



An
Bord
Pleanála

Inspector's Report ABP 309875-21

Development	Demolition of existing structures and construction of a four and setback fifth floor aparthotel with ground floor community space/café and nineteen suites.
Location	Nos 92 and 93 Francis Street and No 1 Mark's Alley, West, Dublin 8.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	2021/21
Applicant	Plunkett Homes Ltd.
Type of Application	Permission
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	Plunkett Homes Ltd
Date of Inspection	22 nd July, 2021
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 261.8 square metres and is that of Nos 92 and 93 Francis Street and No 1 Marks Alley West in the Liberties. It is understood that the Barley Mow Pub occupied the ground floor and that further to a fire, the structures were deleted from the record of protected structures.
- 1.2. At the time of inspection Nos 92 and 93 Francis Street, the two buildings had been removed in entirety and the site had been cleared and fenced off. A two-storey structure is located at the southwest corner.
- 1.3. To the south are four storey buildings, Nos. 90 and 91 Francis Street and to the east there is a three-storey building facing onto Marks Alley West.
- 1.4. The Francis Street area is characterised by a mix of buildings dating from different periods, many of which are in residential, or possibly short-term letting use and commercial and institutional buildings

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing structures in entirety and for construction of a four and five storey apart hotel building with nineteen suites over the upper floors and a café and community space at ground level. The stated plot ratio is 4.2 and stated site coverage is 71%. The stated floor area is 1,104 square metres.
- 2.2. The application is accompanied by an Architectural Report, Traffic and Transport report. Visual Conditions and Structural survey report, Outline Construction Management Plan, Engineering Services Report, Site specific Flood Risk assessment report, Basement Impact Assessment Report Architectural Heritage Assessment report and an Energy and Sustainability report.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 5th March, 2021 the planning authority decided to refuse permission based on the two reasons below:

“1. Having regard to the requirements of the Dublin City Development Plan 2016-2022, it is considered that the proposed development would exacerbate the existing overconcentration of hotel developments and prevent the delivery of residential development and would fundamentally undermine the vision of the City Development Plan for the provision of a dynamic mix of uses within the city centre and fail to sustain the vitality of the inner city. The proposal would therefore be contrary to Sections 5.5.8 and 14.8.4 (sic) of the Dublin City Development Plan 2016-2022 and if permitted would be contrary to the proper planning and sustainable development of this location.”

“2. Having regard to the requirements of the Dublin City Development Plan 2016-2022, it is considered that the proposed development by virtue of its proposal to demolish the existing structure in entirety, the facades of which have significant historic and streetscape value within an Architectural Conservation Area, would be contrary to the policy objectives of the Dublin City Development Plan 2016-2022 and the Thomas Street and Environs Architectural Conservation Area and contrary to the long term sustainable regeneration of this historic part of the Dublin city, would set an undesirable precedent for similar such developments, and as such would be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

- 3.2.1. The report of the City Archaeologist dated 2nd March, 2021 contains an account of the archaeological potential of the Francis Street Area which is thought to be part of the Slige Dala dating from the mediaeval period. An additional Information request is recommended to provide for an archaeological assessment to be prepared in consultation with the City Archaeologist a Building survey to Historic England Level 4 standards for Nos 92 and 93 Francis Street and revisions to the development to include retention of the historic brick elevations for these two buildings.
- 3.2.2. The report of the Transportation Planning Division dated 11th January, 2021 indicates a recommendation for an additional information request: (1) to demonstrate (with revised plan drawings) alignment of the north facing building line with the existing north building line for the adjoining building abutting the western extent of

- 3.2.3. the development on Mark's Alley and (2) provision for three cycle spaces and changing facilities for staff use. There is no objection to the zero-parking proposal.
- 3.2.4. The report of the Drainage Division indicates no objection subject to standard conditions.
- 3.2.5. The report of the Environmental Health Officer dated 2nd March,2021 indicates concerns as to the adequacy of the lodged construction management plan with regard to dust and air pollution mitigation measures. High risk dust monitoring is also recommended.
- 3.2.6. The Planning Officer in his report states that a Dangerous Building's Notice was issued to the applicant on 19th January, 2021 and that the Notice did not authorise demolition or partial demolition and that the repair works required under the Notice include protection and retention of the facades.
- 3.2.7. The planning officer also states, having regard to the relevant Policy objectives of the CDP and the ACA (see section 5 below) that the existing facades should be retained on account of their historic and streetscape value and preservation of the character of the ACA and, that demolition and replacement in entirety with a new building is not supported.
- 3.2.8. In his report, the planning officer includes a summary of existing hotel development (or extant grants of permission for hotel development) within approximately five hundred metres of the application site as set out below:

Extant grants of permission for hotel development

4017/20: Molyneux Yard/Engine Alley	265 rooms
3972/18: Vicar Street	185 rooms
4776/19: 63/64 Thomas Street	22 rooms
3110/19: 135/143 Francis Street	298 rooms
2295/20: Oliver Bond Street/Augustine Street	95 rooms
2571/20: The Brewery Bar, 5/9 Newport Street.	17 rooms

Hotel development in operation within five hundred metres of the site location.

Maldron Hotel Kevin Street -	139 rooms
Hyatt Centric Hotel, Dean Street, The Coombe	234 rooms
Radisson Blu Royal Hotel, Golden Lane, Dublin 8	150 rooms
Jurys Inn, Christchurch	182 rooms
Aloft Dublin City Hotel, Mill Street, Liberties	202 rooms.

3.2.9. The planning officer, having considered the proposed development and the provisions of section 14.8.3 of the CDP expressed concern as to overconcentration of hotel development, It undermines the mixed use requirements as provided for under the zoning objective, and under provision and loss of residential accommodation on upper floors for which is an objective under Policy Objectives QH24 and QH25 to support and bring back residential use on upper floors as a means to revitalisation for the city's historic areas.

3.3. **Prescribed Bodies.**

3.3.1. A submission dated 15th March 2021 issued by An Taisce indicates a recommendation for retention of the historic brick facades at Nos 92 and 93 Francis Street within development on the site. It is stated that the retention is consistent with protection and retention of the character and historic interests of the streetscape and the Architectural Conservation Area. In this regard reference is made to Policy CHC1 for preservation of the built heritage of the city and to section 16.10.17 of the CDP which provide for re-us of older buildings of significance and active consideration of retention and re-use for old buildings not subject to statutory protection but with historic, architectural, cultural artistic or local interest or buildings which make a positive contribution to the character and identify of streetscapes and sustainable development.

3.3.2. A submission from Transportation Infrastructure Ireland indicates a recommendation for attachment of a Section 49 Supplementary Development Contribution condition if permission is granted.

4.0 Planning History

There is a prior record of an application for permission for demolition of existing structures including Nos 92 and 93 Francis Street, a protected structure a mixed-use development providing for twenty -three apartments, ground level commercial bar and restaurant and retail unit, a basement carpark at Nos 90/91 and Nos 92/93 Francis Street and Nos 1A, 2 and 3 Marks Alley under P. A. Reg. Ref. 5998/04. The planning authority decision to refuse permission was upheld following appeal. (PL 211387 refers). The reason for refusal of permission, following appeal is reproduced below:

“The proposed development, by virtue of its proposal to demolish a protected structure and other buildings that make a positive contribution to the character, appearance and quality of the streetscape, would be contrary both to the policy objectives of the Dublin City Development Plan, 2005 and the Architectural Heritage Protection –Guidelines for Planning Authorities, 2004 and would set an undesirable precedent for further such developments. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.”

5.0 Policy Context

- 5.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site comes within Key District Centre 7 and is subject to the zoning objective: Z4: *To provide for and improve mixed services facilities.* Hotel, Bed and Breakfast, Guesthouse and Hostels and residential use are permissible in principle.
 - 5.1.1. The maximum indicative site coverage is 80 % and plot ratio is 2.0 according to section 16.4 and 16.5 which also provide qualitative criteria.
 - 5.1.2. According to Policy Objectives QH24 and QH25 it is the policy of the planning authority to resist the loss of residential use on upper floors and actively support proposals that retain or bring upper floors above ground floor premises into residential use in order to revitalise the social and physical fabric of the city’ and ‘encourage the re-introduction of residential use into the historic areas of the city,

where much of the historic fabric remains intact provided development is consistent with the architectural integrity and character of such areas

5.1.3. According to section 14.8.3: for 'Z4' zoned areas, *“opportunities should be taken to use the levels above ground level for additional commercial/retail services or residential use with appropriate social facilities”*

5.1.4. According to Section 5.5.8, residential accommodation on upper floors is encouraged especially in central commercial areas as it contributes to the creation of vibrant mixed-use areas within a compact urban core.

5.1.5. The site location is within the area of the Thomas Street and Environs Architectural Conservation Area. (ACA) According to the adopted ACA: -

Commercial buildings line all of the main streets of the ACA, and largely share a consistent relationship between each other and the established building line; Most of these structures, dating from a variety of periods, are tall and narrow in the classical tradition, with concealed roofs and parapet walls.

Their effect as individual units is dependent on their cumulative massing into a coherent but varied streetscape.

5.1.6. According to Section 6.2.8

‘The retention and adaption of existing historic structures should be favoured over new build development’ and ‘Proposals to demolish buildings of architectural or streetscape merit within the ACA may be considered in exceptional circumstances only where they are supported by a rationale related to the enhancement of the of the urban structure’

5.1.7. The site location is within the area of SDRA 16 (Liberties and Newmarket Square. SDRA 16 provides for the Liberties Local Area Plan,2008 (LLAP) which provides for multiple strategic and specific objectives inclusive of public realm and amenity improvements and enhancements,

5.1.8. Within chapter 6 of the LLAP strong emphasis is placed on surviving historic fabric as a key asset and as an integral element in regeneration of the Liberties. Several Architectural Heritage Objectives providing for integration of the historic building stock in redevelopment and regeneration projects.

- 5.1.9. Policy CHC1 provide for preservation of built heritage that positively contributes to the character and character of the streetscape.
- 5.1.10. Policy CHC4 provides for the protection of the special interest and character of conservation areas and a requirement that new development contributes positively to and enhances the character and setting of the area. Section 11.1.5.4 provides for development within or affecting conservation areas to contribute positively to the character and distinctiveness and to take opportunities for protection and enhancement of the character and appearance of the area and it's setting wherever possible.
- 5.1.11. According to the CDP, Apart hotels “*can provide tourists and visitors with the flexibility space and luxury of a fully furnished apartment and serviced like a hotel*” (A description for and guidance for Apart Hotel Development are in Appendix 16.)
- 5.1.12. Section 16.10.17 provide for active consideration of retention and re-use for old buildings not subject to statutory protection but with historic, architectural, cultural artistic or local interest or buildings which make a positive contribution to the character and identify of streetscapes and sustainable development. (The buildings were deleted from inclusion on the record of protected structures.)
- 5.1.13. Development management standards are within chapter 16 and include policies and objectives for respect for and enhancement of the character and context of existing buildings and streets and spaces in new development under section 16.2.1.1 and policies and objectives for infill development is in section 16.2.2 which provide for development that complements the prevailing scale, architectural quality and degree of uniformity in the surrounding streetscape.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was lodged by McCutcheon Halley on behalf of the applicant on 1st April, 2021 attached to which are several appendices to include a survey on hotels and apart hotels, copies of correspondence with the planning authority's Dangerous Building Section, copy of Dangerous Buildings' Notice, a Visual Condition and

Structural Survey (report 2 – update), Alternative Elevation drawings and a letter of support from three businesses based in the vicinity.

6.1.2. According to the appeal:

- An apart hotel is hospitality accommodation and should be regarded as being permissible in principle within the 'Z4' zoned lands. The CDP seeks to encourage and facilitate "apart hotel" accommodation and is supported in Policies CEE12, CEE13, CEE14 and CHC4. The proposed development also aligns with the National Planning Framework in providing high quality accommodation for visitors.
- Hotels are separate entities to hotels and a distinct category of land use. Appendix 16 of the CDP compares hotels and apart hotels stating that apart hotels are bespoke accommodation which are a distinct and in a variety of apartment types, for use as short stay accommodation can provide flexibility space and luxury in a fully furnished and managed apartment.
- There is no loss of amenity to the ACA the character of which would be preserved with integration into the area of varied building types with a new building of dynamic design, with brick and a breakdown into three blocks recognising the proportions of Victorian buildings. Development of a vacant site, which is an eyesore, contributes to vitality in the uses which include café community centre use at ground level.
- Apart Hotels are relatively limited in Ireland but are an attractive alternative to hotels providing for longer extended stays for business and visitors. It is hybrid between residential development and hotel rooms with opportunities for self-catering. There is a shift towards and increased demand for this accommodation, especially given preferences due to pandemic.
- Only 4.3 per cent of the 22,813 rooms available in the city centre are apart hotel rooms which refuse the argument as to oversupply in the city. There is no evidence of over-supply in the area as asserted by the planning authority. Available and permitted aparthotel development is scattered around the city. An elaboration is available in the market research report by JLL in the appendices to the appeal.

- The circumstances at the site have changed since the lodgement of the application with the planning authority and receipt of the Dangerous Building's Notice from Dublin City Council. It has since been agreed with the planning authority that the buildings be taken down to the first-floor level. Once these works were carried out it was evident to the applicant's professional advisors that demolition in totality was necessary to ensure safety of the public and adjoining buildings. It was therefore agreed the demolition was necessary.
- Alternative elevation drawings incorporating design elements such as fans over windows are included in the application with a view to incorporation of elements lost due to the structural instability of the buildings. The applicant would accept a condition for redesign of the building to reflect the proposals in the alternative drawings included in the appendices.
- The structural survey, conducted by visual inspection from a platform lift and street level report included in the appeal, notes observations such as to deviation from the plumb line and the condition of the fabric, works undertaken to bring the structure to first floor level. The report of 21st March on the partial demolition notes instability of the structure and fabric as not being salvageable.

It is concluded in the report that the damage and weakening caused to the building fabric due to fire damage, loss of the roof and fabric damage has resulted in the wall fabric being beyond repair or restoration and that the remaining fabric should be demolished in the interest of health and safety, notwithstanding supports and bracing to stabilise the building undertaken by the City Council.

6.2. Planning Authority Response

There is no submission from the planning authority on file.

7.0 Assessment

7.1. The issues considered central to the determination of the decision are:

Demolition

Archaeological Heritage

Design and form and impact on the Thomas Street and Environs ACA

Nature of use

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. **Proposed Demolition.**

- 7.2.1. The application lodged with the planning authority included proposals for demolition of the then, remaining fabric of the structures at Nos 92 and 93 Francis Street. The planning authority in determining the application, following on from recommendations within the internal technical reports clearly indicated in the assessment and in Reason 2 attached to the decision to refuse permission that the proposed demolition was unacceptable. Having regard to the significance of the fabric of the facades that were extant at the time notwithstanding concerns as to stability, the demolition has resulted in adverse impact, on the historic streetscape integrity which comes within the area of the Thomas Street and Environs Architectural Conservation Area particularly given the prominent corner site location and the surviving extant adjoining structures on Francis Street which contribute the architectural character of the streetscape.
- 7.2.2. It is noted from the internal reports of the planning authority and the correspondence from the Enforcement Section at the City Council that is available, that the applicant (owner occupier) has been required further to the Dangerous Buildings' Notices issued by the Local Authority under the Local Government (Sanitary Services) Act 1964 to "take the necessary steps... as appropriate for *Minimal taking-down/making safe works to ensure structural stability*" for Nos 92 and 93 Francis Street. An itemised list for Emergency Making Safe works on foot of the order was also issued on 19th January in an accompanying letter. It is clearly stated on the documentation issued that the Order does not allow for outright demolition.
- 7.2.3. Within the documentation available in connection within the Appeal there is no evidence of any subsequent notification, (further to determination of by the planning authority of its decision), providing for demolition in entirety in accordance with the Dangerous Buildings provisions the Local Authority under the Local Government (Sanitary Services) Act 1964. However, in the appeal it is stated that an agreement was reached. As such, unless such evidence can be made available, the demolition

of the remaining elements, (proposed in the application) are unauthorised and should be subject of an application for permission for retention along with corresponding descriptions in new public notices and associated requirements.

- 7.2.4. The Board has the option of issuing a section 132 notification providing the applicant with an opportunity to provide evidence of receipt of notices issued under Local Authority under the Local Government (Sanitary Services) Act 1964 with a requirement for the demolition in entirety of the remaining elements as has been implemented at the site prior to determination of a decision. However, it would appear likely that such evidence, if available, would have been included with the appeal.

7.3. **Archaeological Heritage.**

- 7.3.1. It is noted from the report of the City Archaeologist that the site area has significant archaeological potential reference being made to excavations conducted at 95-97 Francis Street and at Marks Alley and it is concluded that the proposed development may have negative impact on archaeological features within the site and surviving early fabric within the structures. It is also recommended that a redesign be required to provide for preservation and retention of historic brick elevations at Nos 92 and 93 Francis Street.
- 7.3.2. A request for additional information was recommended to include preparation of an Historic England Level 4 Standard Building Survey and full archaeological assessment as defined in *Framework and Principles for the protection of Archaeological Heritage*, Dept Arts Heritage, Gaeltacht and the Islands, 1999), Although the surface level structures have been demolished and been removed from the site, in the event of possible favourable consideration for the current proposal or future proposals it is clear that prior to determination of any decision comprehensive archaeological impact assessment ideally involving prior consultation with the City Archaeologist is essential. As such it is considered that based on the deficiencies in the information that is available in connection with the application and the appeal, the Board would be precluded from determination of a decision on the proposed development.

7.4. Design and form and impact on the Thomas Street and Environs ACA

- 7.4.1. Given that demolition works took place further to lodgement of the application and the determination of the planning of the decision by the planning authority, there is a has been a material change to the proposed development having regard to the demolition of the fabric which is referred to in Reason 2 and which clearly, the planning authority considers should be retained and incorporated in the development, should it otherwise be acceptable.
- 7.4.2. Aside from the issues concerning demolition works that have taken place some brief remarks following on the proposed new build. The option for the proposed build included with the appeal is considered generally acceptable with regard to façade treatment above ground level. At ground level it is considered the historic features in terms of the distinctiveness of the plots and rhythm require greater recognition. The setback fifth floor which in itself has a considerable height may require an increase in setback, owing to the corner site location in order to ameliorate its predominance which would detract from the profile of the strong parapet lines in views on approach from the north along Francis Street and, as a result would have negative impact on the character of the ACA.
- #### **7.5. Nature of Use.**
- 7.6. It is agreed with the applicant's agent that there is a distinction between aparthotel development and hotel development and some short-term letting accommodation in in terms of the accommodation options for visitors in that the apart hotel is fully serviced apartment accommodation independent of hotel room or suite accommodation. Nevertheless, aparthotel accommodation is not long-term residential accommodation and would remove the opportunity for long term resident accommodation to be developed at the site and, it would hinder rather than contribute to increase the supply of long- term residential accommodation within the central city area including the environs of the site location.
- 7.7. Based on a visual inspection of the area within circa 700 metres of the application site, there is a significant quantum and mix of relatively new build apartment development and older terraced houses and apartments but it is not apparent as the amounts of this stock in long term residential use and in short term residential use.

7.8. In view of the foregoing, it is agreed with the planning authority that the proposed development is contrary to the encouragement of residential development in the area and would undermine the vision for a dynamic mix of uses within the city to sustain the vitality of the inner city as provided for in Sections 14.8.3 and 5.5.8 of the CDP.

7.9. Transport, parking and servicing.

7.9.1. Having regard to the nature of the use and the city centre location, there is no objection to the zero-parking provision in the proposed development and to servicing from loading bays on the public road network in the vicinity which are considered acceptable to the Transportation Planning Division. It is noted that cycle parking provision has not been addressed in the application and that the Transportation has recommended that the footprint be modified to provide for alignment with the north facing building line of the adjoining structure on Mark's Alley West. Preparation of a fully comprehensive construction management plan would be necessary for submission for agreement with the planning authority, following appointment of a contractor.

7.10. Environmental Impact Assessment Screening.

7.10.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.11. Appropriate Assessment.

Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. Given the foregoing, it is recommended that the Board determine that it is precluded from consideration of a grant of permission owing the changed circumstances

regarding demolition works undertaken following the lodgement of the application and the determination by the planning authority of its decision to refuse permission.

9.0 Reasons and Considerations

Based on the information available in connection with the application and in connection with the appeal it would appear that the proposed development relates to a site at which unauthorised works have taken place. In these circumstances, the Board would therefore be precluded from considering a grant of permission for development on site.

Jane Dennehy

Senior Planning Inspector

30th July, 2021.