



An
Bord
Pleanála

Inspector's Report ABP-306737-20.

Development	Permission for change of use from aparthotel to restaurant, together with external signage and all associated site works.
Location	Golf Suites Hotel, Unit G05, Garters Lane, Citywest, Saggart, Co. Dublin.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD19A/0252.
Applicant(s)	Mr. Peter Bradshaw.
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions.
Type of Appeal	Third Party
Appellant(s)	Alva Glen Land Development Ltd.
Observer(s)	None.
Date of Site Inspection	28/05/2020.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located within the Citywest Hotel complex in Saggart, Co. Dublin. The site lies to the south of the N7 and approximately 15km to the west of Dublin City Centre. Saggart village lies approximately 0.5km to the south and Rathcoole lies approximately 1.5km to the west. The existing land uses in the vicinity of the wider Citywest Campus site include a mix of residential, educational and retail / town centre uses and includes a variety of house types including apartments to one off houses.
- 1.2. The Citywest complex comprises a number of elements including the Hotel, Aparthotel (where the subject site lies), a Conference Centre, Leisure Centre and a Golf Club. The site is accessed over the local road network with the main gates to the complex located off Garters Lane.
- 1.3. The site the subject of this appeal comprises a ground floor suite, located within the Golf Suite Hotel area of the complex and has a stated area of 91m². The existing suite is a ground floor corner within the south-eastern area of the Aparthotel, comprising 2 ensuite bedrooms, a living room and kitchen. The suite is accessed via the internal hallways within the building. A door has been inserted into the southern wall of the building which provides direct access to the outside area from the suite. While the drawings show a double door, a single door is in situ.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for a change of use from aparthotel to restaurant, together with external signage and all associated site works, all at Golf Suites Hotel, Unit G05, Garters Lane, Citywest, Saggart, Co. Dublin.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - A letter of consent from the owner of the property.
- 2.3. The development, if permitted, will change the layout of the suite to provide a restaurant with a public floor area of 46.4m², a kitchen area of 21.4m², a cold room 5.1m² and a single accessible WC. The development will retain the existing access

to the shared internal corridor and will provide a new entrance along the northern boundary. A second door is proposed to access the kitchen. This will result in 3 doors being provided on the external walls of the existing suite.

3.0 **Planning Authority Decision**

3.1. **Decision**

The Planning Authority decided to grant planning permission for the proposed development subject to 8 conditions.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening.

The initial Planning Report concludes that further information was required in relation to the development in terms of access to the building and ventilation.

Following the submission of a response to the FI request, the final planning report concludes that proposed development is acceptable. The Planning Officer recommends that permission be granted for the proposed development, subject to 8 conditions.

This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. **Other Technical Reports**

Water Services: No objection subject to compliance with conditions.

EHO: No objection subject to compliance with conditions.

Roads Department: Further information required in relation to disabled access.

Following the submission of the response to the FI request, the Roads Department provided a further report advising no objection subject to compliance with conditions.

The Board will note a reference to a report from Waste Management advising no objections to the proposed development subject to conditions. This report is not on the file, nor is it on the Councils website.

3.2.3. **Prescribed Bodies**

Irish Water: No objection subject to compliance with conditions

3.2.4. **Third Party Submissions**

There is 1no. third party objections noted on the planning authority file. The issues raised reflect those in the Third-Party Appeal and are summarised as follows:

- The 'landowner' does not have a legal remit over the external elements of the unit.
- Inadequate car parking
- Lack of logistical details relating to the operation of the proposed restaurant
- Lack of details relating to signage
- There is an existing restaurant within the building and the proposed offer does not add any benefit to the Citywest Hotel and Conference Centre Complex.
- Inappropriate location of site notices.

4.0 **Planning History**

The following is the relevant planning history pertaining to the subject site:

PA ref:SD11A/0042: Planning permission was refused for 3 reasons to A. Bradshaw for the change of use of Unit G05, Golf Suites Hotel from aparthotel to a 'domestic apartment' together with the construction of a new exit door and associated works. The reasons for refusal are summarised as follows:

1. The change of use from tourist short term accommodation to a permanent residential unit would be materially contrary to the achievement of the zoning objective.

2. The development would seriously injure the residential amenity of future occupants due to the failure to comply with minimum standards for apartment accommodation set out in ministerial guidelines.
3. The proposed development would set an undesirable precedent for similar developments.

The Board will note that the new exit door sought as part of this application has been constructed.

PA ref: S01A/0450: Permission was granted, subject to 20 conditions, for the construction of Apart Hotel, consisting mainly of a three- storey building with fourth floor in roof space, with one section facing into a lower courtyard of four stories with fifth floor in roof space. The proposal consists of 1 no. 1 bed studio, 24 no. 1 bed apartments, 95 no. 2 bed apartments, along with reception area, kitchen, dining room, cocktail bar, staff facilities and car parking for 59 cars on surface with 175 underground car spaces along with all necessary ancillary site development works on their land adjacent to their existing City West Hotel, Leisure and Golf Club, the land on which it is proposed to locate this development contains a protected structure within its curtilage.

Condition 5 of this grant of permission states as follows:

That the proposed development shall be occupied and used only as part of the existing hotel complex on the extended site. Individual units within the proposed development shall be used for short-term tourist accommodation lettings only. Any change will require a grant of planning permission from the Planning Authority or An Bord Pleanala on appeal.

Reason: To meet the specific tourism requirements of the development as set out in this application and to ensure that the hotel suites are used solely for tourist accommodation and not sold or occupied as residential units independent of the hotel complex and in the interests of amenity and the proper planning and development of the area.

5.0 Policy and Context

5.1. Development Plan

The South Dublin County Council Development Plan 2016 – 2022, is the relevant policy document relating to the subject site.

The site is zoned 'OS - To preserve and provide for open space and recreational amenities'.

Chapter 4 refers to Economic Development and Tourism

Section 6.4.4 of Chapter 6 refers to Car Parking.

Land Use zoning in Chapter 11 states that restaurants are open for consideration in OS zones.

5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Glenasmole SAC (Site Code: 001209) which is located approximately 6km to the south-east of the site.

The Rye Valley / Carton SAC, (Site Code 001398), is located approximately 9km to the north west of the site.

5.3. EIA Screening

Having regard to nature and scale of the development, together with the brownfield nature of the site, 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

This is a Third-party appeal against the decision of the Planning Authority to grant planning permission for the proposed development. The issues raised reflect those raised with the PA during their assessment of the proposed development and are summarised as follows:

- Planning history of the site and the applicant has not sought retention for the door which was installed without planning permission or the consent of the owners of the Golf Suites Hotel.
- The applicant has no legal remit to include works to the external walls of Unit G05. The 999-year leaseholder has the right to vary the internal plaster surfaces and finishes but does not have the right to vary the exterior structural walls as set out in the long-term lease agreement.
- The proposal does not provide for adequate car parking as the long-term lease agreement grants the lessee the right to park 1 car only. No permission is given to use additional car parking spaces.
- Deficiencies in the details for the operation of a restaurant, including those relating to capacity of the restaurant, delivery / customer parking and access, management plan in case of an emergency and a waste management plan.
- The erection of signage is also outside the legal remit of the lessee.
- There is an existing restaurant in close proximity to the site. A grant of permission would result in an over-concentration of this use.
- The development, if permitted, would set an undesirable precedent for the change of use of individual units within the Golf Suites Hotel and in particular, the existing 18 ground floor units in the building
- The location of site notices is wholly inappropriate and inadequate as the notice is removed from the general entrance to the building and as such, is inconspicuous and unnoticeable. The location of the second notice on the

side of the N7 is completely ineffective. The application should be invalidated on this basis.

The appeal requests that permission be refused. A number of enclosures are included with the appeal.

6.2. Applicant Response

The first party submitted a response to the third-party appeal. The submission is summarised as follows:

- It is submitted that the appeal to the proposed development is frivolous and intimidating, and for commercial reasons only.
- Efforts have been made to acquire the unit, which is not for sale.
- The unit is privately owned and mortgaged to AIB Bank.

The response includes a number of enclosures.

6.3. Planning Authority Response

The Planning Authority submitted a response to the third-party appeal advising no further observations.

6.4. Observations

None.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development and Planning History

2. Visual Impacts
3. Other Issues
4. Appropriate Assessment

7.1. Principle of the development & Planning History

7.1.1. The proposed development seeks to change the use of a 2-bed suite, constructed as part of the Golf Suites Hotel at Citywest, to a restaurant. The development will include a number of external alterations, including the installation of two additional external doors and signage.

7.1.2. The South Dublin County Council Development Plan 2016 – 2022, is the relevant policy document relating to the subject site. The site is zoned 'OS' where it is the stated objective 'To preserve and provide for open space and recreational amenities'. Chapter 11 of the SDCCDP deals with Land Use zoning and states that restaurants are open for consideration in OS zones. As such, I consider that in principle, the proposed development and use is acceptable.

7.1.3. With regard to the planning history associated with the wider site, the Board will note that planning permission for the overall building in which the current site lies, was granted for the construction of an Apart-hotel comprising a variety of suites and various ancillary services including a reception area, kitchen, dining room, bar and car parking, PA ref: S01A/0450 refers. This permission was granted on lands adjacent to the existing City West Hotel, Leisure and Golf Club and is associated with the wider tourist offer at Citywest. Condition 5 of this grant of permission stated:

That the proposed development shall be occupied and used only as part of the existing hotel complex on the extended site. Individual units within the proposed development shall be used for short-term tourist accommodation lettings only. Any change will require a grant of planning permission from the Planning Authority or An Bord Pleanala on appeal.

Reason: To meet the specific tourism requirements of the development as set out in this application and to ensure that the hotel suites are used solely for tourist accommodation and not sold or occupied as residential units

independent of the hotel complex and in the interests of amenity and the proper planning and development of the area.

7.1.4. Subsequent to the above permission, it appears that the individual units within the development were sold by way of long lease, 999 years, to individuals and subject to certain conditions contained in the lease and as submitted by the appellant in this case. The mother of the current applicant sought permission, PA ref: SD11A/0042 refers, for the change of use of Unit G05, Golf Suites Hotel from aparthotel to a 'domestic apartment' together with the construction of a new exit door and associated works. The reasons for refusal are summarised as follows:

1. The change of use from tourist short term accommodation to a permanent residential unit would be materially contrary to the achievement of the zoning objective.
2. The development would seriously injure the residential amenity of future occupants due to the failure to comply with minimum standards for apartment accommodation set out in ministerial guidelines.
3. The proposed development would set an undesirable precedent for similar developments.

7.1.5. The Board will note that the new exit door sought as part of this application has been constructed, without the benefit of planning permission. The current application does not provide for the retention of this unauthorised door. I also note that the submitted plans depict this door as being a double French door style, while the door in place is a single door.

7.1.6. I note that the third-party appellant has raised this issue as a matter of concern in terms of its unauthorised nature and the issues raised in relation to the conditions of the lease agreement. Given that the unauthorised door forms part of the current proposed development submitted, I am concerned that a grant in this instance would legitimise this element.

7.1.7. In the context of the third party appeal, and the information presented in relation to the conditions of the lease agreement, I am also concerned that the applicant has not secured the relevant permission to alter the external façade of the building. However, I would also note the provision of Section 34(13) of the Planning and Development Act, 2000 as amended, which states that 'A person shall not be

entitled solely by reason of a permission under this section to carry out any development'. In this regard, a grant of planning permission in this instance would not remove the necessity for the applicant to comply with other legal obligations and requirements.

7.1.8. While I acknowledge the proposed use is open for consideration in the South Dublin County Council Development Plan 2016-2022, I am not satisfied that the proposed development accords with the requirements of Condition 5 of PA ref: S01A/0450. In particular, I note that the condition is included to ensure that all units within the development are occupied as part of the hotel complex to meet the specific tourism requirements and to ensure that the hotel suites are used solely for tourist accommodation and not sold or occupied as residential units independent of the hotel complex. In addition, the location of the suite is detached from the existing main public areas associated with the apart hotel and would not represent a co-ordinated or appropriate form of development in the context of the Citywest Campus.

7.1.9. As such, I recommend that the proposed development should be refused on the basis of non-compliance with the conditions of the parent grant of permission of the development on the site. I further consider that a grant of permission would legitimise a currently unauthorised development at the site, for which retention permission has not been sought or approved, would represent a haphazard form of development and would set an undesirable precedent for similar type developments within the Citywest Campus.

7.2. **Visual Impacts**

The proposed development seeks to insert two doors, in addition to the existing unauthorised door, into the north eastern and south eastern façade of the building at ground floor level. The existing building has been designed to present uniformity and balance. In my opinion, the introduction of doors in the prominent corner of the building results in a proliferation of opes which would not complement the existing architectural character of the building. I consider that if permitted, the development would result in a visual impact which would injure the wider general amenities of the Citywest Complex and would be contrary to the proper planning and sustainable development of the area.

7.3. Other Issues

7.3.1. Works to the External Façade

The Board will note that the pertinent issue arising in the third-party appeal relates to a disagreement on the remit of the applicant to include works to external walls. These requirements are set out in the 999 year lease agreement, which I consider to a civil matter. However, I would be satisfied that the provision of Section 34(13) of the Planning & Development Act, 2000 as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development' is sufficient to ensure that the civil issues is rectified prior to the commencement of development on the site.

7.3.2. Roads & Parking

The third-party has submitted that the existing suite has permission to use one car parking space associated with the use of the suite as a short-term tourist let. No permission is given for the use of any additional car parking spaces.

In the context of the location and scale of the proposed development, I am generally satisfied that the likely users of the restaurant would be residents in the hotel and apart-hotel on the Citywest Campus. As such, I am generally satisfied that should the Board be minded to grant permission for the proposed change of use of the suite, there would be no significant impacts arising in terms of roads and traffic.

7.3.3. Water Services

The existing suite is connected to the existing water services network. There is no objection to the development from a water services point of view.

7.3.4. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

7.4. Appropriate Assessment

The site is not located within any designated site. The closest Natura 2000 site is the Glenasmole SAC (Site Code: 001209) which is located approximately 6km to the south-east of the site. The Rye Valley / Carton SAC, (Site Code 001398), is located approximately 9km to the north west of the site.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also 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 be refused for the proposed development for the following stated reasons.

9.0 Reasons and Considerations

1. The proposed development would, by reason of the proposed use, contravene materially a condition attached to an existing permission for development namely, condition number 5 attached to the permission granted by South Dublin County Council on the 14th day of February 2002 under planning register reference number S01A/0450.
2. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a structure which includes elements, including current use as a permanent residence and the inclusion of an external door in the façade of the building, which are unauthorised. It is considered that a grant of permission in this instance would facilitate the consolidation of the unauthorised elements and would represent a haphazard form of development. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

A. Considine

Planning Inspector

3rd July 2020