



An  
Bord  
Pleanála

## Inspector's Report ABP-309650-21.

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<b>Development</b>	Change of use of first & second floors from existing office / commercial space to 2 no. new two-bedroom apartments for short term letting.
<b>Location</b>	No. 5 Aston Quay, Dublin 2.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	3498/20.
<b>Applicant(s)</b>	Dermot O'Neill.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Dermot O'Neill.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	13/05/2021.
<b>Inspector</b>	A. Considine.

## 1.0 Site Location and Description

- 1.1. The appeal site is located to the south of the River Liffey in the north western area of the Temple Bar area of Dublin City and approximately 200m to the west of O'Connell Bridge. The application site relates to the first and second floors of an existing 4 storey over basement mid terrace early 20<sup>th</sup> Century building. The building extends from Aston Quay to the north to Bedford Lane to the south.
- 1.2. The existing building includes a restaurant / bar at basement and ground floor level and at the third floor, there is an apartment which is in long term occupation. The two floors the subject of this appeal are indicated as being in office / commercial use and there is an existing roof terrace area accessible by all floors in the building.
- 1.3. The site has a stated area of 124m<sup>2</sup> and the existing building has a stated floor area of 461.2m<sup>2</sup>. The area of the building the subject of this appeal extends to 136.7m<sup>2</sup>.

## 2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices for development consisting of change of use of first & second floors from existing office/commercial space to 2 No. new two-bedroom apartments for short-term letting with associated minor internal alterations, all located at first & second floors, no.5 Aston Quay, Dublin 2, D02K504.
- 2.2. The application included a number of supporting documents including as follows;
  - Plans, particulars and completed planning application form
  - Cover letter
  - Planning Report which sets out the details of the proposed development and how the proposal complies with the Development Plan as well as the national context.
- 2.3. The proposed development will result in alterations to the internal layout of the first and second floor only and there will be no alterations to the external façade of the building. Access to the upper floors will be via the existing access and all existing services within the building will be available in the change of use of the two floors. The proposed new apartments will also have access to the roof terrace.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reason:

The proposed development, consisting of the change of use of the first floor and second floor from offices to 2 no. two-bed short term let apartments, which includes the sharing the same front entrance and roof top amenity space as an existing long-term residential apartment on the third floor, would be seriously injurious to the residential amenity and viability of the existing long-term apartment within the building and would set an undesirable precedent for similar change of use in the city core area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

### **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 City Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The Planning Report concludes that the proposed development is not acceptable in the context of the transient nature of the use of the short term let apartments and the impact on the residential amenity of the long-term residential apartment on the top floor due to noise nuisance and the impact of the administration of the units. The Planning Officer recommends that permission be refused for the proposed development, for one reason relating to the impact on the existing residential amenities of the one bed apartment on the top floor of the building.

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

### 3.2.2. Other Technical Reports

**Drainage Division:** No objection subject to compliance with conditions.

### 3.2.3. Prescribed Bodies

**TII:** The submission indicates the TII have no observations to make. The site falls within an area subject to the Section 49 scheme.

### 3.2.4. Third Party Submissions

There are no third-party objections/submissions noted on the planning authority file.

## 4.0 Planning History

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

**PA ref: WEB1411/15:** Permission granted for development consisting of change of use of top floor from existing office / commercial space to new one bedroom apartment with associated minor internal and external alterations including new safety balustrade at roof level to front façade.

**PA ref: 3782/05:** Permission granted for a development involving amendments to previously approved permission, ref PA 3264/04, to include change of use at basement level of previously approved staff accommodation & stores to extended nightclub, customer facilities, staff accommodation & stores. Also providing for revised fire escape stairs to rear street level & revised rear elevation treatment & all associated works all at the Viper Room, no. 4 & 5 Aston Quay, Dublin 2.

## 5.0 Policy and Context

### 5.1. National Context:

5.1.1. The following national guidelines are considered relevant:

- Circular Letter PL10/2017 - Guidance on Planning Applications for Short Term Lettings;
- Circular Letter PL 4/2019 – New Regulations of Short-term Letting.

- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities, (DoHPLG, 2018).

## 5.2. National Inventory of Architectural Heritage

- 5.2.1. The National Inventory of Architectural Heritage (NIAH) is a unit within the Department of Environment, Heritage and Local Government engaged in compiling an evaluated record of the architectural heritage of Ireland. Where an NIAH survey of a particular area has been published, relevant planning authorities will be provided with information on structures within the area of that survey. The planning authority can assess the content of, and the evaluations in, an NIAH survey with a view to the inclusion of structures in the RPS according to the criteria outlined in these guidelines.
- 5.2.2. The subject site, No. 5 Aston Quay, is included in the NIAH as 'Gypsy Rose', NIAH ref 50020202, which has Regional Rating and is included in the Architectural and Social Categories of Special Interest. The description and appraisal of the building are as follows:

### **Description**

Terraced three-bay four-storey over basement commercial and apartment building, built c.1940, having recent shopfront to front (north) elevation. Flat roof hidden behind parapet with ashlar granite coping. Red brick walls, laid in Flemish bond to upper floors, having granite entablature and carved cornice to second floor and brick pilasters dividing bays to first and second floors, granite platbands to first and third floors. Smooth rendered walls to rear (south) elevation. Square-headed window openings with continuous carved granite sill courses or granite sills having six-over-six pane and one-over-six pane timber sliding sash windows. Sill course forming cornice over recent timber shopfront. Steel-framed basement lights to pavement. Located on south side of Aston Quay.

### **Appraisal**

Aston Quay was laid out c.1680 on land reclaimed from the River Liffey and was named after Henry Aston, a Dublin merchant. The original buildings have been replaced over time and little fabric of early date survives. The buildings

in this block were demolished in the 1930s and were subsequently rebuilt in a restrained classical style to house a variety of manufacturing and retail uses. The fenestration pattern and continuous granite entablature, cornice and parapet create as strong sense of horizontal emphasis and give the impression of a unified, cohesive composition. Carved granite is used to good effect to articulate and provide a textural and tonal contrast to the red brick of the façade.

### 5.3. Development Plan

- 5.3.1. The Dublin City Development Plan 2016 –2022, is the relevant policy document relating to the subject site. The site is afforded the zoning objective ‘Z5 – City Centre’ in the Plan, where it is the stated objective ‘to consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design, character and dignity’.
- 5.3.2. The primary purpose of this zoning objective is to sustain life within the city centre through intensive mixed-use development. Residential development is a permitted use on Z5 zoned lands and the CDP does not differentiate between short term residential uses, as defined under the Residential Tenancies (Amendment) Act 2019 and other longer term residential uses.
- 5.3.3. Other relevant policies in the City Plan include as follows:
- **CEE12 (i)** - to promote and facilitate tourism, as one of the key economic pillars of the city’s economy and a major generator of employment, and to support the provision of necessary significant increase in facilities such as hotels;
  - **CEE13 (iii)** - to promote and support the development of additional tourism accommodation at appropriate locations.
  - **SC30** - to promote residential use on upper floors and the Living City Initiative;
  - **QH24** - to resist the loss of residential use on upper floors and support and promote the Living City Initiative;

- **QH25** – to encourage the re-introduction of residential use into historic areas.

#### **5.4. Natural Heritage Designations**

- 5.4.1. The site is not located within any designated site. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 2.5km to the north east of the site. The South Dublin Bay SAC (Site Code: 000210) is located approximately 3.5km to the east.
- 5.4.2. The Royal Canal pNHA, (Site Code 002103), is located approximately 1.4km to the east of the site and the Grand Canal pNHA (Site Code: 002104), is located approximately 1.6km to the east of the site.

#### **5.5. EIA Screening**

Having regard to nature and scale of the development, together with the fact that the development does not include any ground works, 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 first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The issues raised are summarised as follows:

- The proposed development complies with the requirements of the City Development Plan
- The proposed development does not result in existing residential properties being withdrawn from the long-term rental market and therefore does not apply any pressure on existing residential use.
- There are relevant precedent cases determined by the Board recently whereby similar developments were considered not to set a precedent for the loss of long-term housing in the inner city area.
- It is submitted that the proposed development will not impact on the existing residential amenity.
- The issues raised in the reason for refusal cannot be considered as being serious in the context of the DoE document Development Control Advice and Guidelines.

It is requested that the Board grant permission for the change of use.

### 6.2. Planning Authority Response

None.

### 6.3. 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
2. Residential Amenity
3. Other Issues
4. Appropriate Assessment

### 7.1. Principle of the development

- 7.1.1. Having regard to the nature of the proposed development, I am generally satisfied that the proposal adequately complies with the Z5 zoning objective afforded to the site. I note that the existing office / commercial uses will be replaced by two no. two-bedroomed apartments which will be offered for short-term letting. The City Development Plan supports the provision of tourist related accommodation at appropriate locations within the City Centre. In addition, I note that the proposed development is located within an area of Dublin City which is subject to the Living City Initiative. The purpose of this initiative is to encourage the regeneration of historic buildings in designated areas and Policies SC30 and QH24 of the CDP support this scheme. I would also note that QH25 seeks to encourage the re-introduction of residential uses in the historic centre of Dublin City.
- 7.1.2. I refer the Board to Circular Letter PL10/2017 - Guidance on Planning Applications for Short Term Lettings which seeks to protect the existing residential stock in areas of high demand, and Circular Letter PL 4/2019 – New Regulations of Short-term Letting which seeks to return those houses and apartments currently being used for short-term lets back to long-term rentals.
- 7.1.3. Given that the proposal is to change the use of existing office / commercial spaces to residential, I do not consider that the development will impact on the existing

residential stock for long-term residential use. Residential use is a permissible use on Z5 zoned lands, and the City Development Plan does not differentiate between short-term residential use as defined in the Residential Tenancies (Amendment) Act 2019 and other long term residential uses. As such, I am satisfied that the proposed development is acceptable in this regard and will not have an adverse impact on the provision of long-term housing in the city centre.

## 7.2. Residential Amenity

- 7.2.1. The proposed apartments provide for total floor areas of 68.4m<sup>2</sup> at first floor and 68.3m<sup>2</sup> at second floor level, and the Board will note that each include a double bedroom and a single bedroom. In this regard, the Apartment Guidelines require a minimum floor area of 63m<sup>2</sup> for two bedrooms (3 persons) apartments. The proposed floor area of the bedrooms also exceeds the minimum floor area required. I am satisfied that the proposed development is acceptable in this regard.
- 7.2.2. In addition, both units provide for storage within the apartments. I note that outside of the bedroom storage, both units provide between 4.14m<sup>2</sup> (2<sup>nd</sup> floor) and 5.47m<sup>2</sup> (1<sup>st</sup> floor), with additional storage provided within bedrooms. I am satisfied that the storage provision is acceptable.
- 7.2.3. In terms of the minimum aggregate floor areas and minimum widths for kitchen / dining / living areas, I would note that the apartments fall slightly short. The 1<sup>st</sup> floor unit proposes a floor area of 26.2m<sup>2</sup> while the 2<sup>nd</sup> floor unit provides 25.8m<sup>2</sup>, representing a short fall of 1.8m<sup>2</sup> and 2.2m<sup>2</sup> in terms of the 28m<sup>2</sup> aggregate floor area stipulated in the Apartment Guidelines. I note however, that the Guidelines provide for a variation of up to 5% which can be applied to room areas and widths subject to overall compliance with the required minimum overall apartment floor areas. In this regard, the shortfall in both proposed units is in excess of the 5% at 6.4% and 7.9%. In terms of the width of the living / dining rooms I note that they also fall below the minimum required within the Apartment Guidelines.
- 7.2.4. In light of the above, it could be construed that the development would not provide for an appropriate level of residential amenity. However, given the fact that the development relates to an historic building, these shortfalls cannot be rectified or added to. I would be in agreement with the PA that the shortfall is acceptable given

that the overall floor area of the units exceeds the minimum required in the Guidelines. Should the Board disagree however, a condition could be included in a grant of permission reducing the units to 1 bedroom. The residential amenity space in that instance would be wholly acceptable in my opinion.

- 7.2.5. With regard to the PAs reason for refusal, I am inclined to agree with the applicant. While I acknowledge the concerns in terms of the existing residential amenity of the top floor apartment, I would not consider that the provision of two short-term letting units, or indeed, the potential for tourists to use the existing roof terrace, will give rise to so significant impacts as to warrant a refusal of permission. The site is located within the city centre and within 200m of O'Connell Bridge and the proposed use is acceptable in terms of the zoning objective afforded to the site. I have no objection in this regard.

### 7.3. **Other Issues**

#### 7.3.1. **Visual Impacts**

The proposed development will not give rise to any external alterations to the existing building. I am therefore satisfied, that no visual impacts arise in this case.

#### 7.3.2. **Services**

The existing building is currently connected to existing services.

#### 7.3.3. **Development Contribution**

The subject development is not liable to pay development contribution under Section 48 general or Section 19 supplementary contributions for the Luas Cross City project. The contributions do not apply in this instance as the proposed development seeks to change from one commercial use to another and the Dublin City Council Development Contribution Scheme provide exemptions for such cases.

#### 7.3.4. **Appropriate Assessment**

The site is not located within any designated site and proposes no ground works. The closest Natura 2000 site is the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) which is located approximately 2.5km to the north east of the

site. The South Dublin Bay SAC (Site Code: 000210) is located approximately 3.5km to the east.

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 granted for the proposed development for the following stated reason and subject to the following stated conditions.

## **9.0 Reasons and Considerations**

Having regard to the nature and scale of the proposed development, the existing office use on site, the pattern of development in the area, the zoning objectives for the site and the provisions of the Dublin City Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would constitute an appropriate use in this location, would not adversely impact on the character or the sustainable mix of uses in the area, would not result in the loss of long-term residential stock, and would increase the provision of tourist accommodation in this inner-city location. The proposed development will not adversely impact on the existing residential amenity of the existing top floor apartment in the building. 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 short-term residential apartments shall be let as single apartments, and shall not be subdivided, without a separate grant of planning permission.

**Reason:** To limit the nature of the development to that sought, in the interest of clarity.

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

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

4. 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 measures to safeguard against impacts on the operation of the Luas, hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and local amenities.

5. Site development and building works shall be carried out only between the hours of 0700 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 amenities of property in the vicinity.

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A. Considine

Planning Inspector

25/05/2021