- There are serious concerns that the recommended average daylight factor will not be achieved.
- Given the design it is more appropriate to assess the unit as a dwelling house rather than an apartment and it will be required to comply with the relevant standards. The living accommodation has limited functionality capacity to cater for a group of people and does not meet any residential standards. The development would not meet standards for tourist accommodation or the apartment standards or best practice guidance and would create a poor quality tourist or residential environment and is unacceptable.
- It is therefore recommended that permission be refused.

3.2.2. Other Technical Reports

Roads Planning Division - no objections to conditions including in relation to construction management plan.

Drainage Division - no objections subject to standard conditions and implementation of flood mitigation measures presented in the report of October 2018.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

The planner's report references reg. ref. 5118/06 which provided for comprehensive redevelopment of 3 no. plots to the west to provide a four storey building. The permission has expired.

5.0 **Policy Context**

5.1. **Development Plan**

The site is within an area zoned Z4 District Centre – a long length of the frontage onto Fairview is so designated. Part of the commercial strip to the west is zoned Neighbourhood Centre.

Within the district centre residential use is permissible. The development plan does not explicitly prohibit ground floor residential use in these areas.

5.2. **Department of Housing, Planning and Local Government**

In associated with the launch of exempted development regulations SI 235 of 2019 regarding short term lettings, the Department published a working document entitled '**New Regulation of Short-term Lettings FAQs**'. In relation to what will be considered when a planning application, the planning authority should consider whether a property is within a rent pressure zone and whether there is sufficient supply of rental properties for long-term rental in the area and will take into account the cumulative impact of applications. In areas of high housing demand and taking into account other factors such as cumulative impacts it is unlikely that permission would be granted.

Circular PL 10/2017 provides guidance on planning applications for short-term lettings. It outlines the circumstances in which a change of use for a short term letting may be appropriate, including that the house has a permanent occupant.

Quality Housing for Sustainable Communities This sets out qualitative and quantitative standards for residential developments and individual units.

5.3. **Natural Heritage Designations**

None directly impacted.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main points of the appeal include:

- A number of other applications are described.
- There will be no visible changes to the front elevation.
- The use is permitted and therefore in compliance with zoning objectives.
- Guidance on hotels is considered relevant in the absence of other guidance – these will normally have a condition stating that the maximum occupancy period shall be two months and that they shall not be used for the purposes of student accommodation.
- Such uses would normally require further permission for a residential unit.
- The relevant guidance for a minimum entry level hotel are described.
- A range of policy in the development plan seeks to encourage, support and facilitate the development of hotel accommodation and the proposal is consistent with policies CEE12, CEE13 and CEE14.
- Policy relating to alterations and extensions to buildings are described.
- The development will complement the character of the area and will enhance an eyesore and will not result in loss of traditional historic building forms.

- The strategy under the RPGs for the greater Dublin area includes consolidation and making efficient use of land and the proposed development contributes to this.
- With respect to the guidance Quality Housing for Sustainable Communities we provide an assessment for this development and all bedrooms meet the standards. The aggregate living area is below the minimum standards by 2.3 m², which is acceptable given that it is a retrofit situation and a proposal for short-term accommodation. The development is considered to comply with that guidance.
- Would not cause undue harm on the amenity enjoyed by adjoining properties.
- There is a lack of interest in the commercial unit and the short-stay accommodation use is more suitable and would make use of the derelict vacant unit, which is currently detracting from the attractiveness and vitality of the area surrounding residential property and its leaking roof is affecting adjacent properties.
- The development plan refers to residential extensions in section 17.4. Obscure glazed windows will ensure that the proposed short-term accommodation received adequate light and will not give rise to direct overlooking to the commercial site. The windows overlooking other lands are pre-existing. The mutual overlooking relationship does not change. Staff members from the public house would have had the ability to look onto adjacent properties. There is a right to light and these windows could not be blocked.
- An internal daylight assessment report prepared and submitted with the planning location is included as appendix B. It aims to demonstrate that levels of daylight will accord with recommendations detailed in the BRE guidance. The standards for daylight and sunlight accessing buildings in the BRE document have been achieved in the proposed development.
- A three-dimensional representation was prepared and analysed using daylight simulation software. While the living/kitchen/dining room has not been assessed in this report it is considered they will receive adequate lighting.

- The proposal is acceptable, complies with the zoning objectives and policies and objectives of the development plan and regional and national, policy. No further overlooking of commercial properties will result. The development is a high quality understated addition to the immediate streetscape and will provide a high standard of accommodation for future guests in an area which is well served public transport.

6.2. **Planning Authority Response**

The planning authority has not offered a substantive response.

6.3. **Observations**

None.

7.0 **Assessment**

7.1. I consider that the main issues in this case are:

- Development plan and other policy.
- Impact on the properties in the vicinity.
- Standard of accommodation for future occupants.

7.2. In relation to the **development plan policy** I consider that the main issue revolves around the zoning objective and the broad discussions and comments which are contained in the development plan regarding the nature and purpose of district centres.

7.3. Notwithstanding the fact that the residential use and similar tourist-related uses are permissible in this Z4 district centre, I have some concerns about the precedent value of the proposed development and the effect on the vitality of the district centre. I concur with the general thrust of the concern outlined in the planner's report. I consider that an active frontage use would be preferable at this location.

7.4. The development plan highlights a range of issues relating to district centres. Such areas are used for the provision of local shopping services which can be accessed using sustainable modes of transport. Amongst the issues highlighted in relation to

some of the older district centres is a lack of larger floor plates to provide for modern retailing. In its description of the previous permission which involved demolition of the three units to the west and development of a four storey block with apartments over commercial ground floor, the information in the planning authority report highlights a possible direction for the immediate area. In effect, re-development of some of these smaller units would appear to be acceptable in principle.

- 7.5. The appellant has highlighted the lack of interest in the subject unit for commercial purposes, which has been vacant / derelict for 15 years. It is clear that its condition is poor and significant works are necessary. Nevertheless, having regard to the very vibrant commercial area in which the site is located, the large residential population in the area and good public transport connectivity, I find it difficult to conclude that a ground floor residential use is desirable.
- 7.6. Nothing in the development plan precludes ground floor used for residential purposes, although it is stated that retail will be the main use. Given that residential development is acceptable in principle and having regard to a general lack of prescriptive policy relating to district centres, it is difficult to conclude that the development contravenes zoning or other specific policy provision relating to the change of use, notwithstanding my reservations.
- 7.7. The document New Regulation of Short-term Lettings FAQs is not Ministerial Guidance but I refer to it in the absence of any specific policy or guidance on this topic. The document states that in areas of high housing demand and taking into account factors such as cumulative impacts it is unlikely that permission for a change of use to short-term letting would be granted. This document has limited relevance as the subject development does not result in loss of a residential unit. I draw the same conclusion in relation to Circular PL 10/2017.
- 7.8. Therefore, in line with the approach of the planning authority, I now consider the impact on adjacent property and the quality of the proposed residential unit.
- 7.9. Regarding **the impact on the adjacent properties** my considerations are as follows:
- I accept that the boundary windows are likely to be in situ for decades. Their retention is regrettable as it maintains the status quo by unduly influencing options for extension of the two plots at the adjacent sites.

- The change of use to short-stay tourist accommodation raises issues in relation to the nature of the overlooking and the possible increased indivisibility between the yard to the rear of the barber shop and the subject ground floor in particular. I am in agreement with the planning authority that there would be increased overlooking as a result of the introduction of habitable rooms within the building, compared with the previous use.
- The restoration of the subject building would benefit all parties.

7.10. Taking all of the above into account I consider that it is reasonable to conclude that the development would not unduly impact the adjacent properties as they are currently functioning. The planning system must operate however to take a longer view of things and in this regard I note the reference in the planning authority decision to the development potential of the adjacent sites. I consider that this matter is relevant. I am also of the opinion that the proposed use would be more sensitive particularly by reason of the ground floor residential element. In this context there would be more conflicts between the adjacent commercial uses and the proposed use and a greater sensitivity to overlooking and the inter-visibility. For these reasons I consider that the proposed development would adversely impact on the adjacent properties and be out of character with the area.

7.11. Regarding the **standard of residential amenity for the future occupants**:

- The appellant has referenced aspects of the Failte Ireland standards which are qualitative and has also stated that the unit will not be registered. The references to minimum entry hotel standards are not relevant. I do not consider that the aparthotel guidance in the development plan is relevant to a single unit.
- Notwithstanding that this is intended for short-stay accommodation, it is appropriate that it comply with some adopted guidance. I consider that the most relevant guidance is that contained in Quality Housing for Sustainable Communities. The appeal contains an assessment of the proposal in terms of that guidance.
- I agree with the appellant's conclusions that the development is largely in keeping with the guidance in terms of bedroom space.

- There is a shortfall of 2.3 m² in the aggregate living area based on the standards for a 4 bedroom / 7 person house. The development proposed comprises a 5 bedroom / 8 person, thus the shortfall is exacerbated.
- I consider that the long (20m) and narrow floor plan further compromises the functionality of the ground floor living accommodation as much of the area would be used for circulation.
- The inclusion of obscure glazing at the western elevation could be addressed by condition. However, while this would address overlooking it would only add to the feeling of confinement and poor amenity levels at ground floor.
- I agree with the planning authority that the ground floor would lack daylight.

In conclusion, taking into account the shortfall in living accommodation and its quality, I conclude that the decision of the planning authority is reasonable.

8.0 Recommendation

8.1. I recommend that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

The site of the proposed development is located in an area for which the stated zoning objective in the current Dublin City Development Plan is 'to provide for and improve mixed service facilities', is situated between two commercial developments and the building contains windows which overlook the adjacent sites and which are to be retained. Having regard to the size and configuration of this restricted site, the nature of the intended use for short-term letting and the fenestration, it is considered that the proposed development would constitute a form of development which would be out of character with the area, would result in increased overlooking of the adjacent properties and would provide a substandard level of residential amenities for future occupants. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mairead Kenny

Senior Planning Inspector

6th March 2020