



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307743-20

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<b>Development</b>	Change of use from commercial/retail unit to 2 residential units
<b>Location</b>	Block F (Kingsbridge), Clancy Quay (former Clancy Barracks - which includes Protected Structures) at South Circular Road, Islandbridge, Dublin 8
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	2528/20
<b>Applicant(s)</b>	KW Investment Funds ICAV.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	KW Investment Funds ICAV.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> of October 2020
<b>Inspector</b>	Adrian Ormsby

## 1.0 Site Location and Description

- 1.1. The site is located c. 3km west of Dublin City centre, within a recently developed apartment scheme known as Clancy Quay (formally Clancy's Barracks) in Islandbridge. The site is also located c.250m south of the Phoenix Park.
- 1.2. The site itself has a stated area of 310 sq.m and is located on the ground floor of a seven storey building known as Block F. The site is located on the northern side of this block and fronts an open pedestrian area and a walkway along the River Liffey. The site is accessed from the west off the South Circular Road.
- 1.3. The site is recessed beneath upper floors which provide a covered canopy area supported by columns. This area is open to the paved and pedestrian areas around the building. The units do not appear to be in any active use. They are finished in ground to ceiling glazed walls and are clearly intended for commercial/retail purposes.
- 1.4. There are a number of Protected Structures located throughout the Clancy Quay scheme but the building in which the site is located is not protected.

## 2.0 Proposed Development

- 2.1. The development comprises-
  - The change of use of one ground floor commercial/retail unit of 120.7 sq.m
  - To two one bedroom apartments of 52.3sq.m and 58.3 sq.m
  - Two dual orientation private terraces
  - Reallocation of car parking spaces
  - Elevational changes.

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 29<sup>th</sup> of June 2020 Dublin City Council refused permission for the following reason-

- Having regard to:
  - a) the location of Block F along the River Frontage of this scheme,
  - b) the Z10 mixed use zoning of the site, and
  - c) the planning history on the site, and the subsequent gradual erosion of the mixed uses within this scheme over the years;

It is considered that the proposed change of use of this commercial/retail unit to residential use would be detrimental to the long-term viability of this large mixed-use scheme. The proposed development would also be contrary to a previous condition attached to Reg. 3274/13, Condition 2, which required the retention of this unit for commercial purposes. The proposed change of use would therefore be contrary to the proper planning and sustainable development of this area and contrary to the zoning of this area which is 'to consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas'.

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

The recommendation to refuse permission in the Planner's Report reflects the decision of the Planning Authority. The main points are outlined as follows:

- A background to the overall scheme was set out identifying three phases
- A use analysis map has been submitted showing non-residential uses as originally permitted in Clancy Quay. The ground floor of blocks F, E2, E1, and D are all shown in commercial retail use along the river front. An 'As built' map has also been submitted showing the current level of non-residential uses in the scheme. The amount of non-residential uses has seriously diminished on the site with Blocks K1, K2 and the current block as vacant.
- Apartments are of a reasonable size, dual aspect and with private terraces.

- Reg Ref 2527/20 is a concurrent application to also change the use of ground floors of Block K1 and K2 from retail/commercial to residential use
- 3274/13 was an application for change of use from commercial to residential in Blocks D, E1, E2, and F. Condition 2 of this permission retained one unit for commercial purposes i.e. Block F.
- There is a concern over the loss of the mixed uses on the site as a whole. The Z10 zoning is a mixed use zoning.
- The site fronts onto what is hoped will become a vibrant riverside walk and public space. Hence Block F was conditioned out of application 3274/13.
- The proposed change of use would not be justified in this large mixed use scheme. There has been a gradual erosion of mixed uses from this scheme that would detract from the long term viability of the scheme and the area.
- Once the overall scheme is completed there will be an increased demand and footfall for commercial retail uses. Therefore, the proposed development would be contrary to proper planning and development.

#### 4.2. **Other Technical Reports**

- Drainage Division- No objections subject to conditions

#### 4.3. **Prescribed Bodies**

- None

#### 4.4. **Third Party Observations**

- None

### 5.0 **Planning History**

There is extensive planning history throughout the lands that form Clancy Quay but for the purpose of this application the following are considered relevant-

- 2527/20- Change of use of: -3 no. existing vacant commercial/retail units (c.402.8 sq.m), 1 no. existing security office (c.18.2 sq.m), and 1 no. existing management office (c.140.3 sq.m) with ground floor access (c.5.9 sq.m), to 7 no. residential units, 1 no. retail unit (c.30.8 sq.m) and 1 no. security office (c.36.5 sq.m), No decision to date.
- 3274/13- Change of use of 1 no. existing vacant, ground floor commercial/retail within Blocks D, E1, E2 and F (4 no. new residential units), 09-Jan-2014, Grant-
- Condition 2 stated '*The proposed change of use of the western most unit shall be omitted and this unit shall be retained for commercial purposes*'. This is Block F and unit subject to current application
- 2771/09 Permission for modifications to previously permitted development under 6113/04 and An Bord Pleanála Reg. Ref. 29S.216060. 27-May-2010, Grant
- 6113/04/29S.216060-
- Permission for refurbishment of 11 No. existing protected structures, and the construction of a mixed use development of total gross floor area approx.100,410 sq.m. including: 959 apartments, 13-Jul-2006, Grant

## 6.0 Policy Context

### 6.1. Ministerial Guidelines-

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018. The following Specific Planning Policy Requirements are relevant-

#### Specific Planning Policy Requirement 1 states-

*Apartment developments may include up to 50% one-bedroom or studio type units (with no more than 20-25% of the total proposed development as studios) and there shall be no minimum requirement for apartments with three*

*or more bedrooms. Statutory development plans may specify a mix for apartment and other housing developments, but only further to an evidence based Housing Need and Demand Assessment (HNDA), that has been agreed on an area, county, city or metropolitan area basis and incorporated into the relevant development plan(s).*

Specific Planning Policy Requirement 2 states-

*‘For all building refurbishment schemes on sites of any size.....:  
....• Where between 10 to 49 residential units are proposed, the flexible dwelling mix provision for the first 9 units may be carried forward and the parameters set out in SPPR 1, shall apply from the 10th residential unit to the 49th;  
.....*

Section 2.22 states-

*‘Development Plans should provide for flexibility in respect of dwelling mix in small-scale building refurbishment and urban infill development schemes:  
.....*

*All standards set out in this guidance shall generally apply to building refurbishment schemes on sites of any size, or urban infill schemes, but there shall also be scope for planning authorities to exercise discretion on a case-by case basis, having regard to the overall quality of a proposed development.*

Specific Planning Policy Requirement 3 states-

*Minimum Apartment Floor Areas:*

- |  |                |
|--|----------------|
| <i>• Studio apartment (1 person)</i>     | <i>37 sq.m</i> |
| <i>• 1-bedroom apartment (2 persons)</i> | <i>45 sq.m</i> |

#### Specific Planning Policy Requirement 4- Dual Aspect

- 33% required in central and accessible locations, may be reduced for refurbishment schemes on a case by case basis subject to quality.

#### Specific Planning Policy Requirement 5- Ground Floor Ceiling Height

- Ground floor apartments a minimum 2.7m

### 6.2. **Dublin City Development Plan 2016–2022**

#### Zoning

#### Section 14.8.10 – Inner Suburban and Inner City Sustainable Mixed Uses Zone Z10

##### *Land-Use Zoning Objective Z10:*

*To consolidate and facilitate the development of inner city and inner suburban sites for mixed uses, with residential the predominant use in suburban locations, and office/retail/residential the predominant uses in inner city areas.*

Residential is a Permissible Use in Zoning Objective Z10

Section 14.8.10 also states-

*‘The concept of mixed-use is central to the development or re-development of these sites and mono uses, either all residential or all employment/office use shall not generally be permitted.’*

A small section of the northern part of the site is located within Z9 zoned lands-

#### Section 14.8.9 Amenity/Open Space Lands/Green Network – Zone Z9

##### *Land-Use Zoning Objective Z9:*

*‘To preserve, provide and improve recreational amenity and open space and green networks.’*

Section 14.8.9 also states-

*This zoning includes all amenity open space lands which can be divided into three broad categories as follows:*

- *Public open space*
- *Private open space*
- *Sports facilities in private ownership*

The site is also located within a Conservation Area-

Section 11.1.5.4- Architectural Conservation Areas and Conservation Areas

*The policy mechanisms used to conserve and protect areas of special historic and architectural interest are:*

*Land-use zonings: .....and the red-hatched areas shown on the zoning objective maps.*

The policy to ensure the conservation and protection of the areas of special historic and architectural interest is as follows-

*It is the Policy of Dublin City Council:*

*CHC4: To protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.....*

The site is also located within a Strategic Development and Regeneration Areas

Section 15.1.1.10 of the Development Plan- SDRA 7 Heuston and Environs.

Figure 27- Page 277 of the Plan identifies the boundary and outlines the Key Development Principles.

Development Standards- Chapter 16

- Section 16.10.1 Residential Quality Standards – Apartments



### 6.3. Natural Heritage Designations

6.3.1. The site is located c. 5.5 km to the south west of the South Dublin Bay and River Tolka Estuary SPA (004024) and c.6km north west of the South Dublin Bay SAC (000210).

6.3.2. The site is located c. 1km north of the Grand Canal pNHA.

### 6.4. EIA Screening

6.4.1. Having regard to the limited nature and scale of the proposed development it is considered that 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.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

A first party appeal has been received and can be summarised as follows-

- The existing retail unit has remained unoccupied since Block F was constructed in 2009 and since an unsuccessful application to change its use in 2013.
- Similar changes of use have been implemented at ground floor level in existing Blocks D, E1, and E2 (3274/13)
- The unit has been vacant through a recession and an economic recovery. The location of the unit is not favourable to attracting or sustaining a viable commercial use. Residential units are sustainable from a long term viability and vitality perspective.
- Condition 2 of 3274/13 has proved unworkable. The unit has failed to yield a commercial operator since the parent permission 6113/04 (ABP 216060) and completed for occupation. The prospect of finding a commercially viable end user remains unrealistic.

- Movement of pedestrians and cyclist at Clancy Quay is prioritised at surface level. There are a very limited number of car parking spaces allocated to serve the commercial uses within Clancy Quay. The viability of existing units relies heavily on custom by local residents rather than casual trade.
- The unit is located along the northern side of Block F which faces the Liffey. It was originally envisaged that this would be a vibrant public walkway connecting through to other lands. There is no firm plan existing to extend the riverside walk into CIE lands to the east. As such there is no passing trade and the space acts as a residential amenity space for Clancy Quay.
- The persistent vacancy detracts from the riverside open space. The proposed development would enhance street interaction and the vitality of the scheme.
- The location of the site off the public road are less likely to draw custom beyond the residential community which is not sufficient to sustain more than one or two such uses which are already retained closer to the public roads.
- Seven blocks in Phase 1 of the overall development have non-residential uses at ground floor level.
- Phase 2 is predominantly residential
- Phasing 3 includes a small supermarket (c. 598 sq.m)
- The commercial units located closer to the South Circular Road have been more successful at attracting end users
- There has not been *'a gradual erosion of the mixed uses within the scheme over the years'* as identified by the Planning Authority. 4 no. units subject to the previous permission for change of use from 2007-14 had failed to secure viable commercial uses since completion in 2009.
- A significant mix of existing and permitted uses would remain within phase 1 (2,978.3 sq.m commercial), Phase 3 (598sq.m commercial) and the nearby redevelopment of the Black and Amber pub site (82 sq.m commercial). Total commercial 6,658.97 for a combined residential unit total of 867. Figures assume current application is permitted)

- The proposed use is consistent with the Mixed Use zoning objective. There is no specific ratio of uses provided within the development plan and as such no definitive measure of compliance.
- The overall Clancy Quay development will continue to represent a mixed use scheme.
- The proposed development is consistent with planning strategy to consolidate development in the inner city and will ensure effective use of vacant accommodation.
- The apartment guidelines recognise a deficit of housing for 1-2 person households.
- The development meets all the SPPR's.

## 7.2. **Planning Authority Response**

- None received.

## 7.3. **Observations**

- None

## 8.0 **Assessment**

### 8.1. **Main Issues**

I have examined the application details and all other documentation on file, including the submission received in relation to the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the relevant issues for consideration in this appeal are as follows-

- Zoning
- Long term Viability of the Mixed Use scheme
- Residential Amenity- Apartments
- Appropriate Assessment

## 8.2. Zoning

The majority of the site is located within Land-Use Zoning Objective Z10- Inner Suburban and Inner City Sustainable Mixed Uses. Residential is a Permissible Use in this zoning objective.

A very small portion of the northern part of the site is located within Z9 zoned lands- Amenity/Open Space Lands/Green Network. Residential Uses are neither Permissible Use nor Open for Consideration Uses within this zoning objective.

Section 14.8.9 in relation to Z9 zoning states-

*This zoning includes all amenity open space lands which can be divided into three broad categories as follows:*

- *Public open space*
- *Private open space*
- *Sports facilities in private ownership*

The application proposes terrace areas to both apartments along the northern boundary including the recessed areas under the upper floors. The applicant proposes high and low planters to match the existing planters to other blocks. I am satisfied these terrace area fall with 'amenity open space lands' as per section 14.8.9 of the Development Plan.

The site is also located within a designated red hatched Conservation Area of the Development Plan. The application involves a change of use of an existing recently built structure. The development as proposed would not impact on the Conservation status of the area.

The proposed development is therefore consistent with the zoning objectives of the site.

## 8.3. Long term Viability of the Mixed Use scheme

- 8.3.1. The Planning Authority considers that the proposed development and loss of a ground floor commercial unit will be detrimental to the long-term viability of this large

mixed-use scheme and that the proposal would be contrary to condition 2 of Reg. Ref No. 3274/13 requiring this unit to be for commercial purposes.

- 8.3.2. The applicants contend that despite a commercial unit being permitted since 2004 and following completion of the overall building in 2009 this ground floor unit has remained vacant through a recessionary and economic recovery period. They also argue that notwithstanding the zoning objective of the site there is no specific ratio of uses provided within the development plan and as such no definitive measure of compliance with same.
- 8.3.3. The site is located c.150 metres off the South Circular Road and past existing commercial operators who are operating closer to the public road. The site is not easily visible from the South Circular Road or from other public places. I tend to agree with the applicants that the site is not likely to benefit from passing trade given its 'out of the way' location from public areas.
- 8.3.4. The Planning Authority and the applicants both refer to the prospect of the site fronting onto what in the future may become a vibrant riverside walk and public space. The Planning Authority also detail that when the Clancy Quay scheme is complete there will be increased demand and footfall in the area.
- 8.3.5. The site is located within a Strategic Development and Regeneration Areas as outlined in Figure 27 of the Development Plan. This map outlines Key Development Principles including Green Linkages (with pedestrian cycle connections). This map does not identify such linkages along the River Liffey in front of the application site.
- 8.3.6. The Planning Authority has raised concerns over the erosion of mixed uses within this scheme referring to their grant of permission for three similar units to change to residential uses and a condition restricting the subject unit to commercial under 3274/13. Although the site is zoned for Mixed Uses there is no quantum of floor area for such uses set out. In this regard the applicants have identified 3,576.3 sq.m of commercial space within the Clancy Quay Scheme and a further 82 sq.m permitted under the nearby Black and Amber Scheme.
- 8.3.7. Given the sites location and historical difficulties in attracting a commercial operator, its lack of permeability with adjoining lands, the absence of specific objectives in the Development Plan to this effect and the extent of commercial space available within the Clancy Quay Scheme, I am satisfied that the development as proposed would

not be detrimental to the long-term viability of this mixed use scheme and would be in accordance with the Mixed Uses zoning objective of the area.

#### **8.4. Residential Amenity- Apartments**

- 8.4.1. This application is for the change of use of a commercial unit permitted under 2771/09 to two one bedroom apartments amendments. The proposed development shall be assessed against the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities in March 2018 .
- 8.4.2. The 2018 guidelines introduced a number of Specific Planning Policy Requirements (SPPR) that the proposed development must comply with. In the context of the existing development and the floor area available it would not be reasonable or pragmatic to insist the current application provides a mix of units in accordance with SPPR 1 and 2. Notwithstanding this, section 2.22 details that there shall also be scope for planning authorities to exercise discretion on a case-by case basis, having regard to the overall quality of a proposed development.
- 8.4.3. SPPR 3 sets Minimum Apartment Floor Areas of 45 sq.m are required for one bedroom apartments (2 persons). The two proposed apartments have stated floor areas of 52.3 sq.m and 58.3 sq.m both of which exceed the required area by more than 10%. While this is not a requirement in this instance (as per section 3.8 of the guidelines) the additional floor area contributes to the quality of the overall proposal.
- 8.4.4. The proposed development complies with the requirements of SPPR 4 in relation to dual aspect requirements. One apartment facing north and east. The second apartment faces north and west. The proposed apartments have ground to ceiling heights of 3.1m and as such also comply with SPPR 5 in terms of the Minimum Ceiling Heights requirement of 2.7m.
- 8.4.5. The guidelines also set out a number of other requirements in Appendix 1- Required Minimum Floor Areas and Standards. I am satisfied the proposal complies with all of these requirements. In particular the extent of private open space terrace areas 39.3 sq.m and 48.9 sq.m (well in excess of the 5 sq.m requirement) with two orientations significantly contributes to the overall quality of the proposed development.
- 8.4.6. Overall, I am satisfied the proposed development complies with the requirements of the 2018 Apartment Guidelines.

## **8.5. Appropriate Assessment**

- 8.5.1. Having regard to the nature and small scale of the proposal and the distance from 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.

## **9.0 Recommendation**

- 9.1. I recommend that planning permission should be granted, subject to conditions as set out below.

## **10.0 Reasons and Considerations**

- 10.1. Having regard to the Dublin City Development Plan 2017-2023, the provisions of the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2018 and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not be detrimental to the long-term viability of Clancy Quay, would be in accordance with the Z9 and Z10 zoning objectives of the site and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 28<sup>th</sup> day of July 2020, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

Reason: In the interest of public health.

3. Prior to commencement of development, the developer shall enter into water and/or waste water connection agreement(s) with Irish Water.

Reason: In the interest of public health.

4. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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.

Reason: In order to safeguard the [residential] amenities of property in the vicinity.

5. The development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

6. 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 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.

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.

7. 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 within three months of the date of this order 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.

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.

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Adrian Ormsby  
Planning Inspector

27<sup>th</sup> October 2020