



An
Bord
Pleanála

Inspector's Report ABP307144-20

Development	Change of Use for short-term letting of existing 3 residential units on a part-time basis.
Location	Bluebell Lodge Site, Old Naas Road, Bluebell, Dublin 12.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	2170/20.
Applicant	Lorraine McGarry.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Refusal.
Appellant	Lorraine McGarry.
Observers	None.
Date of Site Inspection	8 th June, 2020.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	4
4.0 Planning Authority Decision	4
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	7
7.0 Appeal Responses.....	8
8.0 Planning Policy	8
9.0 Planning Assessment	10
10.0 Conclusions and Recommendation.....	13
11.0 Appropriate Assessment	13
12.0 EIAR Screening Determination	10
13.0 Reasons and Considerations	13
14.0 Conditions	14

1.0 Introduction

ABP307144-20 relates to a first party appeal against the decision of Dublin City Council to refuse planning permission for a change of use from existing residential development to use as short-term residential letting. The development, which has been recently completed on site, comprises of three residential units together with office accommodation within a newly constructed building. The subject site is located within the centre of the Bluebell Industrial Estate off the Old Naas Road. Dublin City Council refused planning permission for a single reason stating that the development would result in the potential loss of permanent residential accommodation which would be contrary to the core principles of the Dublin Housing Strategy and the Core Strategy of the City Development Plan.

2.0 Site Location and Description

- 2.1. The site is located in the Riversdale Industrial Estate which forms part of the wider Bluebell Industrial Estate to the immediate north of the Old Naas Road, approximately 6 kilometres south-west of Dublin City Centre. The site is accessed off a narrow tarmac laneway which leads to the subject site and Bluebell Cemetery further north. The subject site is surrounded by industrial warehousing and retail warehousing uses including largescale building providers, second-hand vehicle retail outlets and warehouse and distribution companies, which are located along the Old Naas Road. The Bluebell Luas Station is located approximately 500 metres to the south-east of the site. There is no other residential development in the immediate vicinity. The nearest largescale suburban residential development is located to the north of the Old Naas Road along Bluebell Road and Bluebell Avenue c.300 metres to the east.
- 2.2. The site accommodates a part two/part three storey building which has recently been completed, and at the time of site inspection does not appear to have been occupied. It accommodates residential accommodation and office accommodation at ground floor level and additional accommodation together with an outdoor terraced area at first floor level. Additional residential accommodation is located at second floor level along the eastern elevation of the building. The building rises to a

maximum height of 9.58 metres and incorporates a flat roof and tergal fibre cement cladding incorporating a mixture of light and dark finishes. The external elevation of the existing building on site is indicated in the photographs attached. The building also incorporates a communal courtyard.

3.0 Proposed Development

- 3.1. A covering letter submitted with the planning application to Dublin City Council indicates that the existing development on site was completed in late 2019 and the building provides office facilities for the Company of the applicant alongside residential accommodation for construction workers. The three apartments onsite are used by the applicant to accommodate construction workers from the Roscommon area between Monday and Friday and the building is generally vacant and unused at the weekend/holiday periods. The building was constructed in lieu of providing hotel room facilities during the week for the construction workers.
- 3.2. The current application seeks that there would be additional use of the units at the weekend for short-term weekend accommodation in addition to housing construction workers during the week.

4.0 Planning Authority Decision

- 4.1. Dublin City Council refused planning permission for a single reason which is set out below.
- 4.2. *The development by itself and by the precedent for which a grant of permission would set, would be contrary to the stated provisions of the core strategy of the Dublin City Development Plan 2016 – 2022 which recognises residential units as a scarce resource and which need to be managed in a sustainable manner, so that the housing needs of the city are met. The subject site is located within a ‘Rent Pressure Zone’. The development resulting in the potential permanent loss of residential, would be contrary to the core principles of the Dublin Housing Strategy 2016 – 2022 which requires that the planning and building of housing and residential space in the city contributes to sustainable and balanced development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

4.3. **Documentation Submitted with the Application**

4.3.1. The application was accompanied by a covering letter by Quinn Barnwall and Buggy Architecture, Conservation Planning Consultancy. It sets out the rationale for the proposed development and argues that the proposed change of use to incorporate weekend residential usage would provide much needed additional accommodation at weekends and holiday periods in an area of the city that is well served by existing infrastructure facilities. The submission highlights that the use of three apartments for short-term letting would not displace the prevailing long-term rental use. The proposed change of use would not result in any loss of existing residential accommodation but would in fact provide additional residential usage at the weekend and for this reason should be considered to be consistent with the policies set out in the development plan and in accordance with the proper planning and sustainable development of the area.

4.4. **Assessment by Planning Authority**

4.4.1. A report from the Engineering Department Drainage Divisions states that there is no objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works.

4.4.2. The planner's report sets out the legislative framework and national guidance as it relates to the private rental sector. In this regard reference is made to Section 38 of the Residential Tenancies Amendment Act and the Planning and Development Exempted Development (No. 2) Regulations 2019 (S.I. No. 235 of 2019). These Regulations require that, within Rent Pressure Zones, planning permission is required for short-term letting. Reference is also made to Circular Letter PL4/2019 and PL10/2017 which also relate to the provision of housing in Rent Pressure Zones. The planning assessment notes that the site is located within a Rent Pressure Zone where there is a high demand for long-term residential properties. There are some reservations regarding the permanent change of use of three residential units to short-term letting apartments. The need to balance the competing demands of the city centre is acknowledged including the need to provide additional tourism accommodation. However, the proposal would result in the potential loss of residential stock from the residential housing system meaning less long-term and secure accommodation would be available in the city. The Planning Authority is not

satisfied with the provision of short-term accommodation at this location and the applicant has not made a significant effort to provide residential accommodation within this rent pressure zone. On this basis it is recommended that planning permission be refused.

5.0 Planning History

5.1. No history files are attached. Two planning applications are referred to in the planner's report.

Under Reg. Ref. 2376/19 planning permission was granted for the retention and completion of an existing partially constructed development consisting of the demolition of a two-storey house and ancillary workshop on site and the construction of a three-storey mixed use development with a gross floor area of c.540 square metres consisting of a commercial office and three apartments together with roof terraces at first floor level, the residential units comprised of:

- 1 three-bedroomed apartment.
- 1 three-bedroomed duplex unit and
- 1 four-bedroomed unit.

Under Reg. Ref. 4566/17 planning permission was granted for the demolition of an existing two-storey house and ancillary workshops on site and the construction of a new three-storey mixed use development with a gross floor area of 525 square metres consisting of one commercial office and three apartments together with roof terraces etc. Works also included four car parking spaces, bin storage and six cycle spaces.

5.2. Natural Heritage Designations

5.2.1. The nearest Natura 2000 sites are located in Dublin Bay the closest of which is approximately 9 kilometres to the east of the subject site.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a first party appeal on behalf of the appellant Lorraine McGarry, by Quinn Barnwall and Buggy, Architecture Conservation and Planning Consultancy. The grounds of appeal are outlined below.
 - 6.1.1. It is not accepted that the proposed development would set a precedent which would result in the potential permanent loss of residential units. The apartments are being used for the purpose for which they were built and for which planning permission was granted. There is no intention nor is there any reason why the existing use would cease and thus result in the loss of any residential units. The building was built to accommodate construction works during the working week and this use was continued. What is being applied for under the current application is a change of use for additional residential usage for short-term letting for an additional number of days per year.
 - 6.1.2. It is argued that the units are not, and will not be in the foreseeable future, traditional long-term rental units and therefore will not be removed from that market as suggested in the planner's report. What is being proposed in this instance is that the existing residential units would be made available to additional residents for a maximum of 120 nights per year or a more modest period should the Board consider it to be suitable.
 - 6.1.3. The proposal will not result in the removal of residential units, which it is acknowledged, constitute a scarce resource in the city centre. In this instance the existing residential units will be used efficiently and economically as practicable. While the applicant accepts that housing is a finite resource which must be managed in a sustainable manner, it is difficult to reconcile how the use of three apartments for short-term letting which is ancillary to the principle use would contravene any stated provision in the core strategy or housing strategy of the current Dublin City Development Plan. It is also stated that in the immediate vicinity more than 1,700 residential units are proposed.
 - 6.1.4. While it is acknowledged that there is a high demand for housing units in the generally Dublin area, the appellant is of the opinion that the use of three existing residential units for additional short-term letting would have a negligible impact on the overall housing market.

- 6.1.5. There has been a history of anti-social and illegal activity on the site prior to the construction of the existing building. The proposed development would not have any negative impacts on adjacent land use and the site is located approximately 400 metres from the Bluebell Luas Station and therefore allows easy connectivity with the city centre. The owners also have concern that the existing building which lies empty at the weekends could be an attraction for anti-social or illegal activities on site.
- 6.2. It is stated that there are no policy statements in either the housing strategy or the core strategy which offers a presumption against or the prohibition of short-term letting developments.
- 6.3. Finally, it is stated that there appears to have been no serious review or analysis of the proposed development and that the Planning Authority refused permission without due consideration of the nature and circumstances and scale of the development.
- 6.4. In conclusion, it is stated that the proposal would not result in the loss of any residential units.

7.0 **Appeal Responses**

It appears that Dublin City Council have not submitted a response to the grounds of appeal.

8.0 **Planning Policy**

- 8.1. The site is governed by the policies and provisions contained in the Dublin city development plan 2016 - 2022. The subject site is located in an area zoned Z6 “*to provide for the creation and protection of enterprise and facilitate opportunities for employment creation*”. The site is also located in a zone of archaeological interest being located in close proximity to Bluebell Cemetery to the north-west. Residential development is a use which is open for consideration under the land use zoning objective.
- 8.2. Chapter 5 of the development plan relates to housing. It notes that there is a pressing need to facilitate significant increase in housing output while creating high quality accommodation to address a range of housing issues including

homelessness. The development plan also acknowledges that there is a key challenge in the shortage of supply of rental accommodation compared to demand which is causing price inflation.

8.3. Departmental Circulars PL 10/2017

8.4. Circular PL10/2017 and PL 04/2019 sets out guidance on planning applications for short-term lettings.

8.5. Circular PL10/2017 This Circular seek the protection of residential rental stock in areas of high housing demand/need. The strategy for the rental sector recognises the issue of potentially significant numbers of properties being withdrawn from the long-term rental market for use for short-term lettings and the negative impact this would have for the supply and availability of residential rental accommodation. The growing use of online platforms may, if not adequately regulated, facilitate, and encourage this trend.

8.6. There is significant concern that the ability to use online platforms may encourage:

- Landlords who normally provide residential rental accommodation to tenants, to seek to obtain higher returns by ceasing residential letting and moving to short-term letting to tourists and business traveller customers.
- Investors to purchase residential units for short-term letting as an investment option.

8.7. Both these scenarios involve residential properties being lost to the residential housing system meaning that less long-term and secure accommodation will be available for the growing numbers of family and people who need it. The Department is also concerned that the ability to use online short-term letting platforms might facilitate or promote the use of housing units such as apartments for short-term letting purposes contrary to the provisions of the Planning Acts and create planning enforcement difficulties for the Planning Authorities.

8.8. The circular also highlights issues in relation to amenity and nuisance issues and also sets out guidance for planning applications relating to short-term lettings.

8.9. Circular PL4/2019. The primary objective of this circular is to influence the bringing back of houses and apartments in designated Rent Pressure Zones which are

currently being used for short-term letting purposes to the traditional long-term rental market thereby helping to ease the accommodation shortage pressures currently being experienced in this area.

- 8.10. The Circular sets out the summary of the new legislative provisions which include Section 38 of the Residential Tenancies (Amendment) Act 2019 and inserts a new Section 3A into the Planning and Development Act 2000 to provide that short-term letting of a house in a Rent Pressure Zone is a material change of use of the property concerned thereby requiring planning permission, unless specifically exempt from this requirement. A short-term letting is defined as a letting of a house or apartment or part of a house or apartment for any period not exceeding 14 days.

9.0 EIAR Screening Determination

The current application before the Board does not constitute a class of development for which EIAR is required.

10.0 Planning Assessment

- 10.1. I have read the entire contents of the file and visited the subject site and its surroundings and have had particular regard to the Planning Authority's reason for refusal and the grounds of appeal challenging the reasoning set out in the refusal. Having regard to the fact that planning permission has already been granted for a residential development on the subject site and this development has already been constructed, I consider that the Board can restrict its deliberations solely to the issue raised in the reasons for refusal and the grounds of appeal namely whether or not the use of the accommodation in question for short-term letting is contrary to Dublin City Council's Housing Strategy and Core Strategy and would result in the loss of long-term housing stock in Dublin City Centre. I inspected the site on Monday 8th June, 2020. The Board will note from the photographs attached that the building did not appear to be occupied and was fenced off during the time of site inspection. However, the fact that the building was not in use could be attributed to the Covid-19 restrictions in place at the time of site inspection.
- 10.2. Dublin City Council refused planning permission on the basis that the proposal could set an undesirable precedent in transferring residential units from long-term letting to

short-term letting which could undermine the long-term housing supply the city and would also be contrary to the strategic objectives set out in Circular Letter PL4/2019 and Circular Letter PL10/2017 issued by the Department of Housing, Planning and Local Government. The appellant in the grounds of appeal and also in the documentation submitted with the planning application, highlight the fact that construction workers employed by the McGarry Group will occupy the building from Monday to Thursday and that the building is generally vacant and unused at the weekends and holiday periods. Furthermore, what is proposed in this instance is that short-term letting would only occur at the weekends and during holiday periods. The proposal before the Board therefore would not result in the transition of the residential units from units which currently facilitate long-term rental accommodation to units which would be available for short-term lettings/Airbnb type accommodation on a permanent basis. The proposal would result in the existing units being used for long-term rental accommodation during the week, and in doing so would provide the much needed rental accommodation for workers in Dublin City Centre and then rather than becoming vacant at the weekend would offer an additional function as short-term letting accommodation for tourists or other such visitors to the city centre.

- 10.3. While the development is located in an industrial estate, the principle of residential development in this location has already been established. In this regard the suitability for residential development be it long-term rental accommodation or shorter-term Airbnb accommodation is not the issue to be determined in this instance. The marketability of the units in question for the purposes of short-term letting accommodation such as Airbnb is a matter for the applicant. The grounds of appeal point out that the subject site is less than half a kilometre from a Luas stop which provides high quality and frequent public transport connections with the City Centre.
- 10.4. What is proposed in this instance therefore is not a change of use from long-term residential rental accommodation to short-term residential letting but rather involves an intensification of use whereby the residential units instead of being occupied for a period of five days a week, would (subject to demand), result in the buildings being occupied throughout the entire 7-day period on any given week. Thus, the proposal rather than seeing one type of rental accommodation being replaced by another type of rental accommodation it would see both long-term and short-term lettings occur

within the building side by side throughout the 7 day period. This in my view is the critical issue in determining the current application. It is reiterated, according to the information contained in the grounds of appeal, that the proposal will not remove and undermine the supply of rental accommodation within the city but will rather result in the units being used for permanent longer-term rental accommodation during the working week and shorter-term Airbnb/tourist and visitor accommodation at the weekends. It would in my view therefore constitute a more efficient use of a scarce resource within the city.

- 10.5. The Planning Authority point out that under the Planning and Development Regulations, 2019 (S.I. No. 235 of 2019) that, within designated Rent Pressure Zones, planning permission is now required for short-term letting within existing residential development.
- 10.6. Prior to the enactment of this legislation the nature of residential accommodation to be provided within a residential unit was exempted development. The applicant is therefore required to obtain permission for any short-term residential lettings within the building in question. The applicant is obviously acknowledging the requirements of this new legislation, in applying for planning permission on the basis of the planning legislation, therefore I consider that the Board can adequately regulate the use of the existing development by way of condition and can specify that short-term letting can only occur on certain days of the week, namely the weekend and also during the period of builders holidays which amounts to 2 weeks during the summer. If the Board were to permit short-term lettings during the periods suggested, this would amount to a maximum short-term letting period of 114 days (52 weekend plus 10 days holidays). It would appear reasonable in my view that the Board would incorporate a condition specifying that the short-term letting accommodation permitted within the development would:
 - (a) For Friday nights and Saturday nights only.
 - (b) For a two-week period only during the month of either July or August.
- 10.7. For the purposes of clarity the Board could also specify that short-term letting within the building shall be restricted to a maximum period of 114 days in any one year.

10.8. If the Board therefore consider it appropriate to grant planning permission, I recommend that such a condition be incorporated in any grant of planning permission.

11.0 Conclusions and Recommendation

Arising from my assessment above, I recommend that the Board overturn the decision of Dublin City Council and grant planning permission for the proposed development based on the reasons and considerations set out below.

12.0 Appropriate Assessment

12.1. Having regard to the nature and of the proposed development which involves a change of use to short-term letting accommodation for weekend use only and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

13.0 Reasons and Considerations

It is considered that the proposed change of use for short-term letting in conjunction with the continuance of long-term letting within the existing residential units at the site which is the subject of the appeal, would not, subject to being restricted to weekend periods and a two-week holiday period for the purposes of short-term lettings, undermine the housing needs of the City or be contrary to the core principles set out in the Dublin Housing Strategy or Housing Policies contained in the Dublin City Development Plan 2016 – 2022. It is considered therefore that the proposed development would be in accordance with the proper planning and sustainable development of the area.

14.0 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. Any short-term letting of the residential unit shall be restricted to:
 - (a) Friday nights and Saturday nights in any given week. During the period of Sunday to Thursday inclusive residential units shall accommodate long-term rental accommodation only and shall not be used as short-term letting.
 - (b) On one occasion in any calendar year the residential units may be used for short-term letting for a continuous two-week period. This two-week period shall be restricted to the months of July and August only.
 - (c) Any short-term letting of the residential unit shall not exceed a total of 114 days in any calendar year.

Reason: To regulate the supply of short-term letting within the development and to ensure the continued supply of long-term residential accommodation within the residential units.

Paul Caprani,
Senior Planning Inspector.

6th July, 2020.