



An
Bord
Pleanála

Inspector's Report

ABP-306030-19

Development	19 apartments and a café including the demolition of part of a former public house.
Location	The Cuckoo's Nest, Greenhills Road, Tallaght, Dublin 24
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0287
Applicant	Legendstand Ltd.
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party
Appellants	Temple Woods Residents' Association
Observers	None
Date of Site Inspection	17 th March 2020
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

- 1.1. The site is on the Greenhills Road, an arterial route from the city centre towards Tallaght, just outside the M50. It is c9km south-west of the city centre and c2km northeast of Tallaght village. It has a stated area of 0.24ha. It is occupied the a vacant and partially demolished building that used to house the Cuckoo's Nest pub. Immediately to the south of the site stands a 3-storey apartment block. An estate of 39 houses stands to the rear of the site. To the north of the site stands a small theatre building. All are of recent construction. The Greenhills Road in front of the site has a high frequency of bus services but no bus priority measures.

2.0 Proposed Development

- 2.1. It is proposed to complete the demolition of extensions to the historic building that contained the Cuckoo's Nest pub. A café of 137m² would be provided on the ground floor of the original building and a two-bedroom apartment on its first floor. A three and four storey building would be erected around the historic building that would contain 18 apartments of which 6 would be two-bedroom units and 12 would have one bedroom.
- 2.2. The proposed development is described as a modification of a previous permission granted under SD16A/0157.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 27 conditions. Condition 2 required the omission of 3 proposed apartments and the incorporation of the resulting floor area into 6 of the other apartments.

3.2. Planning Authority Reports

3.2.1. Planning Report

The principle of residential development on the site is established by H17 SLO1, which requires the theatre use to be maintained but does not refer to the pub, and by

the permission issued under SD16A/0157 which the current application seeks to modify. The public house is not a protected structure but is associated with the historic use of the site for coach stops. There is concern about the standard of amenity that the proposed apartments would provide for their occupants but this can be addressed by condition. The separation distance from the houses at Temple Wood is acceptable. Apartment 11 on the first floor of the existing building would be somewhat below the minimum sizes required under the 2018 guidelines on apartment design. Other units follow the standards for 2-bed 3 person apartments which the guidelines say should be used sparingly. The layout of the apartments should be revised to address these shortfalls with the omission of 3 of the one-bedroom apartments. More storage space is also required. A footpath is required beside the on-street car parking spaces included in the application boundary. The development would not be likely to have significant effects on any Natura 2000 site and does not require AA. Neither does it require EIA. It was recommended that permission be granted subject to conditions that reduced the number of apartments to 16.

3.2.2. Other Technical Reports

The Conservation Officer reported that the proposed development was acceptable and would allow the existing building to be retained and reused.

The Roads Department stated that the proposed parking and access arrangements were acceptable.

The Parks Department sought additional information on the treatment of open spaces.

The Water Services Department sought additional information regarding attenuation.

3.3. Prescribed Bodies

Irish Water had no objection.

3.4. Third Party Observations

There were numerous submissions to the planning authority that objected to the proposed development. Many stressed the historic and social importance of the

Cuckoo's Nest pub and the extent to which its retention and improvement was an important factor in local acceptance of the previous permission for development on land zoned for open space.

4.0 Planning History

- 4.1. SD16A/0157 – On 13th February 2017 the planning authority granted permission on a site of 1.68ha that includes the current appeal site to replace a theatre, renovate the Cuckoo's Nest public house by demolishing previous extensions and erecting new ones that would provide for a bar and lounge on the ground floor and a restaurant on the first floor, and to build 6 apartments and 39 houses. Condition no 16 of the permission required details of an owners management company under the 2011 Multi Unit Developments Act to be agreed with the planning authority prior to the commencement of development.

5.0 Policy Context

5.1. National Policy

The Guidelines for Planning Authorities on Sustainable Urban Housing: Design Standards for New Apartments were issued in March 2018. Section 2.4 states that accessible urban locations, including those within walking distance of a bus route with a peak frequency of 10 minutes or less, are generally suitable for development at higher densities which is wholly composed of apartments. SPPR 3 requires a minimum floor area for one-bedroom apartments of 45m² and for two-bedroom apartments of 73m². A 3-person two-bedroom apartment of 63m² can be provided but it may not comprise more than 10% of the number of apartments in a private scheme. Requirements for individual rooms, for storage and for private amenities space are set out in the appendix to the plan. Section 4.19 states that the default policy is for car parking to be minimised for apartment schemes in accessible areas.

The Guidelines for Planning Authorities on Urban Development and Building Heights were issued in December 2018. SPPR 1 states government policy in favour of increased building height and density in locations with good public transport

accessibility. Section 3.6 states that in suburban locations a mix of 2, 3 and 4 storey development should be provided.

Current proposals for the Bus Connects project would involve making the Greenhills Road in front of the site one-way in order to make room for a bus lane.

5.2. **Development Plan**

The South Dublin County Development Plan 2016-2022 applies. The site is zoned under objective OS to provide open space and recreational amenities. It is also subject to specific local objective H17 SLO 1 to facilitate residential development that addresses Tymon Park and retains the theatre use and provides for facility improvements in the park area. H15 objective 4 is that opposing balconies and windows above ground floor level have adequate separation to safeguard privacy. Section 11.2.7 refers to building height and states that new residential development that adjoins existing one and/or two storey housing (backs or sides onto or faces) shall be no more than two storeys in height, unless a separation distance of 35 metres or greater is achieved. The car parking standards at table 11.23 and 11.24 set a maximum level of 1 space per 20m² of floorspace in a café and 0.75 spaces per apartment in this zone which is within 400m of bus route with a frequency of more than 10 minutes at peak times and 20 minutes at other times.

5.3. **Natural Heritage Designations**

None

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The grounds of appeal can be summarised as follows-

- The appeal is lodged on behalf of the residents of the scheme of 39 houses at Temple Woods who purchased their houses on the reasonable expectation that the entire development authorised under SD16A/0157 would be completed.

- The application is invalid. The proposed development was not included within the red line outlining the site on the location map. The basement referred to in the description of development extends outside the line. The proposed development also involves the use of car parking outside the site. The blue line on the location map includes land at Temple Woods and Temple Lawns where the freehold has been purchased by other people or is in the control of management companies. The location map fails to show rights of way at Temple Woods in yellow. The description of development should have included retention of the demolition of extensions to the side and rear of the Cuckoo's Nest because the previous permission SD16A/0157 granted permission for demolition of parts of that building to provide a restaurant and public house, not for the apartments proposed in this application.
- The proposed development includes insufficient car parking and would require the use of 6 visitor spaces previously authorised under SD16A/0157 at the entrance to the Temple Woods estate, where only 4 cars can actually park. It is not reasonable to assume that the deficiency of car parking would deter demand for parking. The proposed development would therefore lead to haphazard and dangerous car parking on roads within the Temple Woods estate. The lack of car parking and the pressure which the proposed development would place on previously authorised car parking would threaten the viability of the theatre contrary to local objective H17 SLO1. The revised proposals have not been justified by a revised analysis of traffic or parking demand. The proposed development would not meet the parking standards set out in the development plan because for the apartments and the proposed café. The owners will not facilitate access and permeability through the Temple Woods estate from the site towards Tymon Park due to concerns about parking.
- The proposed development would exacerbate traffic congestion. There are already traffic queues leaving the estate at peak times. The current proposal does not take adequate account of the proposed re-alignment of the Greenhills Road.

- The loss of an historic public house would diminish local amenities. The site is zoned for open space and amenities. The retention of the public house and theatre use on the site was supposed to compensate for the absence of open space in the proposed development. The architectural treatment of the apartment development is unsympathetic to the historic building,
- The application did not include the archaeological studies required for such an historic location.
- The application did not include sufficient analysis of the potential effect of the development on natural heritage including Leisler's Bat which is an Annex IV species.
- There was an inadequate assessment of surface water runoff and the proposal to drain to a soakpit is not acceptable.
- The proposed high building would overshadow the neighbouring houses in Temple Woods contrary to section 11.2.7 of the county development plan, and unduly overlook them contrary to objective H15.4 of the plan.

6.2. Applicant Response

The applicant's response can be summarised as follows-

- The previous owners of the site and public house were granted permission under SD16A/0157 for a scheme to renovate and extend the pub, replace the theatre and build 6 apartments and 39 houses. The current applicant then purchased the site and provided the new theatre and homes under the permission. The permission allowed for the demolition of structures forming part of the pub, some of which has already been carried out. The licence for the public house has withered. The current proposal was made after consultation with the council and takes into account comments from its Conservation Officer about retaining the older fabric of the pub even though it is not a protected structure. The floor area of the retained building is 161m², with another 84m² in a cellar that would be used to house plant.
- The proposed apartments would comply with the guidelines on apartment design and on building height that were issued in 2018 which favour greater

height and appropriate urban locations including those with good public transport accessibility. Section 3.5 of the latter guidelines supports development between 2 and 4 storeys in suburban areas.

- The applicant does not consider the continuance of public house on the site to be viable. As the planning authority validated the applicant, assertions of erroneous mapping are irrelevant. The proposed development does not seek to alter the cellar under the public house. The applicant does not claim any hold over the individual houses in Temple Woods that have been sold. However the roads, services and open spaces there remain in the applicants' control as they have not been taken in charge by the council. This is why the estate was included within the blue line on the location map. It is not intended that the common areas in the housing estate would be transferred to a private management company and there is no requirement to do so, notwithstanding condition 16 of SD16A/0157. No demolition has occurred on the site that was not previously authorised and so no requirement to seek permission for the retention of permission.
- The proposed development would provide 20 car parking spaces to serve the apartments which is just below the maximum amount that would be provided under the standard at table 11.24 of the county development plan. The car parking at the theatre would not be altered. Adequate car parking and open space would remain to serve existing development in the area after the proposed development was carried out. The development carried out under SD16A/0157 provided pedestrian and cyclist access to Tymon Park and more public open space beside it. This was the basis on which it complied with SLO 1 H17. The proposed development would not affect this contribution to local amenity.
- The current proposals would have no impact on archaeology or appropriate assessment.
- The proposed apartments would achieve sufficient separation distances from neighbouring houses in line with the 2018 guidelines on apartment design.

6.3. **Planning Authority Response**

The response referred to the planner's report on the application without further comment.

7.0 **Assessment**

- 7.1. The proposed residential and cafe uses on the site are open for consideration under the OS zoning objective that applies to the site. They would be in keeping with the specific objective SLO1 H17 of the development plan that also applies to the site. Neither objective requires a public house to be operated on the site. Nor would this be required to provide adequate amenities for the authorised and existing housing in the vicinity. The applicant retains the ownership of the premises of the former pub and so may apply for planning permission to use and develop it in a different manner to that provided for under a previous permission. It then falls to the council or the board on appeal to determine whether the new proposal complies with the proper planning and sustainable of the area. It would not be appropriate to use the power to decide planning applications to enforce an obligation that a third party might feel they are owed which does not relate to planning issues. Even if permission were refused to change the use of the site, this could not oblige a private owner to operate a public house there if the owner decided not to. In any event my advice to the board is that the use of the site for apartments and a cafe is in keeping with the proper planning and sustainable development of the area and with the provisions of the development plan, and so the proposed development is acceptable in principle.
- 7.2. The building that used to be a public house is not a protected structure or in an Architectural Conservation Area. Its preservation is not imperative under planning policy. Nevertheless the proposed retention of the older part of the building is welcome and would help to integrate the proposed apartments into the existing fabric of the area. The design of the proposed development achieves an acceptable standard of urban design and it would make a positive contribution to the character and appearance of the area.
- 7.3. The guidelines on the design of new apartments issued in 2018 state that 3-person 2-bedrooms apartments should only be used in limited circumstances. The alterations required by condition 2 of the council's decision that would reduce the

number of permitted apartments to 16 is therefore justified. It is noted that it was not appealed by the applicant. A similar condition is therefore recommended below. Subject to this alteration, the proposed apartments would provide an acceptable standard of residential amenity for their occupants in accordance with the applicable standards.

- 7.4. The situation and scale of the proposed development is such that it would not unduly overlook, overshadow or overbear any other residential property or otherwise injure their residential amenity. The height of the proposed development is appropriate for its location, having regard to SPPR1 and section 3.6 of the guidelines on building height issued in 2018.
- 7.5. The maximum amount of car parking for the proposed development that would be allowed under the standards in the development plan is 20, based on 0.75 spaces for the 19 apartments and 1 space per 20m² of floorspace in the cafe. The proposed development would have 20 car parking spaces in the car park on its own curtilage. Any more car parking would contravene the provisions of the development plan. The proposed provision arguably contravenes the advice at section 4.19 that car parking should be minimised for apartment schemes in accessible locations because the site is on a high frequency bus route. The assertion in the appeal that the proposed development has inadequate parking is therefore at variance with national policy and local standards on the subject and is not accepted. The proposed development does not require any alterations to the use or layout of the on-street spaces at Temple Woods that are included within the red line of the application site. This can be clarified by condition. The parking serving the proposed development and the neighbouring theatre are limited in scale and would not justify laying out a new junction on Greenhills Road. The footpath should be maintained across the entrance in accordance with section 4.3.1 of DMURS. Subject to this alteration the proposed development would not be likely to give rise to traffic hazard or the obstruction of road users.
- 7.6. The site is brownfield land in a city. It is not in or adjacent to a Natura 2000. There is no objective or rational basis that could support a conclusion that it might have the potential to have a significant effect on any Natura 2000 site either individually or in combination with any other plan or project. An appropriate assessment of the

proposed development would be superfluous. The proposed development would not be likely to have a negative impact on natural or archaeological heritage.

- 7.7. The proposed drainage arrangements are acceptable. The proposed development is not at undue risk of flooding and is not likely to give risk to an undue risk of flooding on other land.
- 7.8. The maps and drawings submitted with the application and the published notices adequately describe the proposed development. The inclusion of the curtilages of the houses at Temple Woods where the freehold has been sold within the blue line on the location map was not in keeping with article 22 of the planning regulations. However this did not impede the submission of observations or the assessment of the proposed development. The other matters raised in the appeal do not amount to departures from the requirements of the regulations regarding planning applications. In these circumstances it would not be reasonable to declare the application invalid.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the location of the site and the pattern of development in the vicinity, to the provisions of the South Dublin County Development Plan 2016-2022 including H17 SLO1, and to the Guidelines for Planning Authorities on Design Standards For New Apartments issued in March 2018 and the Guidelines for Planning Authorities on Urban Development and Building Height issued in December 2018 it is considered that, subject to compliance with the conditions set out below, the proposed development would not injure the character of the area or the amenities of property in the vicinity and would be acceptable in terms of traffic safety and the convenience of road users. It would therefore be in keeping with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matters in dispute shall be referred to An Bord Pleanála for determination. This permission authorises 16 apartments and a café</p> <p>Reason: In the interest of clarity</p>
2.	<p>The proposed development shall be amended as follows:</p> <p>(a) Unit 11 shall be a one-bedroom or studio apartment and shall be provided with east facing windows</p> <p>(b) Units 04, 09 and 15 shall be omitted and the resulting space shall be incorporated into units 03, 05, 08, 10, 14 and 16 so that they meet the standards for 4-perons 2-bedroom apartments in the 2018 Guidelines on the Design Standards for New Apartments</p> <p>(c) the open space in the south western part of the site shall be provided as communal open space for the proposed apartments and the existing adjoining apartments with appropriate boundary treatments and access arrangements</p> <p>(d) the on-street parking spaces at the eastern side of the application site at Temple Woods shall be retained in the course of the development with a suitable footpath alongside them</p> <p>(e) the public footpath along the Greenhills Road shall be extended along the entire width of the site with a crossover at the same level and with the same surface treatment as the rest of the footpath to provide access to the</p>

	<p>parking area for the permitted development and that for the theatre in accordance with section 4.3.1 of DMURS</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interests of residential] amenity and traffic safety.</p>
3.	<p>Details of the materials, colours and textures of all the external finishes and of boundary and surface treatments shall be as submitted with the application, unless others are required to comply with the conditions of this permission or have been agreed in writing with, the planning authority prior to commencement of development. In default of agreement the matters in dispute shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>No advertisement or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building, unless authorised by a further grant of planning permission.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.</p> <p>Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.</p>
6.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in</p>

	<p>particular, recyclable materials and for the ongoing operation of these facilities for each apartment unit and the café shall be submitted to, and agreed in writing with, the planning authority not later than 6 months from the date of commencement of the development. Thereafter, the waste shall be managed in accordance with the agreed plan</p> <p>This plan shall provide details of air handling and extraction for the permitted café and of any ducting or other equipment required in this regard.</p> <p>Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.</p>
7.	<p>A minimum of 10% of all communal car parking spaces should be provided with functioning EV charging stations/points, and ducting shall be provided for all remaining car parking spaces, including in-curtilage spaces, facilitating the installation of EV charging points/stations at a later date. Where proposals relating to the installation of EV ducting and charging stations/points has not been submitted with the application, in accordance with the above noted requirements, such proposals shall be submitted and agreed in writing with the Planning Authority prior to the occupation of the development.</p> <p>Reason: To provide for and/or future proof the development such as would facilitate the use of Electric Vehicles</p>
8.	<p>Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management</p>
9.	<p>The developer shall enter into water and waste water connection agreements with Irish Water, prior to commencement of development.</p>

	<p>Reason: In the interest of public health.</p>
10.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive and between 0900 and 1300 on Saturdays, and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the [residential] amenities of property in the vicinity.</p>
11.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge</p>
12.	<p>Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an</p>

	<p>agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>
13.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions*** of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Stephen J. O'Sullivan
 Planning Inspector

17th March 2020