



An
Bord
Pleanála

Inspector's Report ABP-308838-20

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| Development | Hotel |
| Location | 180, 182, 183 and 184 James's Street, Dublin 8 |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3444/20 |
| Applicants | James's Street Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Refuse permission |
| Type of Appeal | First Party |
| Appellants | James's Street Hotel Ltd. |
| Observers | None |
| Date of Site Inspection | 29 th January 2022 |
| Inspector | Stephen J. O'Sullivan |

1.0 Site Location and Description

- 1.1. The site stands on a main street c2km west of Dublin's city centre opposite St. James Hospital. It has a stated area of 2,066m². It is a vacant site with a disused shed upon it. The site has frontage along the southern side of James's Street that is interrupted by a contemporary 6 storey apartment block, which the site surrounds on three sides. Its eastern boundary adjoins what appears to be vacant industrial premises that has a narrow two-storey building and vehicular access on James's Street with sheds and an extensive hard standing behind them. The site's western boundary abuts the stepped pedestrian lane at Cromwell's Quarters for a distance of c42m. The site and that lane slope down to the north with a drop of c9.5m. The building on the other side of Cromwell's Quarters is known as Tathony House. It is two and three storeys high and has windows in its wall along the western side of the lane. It is used as a hostel. The northern boundary of the site adjoins the curtilages of a two-storey house and 2 three-storey apartment buildings that face Bow's Lane, as well as a vacant plot at the corner of Bow's Lane and Cromwell's Quarters.

2.0 Proposed Development

- 2.1. It is proposed to build a hotel on the site with a stated floor area of 4,864m² and 148 bedrooms. The building would front directly onto James's Street. It would be seven storeys high at the eastern end of this frontage. This part of the hotel would be 2.6m higher than the existing six storey apartment building which it would adjoin. The frontage to the west of the existing building would step down with elements of four, three, two and one storey, all over two levels in a basement whose lower level corresponds to the ground level at the northern end of the site. The building would not have frontage along Cromwell's Quarter. There would be a railing along that lane. The development would provide a private landscaped area on the other side of that railing at the corner with James's Street, with a lightwell to the north of that space that would be recessed c3.7m from the site boundary. The hotel would have three and four storeys of accommodation on the northern part of the site that would be between 1.9m and 11.9m from the northern boundary. There would also be a separate single storey plant room on the site's boundaries in its north-eastern corner. The hotel's elevations along James's Street and towards Cromwell's Quarters would

be mainly finished in brick. The eastern side of the seven storey element at the south-eastern corner of the site would be finished in metal cladding without any windows. The rest of the building would be finished mainly in render. No parking is proposed.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused permission for one reason which stated that the proposed development would not provide an appropriate transition in scale along James Street or a sense of enclosure along Cromwell's Lane and so would have a negative impact on the public realm. The reason concludes that the proposed development would be seriously injurious to the amenity of the area and would depreciate the value of property in the vicinity.

3.2. Planning Authority Reports

3.3. Planning Reports

It was noted that there is permission for a 149 room aparthotel on the site. Given the Z1 zoning, this planning history and the proximity of the hospital, the principle of developing a hotel on the site is accepted. The development would not have a negative impact on the residential amenities of the dwellings to the north along Bow's Lane or on those of the property to the west at Tathony House. The heights along James's Street are inappropriate. The development would not provide an appropriate transition in scale between the 3 storey building west of Tathony House and the existing 6 storey apartment block. It would appear visually incongruous along James's Street. The stepped and recessed building would not provide a sense of enclosure along Cromwell's Quarters and would therefore have a negative effect on the public realm. The form and mass of the proposed development does not respond to its urban context and would have negative impact on the character of the street. The reports from the Transportation and Drainage Sections were noted, as was that from the City Archaeologist. It was recommended that permission be refused..

3.3.1. Other Technical Reports

Transportation and Drainage Divisions stated no objection subject to standard conditions. The City Archaeologist noted that the site was within the zone of constraint on the record of monument and places for the historic city of Dublin and recommended that a full archaeological assessment be required as further information

3.4. Third Party submissions

None.

4.0 Planning History

ABP-300057-17, Reg. Ref. 2950/17 – In May 2018 the board granted permission for a 7 storey aparthotel on the site. This permission has not been implemented.

5.0 Development Plan

5.1. **Dublin City Development Plan 2016-2022** –The site is zoned for residential use under objective Z1. Hotels are open for consideration under this zoning. Policy CEE 12 is to promote and facilitate tourism as one of the key pillars of the city’s economy and to support an increase in facilities such as hotels.

5.2. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

- After the board granted permission for an aparthotel on the site under ABP-300057-17 the owner of the property to the west at Tathony House made a claim in the High Court that their property had a right to light across the appeal site. This claim was accepted by the site’s owners. The current

application was made to seek permission for the greatest level of development on the site that did not interfere with the right to light to Tathony House whose existence has now been established.

- The existing condition of the site detracts from the character of the area.
- The development would not have a negative impact on the appearance of James's Street. The council have not given sufficient weight to the right to light that exists for Tathony House and its impact on the way the appeal site can be developed. It effectively sterilises the western part of the site and requires the stepping down of heights there. The council's approach involves an unreasonably selective application of development plan policies. Section 11.1.5.4 of the plan says that proposals should not harm buildings in conservation areas. An adequate density of residential development could not be achieved on the site. The current proposal is the only viable approach to the redevelopment of this derelict brownfield site. The permitted development on the site would not have provided a uniform height for buildings along James's Street. The drop in levels along the street to the west means that there will always be variation in the perceived level of buildings along it.
- The development will be along the footpath on James's Street and will bring activity to it. The proposed landscaping will enhance the public realm along Cromwell's Quarters. The set back of the building line there will create a defensible buffer while increasing surveillance of the path. The relationship of the proposed development with Cromwell's Lane is similar to that of the permitted one here. The council's reason for refusal does not take proper account of the right to light issue. The applicant would be willing to make a financial contribution to works to improve the public realm at Cromwell's Quarters.

6.2. Planning Authority Response

None received.

7.0 Assessment

- 7.1. There is an extant permission for an aparthotel on this site. Hotel uses are open for consideration under the Z1 zoning that applies to the site. The area is close to the city centre and the major hospital at St. James's and is well served by public transport, making it a sustainable location to meet the demand for short-stay accommodation in Dublin without increasing road traffic or requiring land to be given over to car parking. No party objected to the use of the site for a hotel. The principle of the proposed development is therefore acceptable.
- 7.2. There was no objection to the development on grounds of access or drainage from the relevant sections of the council or third parties. The submitted engineering drawings show the installation of a loading bay on the street in front of the site. This is outside the boundary of the site and so is merely an indicative proposal that would not be authorised by a grant of permission on this application, but it does show that service vehicles could stop on the carriageway there without blocking traffic. Neither was any concern raised by the council or third parties regarding the impact of the proposed development on the amenities or development potential of nearby property including the apartments and houses to the north, the hostel across the lane to the west or the vacant sites to the east along James's Street. After inspecting the site and considering its planning history and the documents submitted with this application and appeal, and I see no reason to raise such issues now. I note the report from the city archaeologist and the information that it seeks. It would be consistent with the board's previous grant of permission to require this information by condition.
- 7.3. The outstanding issue is therefore the one cited in the council's reason for refusal, which is the impact of the proposed development on the character of James's Street and Cromwell's Quarters. The council's concerns in this regard have a reasonable basis. The proposed development does not provide frontage that would properly define, enclose and supervise the lane at Cromwell's Quarters or create direct access or activity there. The stepping down of the frontage along the main urban thoroughfare of James's Street from four storeys to none at a junction with an alley looks profoundly odd and would violate the normal principles of urban design where the scale and function of the buildings facing the main street would be emphasized.

The permitted development does not share these defects to the same extent and is significantly better than the one now proposed.

- 7.4. I also have concerns about the rationale advanced by the applicant for the revised proposals, which is the agreed settlement of a legal claim of a right to light for the neighbouring hostel to the west. The impact of the site's development on the light available to the hostel was considered extensively in the previous application and appeal, after which the board determined that the permitted development would not unduly affect the hostel in that manner having regard to its use for short term occupation. This determined the issue on planning grounds. As mentioned above, the established principles of urban planning and design recognise the importance of development respecting the layout and hierarchy of streets for various reasons. These include establishing a reasonable basis for expectations by occupiers and developers of adjacent plots about access to light. The relevant planning principles would not involve the restriction of building frontage along a main street such as James's Street to increase the light reaching one side of an alley such as Cromwell's Quarters. Rather they would establish that the windows to the side of a building along an alley could not expect the same outlook and light as those on the main street, with the implication that they may be not be adequate in themselves to provide light for permanent residential dwellings as opposed to accommodation that would only be occupied by people on a short term basis like hotel or hostel. Furthermore there was no court judgment establishing that the permitted development on the site would contravene any right to light, only a recognition of the settlement of a claim that was agreed by private parties. Although it is understandable that people would have serious concerns about the length, cost and uncertainty of court proceedings, and so would try to avoid them, agreements between private parties should not determine how a public tribunal such as the board deals with matters within its area of competence.
- 7.5. Having said all that, it is conceivable that a court would be capable of prohibiting the permitted development on the basis of the claim of a right to light. This would perpetuate the greatest threat to the character of the area, which is the persistence of vacancy and dereliction there even in circumstances where is a strong demand for additional development. The proposed development would end the vacancy and dereliction of the site. As such it would have a very positive impact on the character

of the area, just not as positive as the one the permitted scheme would have. It would restore the streetscape along most of the site's frontage onto James's Street. It would improve the appearance of one side and Cromwell's Quarter and the supervision of that laneway to some extent and a financial contribution could be made to works by the council to improve the public domain there, as suggested in the appeal. The detailed architectural design achieves a satisfactory standard, with brick finishes facing most public areas. The 7 storey element on the eastern side of the site's frontage has a reasonable height for its situation on a main thoroughfare that is similar to that already permitted there. It would have an appropriate finish of metal cladding on its prominent eastern elevation that adjoins a site with development potential. The proposed development would introduce more activity to an area that would benefit from it. It would contribute to the achievement of objective CEE 12 of the city development plan to provide accommodation for tourists. In these circumstances, the arguments in the appeal are justified. The current proposal would be in keeping with the proper planning and sustainable development of the area.

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 policies and objectives of the Dublin City Development Plan, 2016-2022, including the Z1 zoning objective that applies to the site under which hotels are open for consideration and policy CEE 12 to support the provision of facilities such as hotels, as well as to the nature, scale and design of the proposed development, to the availability in the area of a wide range of social and transport infrastructure and to the pattern of existing and permitted development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or the amenities of property in the vicinity, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety and convenience and would represent a high quality architectural and urban

design response to the site's context and its constraints. It is further considered that the proposed development would represent a positive re-use of a derelict brownfield inner city site at an appropriate scale given its location within the streetscape and proximity to excellent public transport links. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 The proposed railings bounding Cromwell's Quarters shall be coloured in a light grey finish to match the cut stone finish to the ground and first floor - St James Street elevation. Revised drawings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of works on site.

Reason: In the interest of visual amenity.

- 3 Details and samples of the materials, colours and textures of all the external finishes to the proposed development, including pavement finishes, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

- 4 Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. In addition, prior to commencement of development, mitigation measures against the risk of flooding including

measures to address egress of occupants from the building in the case of flooding of surrounding land shall be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of public health.

5. (1) All foul sewage and soiled water shall be discharged to the public foul sewer.

(2) Only clean, uncontaminated storm water shall be discharged to the surface water drainage system.

Reason: In the interest of public health.

- 6 All the plant equipment to the north-east corner of the site shall have acoustic attenuation and be located within an enclosure designed to buffer and screen the area at all times.

Reason: To protect the amenities of adjoining residential occupants.

- 7 No advertisement or advertisement structure, the exhibition or erection of which would otherwise constitute exempted development under the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, shall be displayed or erected (on the building/within the curtilage of the site) unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

- 8 The construction of 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, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

9. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

- 10 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 particular, recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

- 11 The developer shall comply with the following requirements of the planning authority:-

(a) no construction or site preparation work shall be carried out on the site until all archaeological requirements of the City Archaeologist are complied with,

(b) the project shall have an archaeological assessment (and impact assessment) of the proposed development, including all temporary and enabling works, geotechnical investigations, for example, boreholes and engineering test pits carried out for this site as soon as possible and before any site clearance/construction work commences. The assessment shall be prepared by a suitable qualified archaeologist and shall address the following issues:-

(i) the archaeological and historical background of the site, to include industrial heritage,

(ii) a paper record (written, drawn and photographic, as appropriate) of any historic building and boundary treatments,

(iii) the nature, extent and location of archaeological material on site by way of archaeological testing and/or monitoring of the removal of overburden,

(iv) the impact of the proposed development on such archaeological material,

(c) the archaeologist shall forward their method statement to the City Archaeologist in advance of commencement,

(d) where archaeological material is shown to be present, a detailed impact statement shall be prepared by the archaeologist which will include specific information on the location, form, size and level (corrected to Ordnance Datum) of all foundation structures, ground beams, floor slabs, trenches for services and drains. The assessment shall be prepared on the basis of a comprehensive desktop study and, where appropriate/feasible, trial trenches excavated on the site by the archaeologist and/or remote sensing. The trial trenches shall be excavated to the top of the archaeological deposits only. The report containing the assessment shall include adequate ground plan and cross-sectional drawings of the site, and of the proposed development, with the location and levels (corrected to Ordnance Datum) of all trial trenches and/or bore holes clearly indicated. A comprehensive mitigation strategy shall be prepared by the consultant archaeologist and included in the archaeological assessment report,

(e) no sub-surface work shall be undertaken in the absence of the archaeologist without their express consent. The archaeologist retained by the project to carry out the assessment shall consult the City Archaeologist in advance regarding the procedure to be adopted in the assessment,

(f) a written and digital report (on compact disc) containing the results of the archaeological assessment shall be forwarded on completion to the City Archaeologist. The city archaeologist (in consultation with the National Monuments Service, Department of Culture, Heritage and Gaeltacht) shall determine the further archaeological resolution of the site,

(g) the developer shall comply in full with any further archaeological requirement, including archaeological monitoring, and if necessary, archaeological excavation and/or the preservation in situ of archaeological remains, which may negate the facilitation of all, or part of any basement,

(h) the developer shall make provision for archaeological excavation in the project budget and timetable,

(i) prior to commencement of development, the developer shall agree the foundation layout with the City Archaeologist,

(j) following submission of the final report to the City Archaeologist, where archaeological material is shown to be present, the archaeological paper archive

shall be compiled in accordance with the procedures detailed in the Dublin City Archaeological Archive Guidelines (2008 Dublin City Council) and lodged with the Dublin City Library and Archive.

Reason: In the interest of preserving or preserving by record archaeological material likely to be damaged or destroyed in the course of development.

14. 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 or by a management company of 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.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

15. 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.

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.

16. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of works to improve the public domain on and near Cromwell's Quarters. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

Stephen J. O'Sullivan
Planning Inspector

29th January 2022