



An
Bord
Pleanála

Inspector's Report ABP-313215-22

Development	Addition of setback penthouse level/fifth storey containing 1 no. two-bed apartment to four-storey building, which was permitted under 3327/20.
Location	34, 35 – 36, 37 Pembroke Street Lower, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3051/22
Applicant(s)	Carsara Inns Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 8 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Philip O'Callaghan on behalf of the South Georgian Core Residents' Association
Observer(s)	Philip O'Reilly
Date of Site Inspection	9 th September 2022

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located on the eastern side of Pembroke Street Lower close to its junction with Baggot Street Lower. These Streets form the western and northern sides of a city block that is bound to the east and to the southern by Fitzwilliam Street Upper and Fitzwilliam Square North. The interior of this block is accessed by means of Pembroke Lane and Baggot Court.
- 1.2. The site lies within a varied street frontage. To the north is a part-one/part-three/part-four storey bank, which occupies the south-eastern corner of the above cited junction. To the south is a row of three storey buildings with shops/eateries on their ground floors and offices/ancillary space on their upper floors. At the southern end of this row is a new part-four/part-five storey building with a recessed sixth storey, which is nearing completion. This building will have a shop/eatery at ground floor and offices on its upper floors. It occupies the north-eastern corner of the junction formed by Pembroke Street Lower and Pembroke Lane.
- 1.3. The site itself is of rectangular shape and it extends over an area of 168 sqm. This site accommodates a row of two storey buildings with single storey elements on the street front. These buildings are in a variety of uses as a beautician, an auctioneers, and an estate agents.

2.0 Proposed Development

- 2.1. Under 3327/20, the site is the subject of an extant permission for its redevelopment to provide a four storey building with a commercial space and ancillary residential space at ground floor and 2 no. apartments on each of the upper floors, i.e., a one-bed unit and a two-bed unit.
- 2.2. Under the current proposal the following amendments would be made to the development with extant permission:
 - Addition of setback penthouse level/fifth storey containing 1 no. two-bed apartment (gross 97.8 sqm and net 81.7 sqm),
 - Internal modifications to common stairwell at third floor, and

- Alterations to elevations to accommodate the re-design and addition of fifth floor.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 8 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The case planner compares the proposal with the previously proposed fourth floor, which was omitted by condition. The following commentary is salient:

Based on the photomontages, it would appear the top floor level has been refined and does not perch excessively above the framed view of the site, particularly when viewed from the junction of Pembroke St. and Baggot St. The setting back of the top floor level gives the impression of the penthouse unit being internalised somewhat and combined with the use of a light coloured/reflective aluminium panelling, it is considered that a significant improvement on the previously proposed fourth floor level.

3.2.2. Other Technical Reports

- TII: Section 49 Luas line levy requested.

4.0 Planning History

Relevant planning history of the site is set out below:

- **3327/20:** The development will consist of demolition of Nos. 34, 35, 36 & 37 Pembroke Street Lower (3 no. 2-storey buildings; c.268 sqm total) comprising 3 no. commercial units; construction of a new 5 storey mixed use development consisting of 4 storeys of apartments including set back penthouse level with sedum roof containing 4 no. 2 bed and 3 no. 1 bed apartments (ranging in area from 45.7 - 86.2 sqm) each with private amenity terrace spaces; over commercial unit (90.4 sqm) at ground floor level; separate apartment entrance and communal facilities including secure bicycle

parking (14 spaces) and refuse storage at ground floor level; all plant and ancillary site development works. The total gross floor area of the proposal is 713.4 sqm. This application was permitted, subject to 16 conditions, including the following denoted as Condition No. 6(a):

6. Prior to commencement of development the Developer shall submit revised drawings for the written agreement of the Planning Authority showing the following amendments:

a) The fourth-floor aluminium clad level of the proposed development shall be omitted, thus resulting in a 4-storey building.

Reason: In the interest of visual and residential amenities.

The permission was appealed, ABP-309847-21. However, the appeal was subsequently withdrawn.

5.0 Policy and Context

5.1. National Planning Guidelines

- Urban Development and building Heights
- Architectural Heritage Protection
- Sustainable Urban Housing: Design Standards for New Apartments

5.2. Development Plan

Under the Dublin City Development Plan 2016 – 2022 (CDP), the site is shown as lying within an area that is zoned Z4, wherein the objective is “To provide for and improve mixed-services facilities.” Residential is a permissible use within this zone. The site is also shown as lying within a conservation area and buildings within its vicinity are protected structures, e.g., to the north, the bank at No. 130 Baggot Street Lower (RPS ref. no. 428), to the north east, the Georgian houses at Nos. 128 & 129 Baggot Street Lower (RPS ref. nos. 426 & 427) and, to the south, the house at No. 32 Pembroke Street Lower (RPS ref. no. 6648).

The above cited protected structures are included in the NIAH under reg. nos. 50930040, 41, 42 & 38, respectively. No. 31 Pembroke Street Lower is also included under reg. no. 50930039.

Policy CHC4 of the CDP addresses conservation areas. Relevant extracts from this policy are set out below:

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. Enhancement opportunities may include: ...4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area...

Development will not:

- 1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area...*
- 3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors.*
- 4. Harm the setting of a Conservation Area*
- 5. Constitute a visually obtrusive or dominant form...*

5.3. Natural Heritage Designations

Portions of Dublin Bay are the subject of European designations.

5.4. EIA Screening

Under Items 10(b)(i) and (iv) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where more than 500 dwelling units would be constructed or where urban development would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere, the need for a mandatory EIA arises. The proposal is for the development of 1 additional dwelling unit to a mixed-use development previously permitted for 3 commercial units and 6 residential units on a site with an area of 0.0168 hectares. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall below the relevant

thresholds, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Philip O'Callaghan on behalf of the South Georgian Core Residents' Association

- The appellant supported the Planning Authority's previous omission of the proposed fourth floor to the applicant's permitted building.
- Concern is expressed that the current proposal would exceed both the parapet and ridge heights of nearby houses on Baggot Street Lower.
- While the applicant cites examples of other buildings that of similar height in the vicinity, they do not have the same relationships to nearby protected structures, e.g., the bank and houses on Baggot Street Lower, as the proposal would have.
- The proposed setback would fail to hide the fourth floor from the front, streetside of the site, and it would be highly visible to the rear. Consequently, the proposal would establish an adverse precedent.
- The appellant cites Development Management Criteria set out in the Urban Development and Building Height Guidelines.
- The impact of the proposal would be greater than that of the permitted building, as the setback would fail to hide the proposed fourth floor, due to the presence in its vicinity of lower buildings. Consequently, it would "read" as an additional storey, which would fail to integrate into the streetscape of what is an architecturally sensitive area. Above cited criteria would thereby be infringed.
- The appellant has submitted a series of photographs, which illustrate the unwelcome protrusion of a similar building under construction at Nos 27 – 29 Pembroke Street Lower.

- While the appellant is keen to see a greater number of residents within the neighbourhood of the site, the proposed addition of one residential unit would not be justified, given the above cited concerns over the impact of the proposal.

6.2. Applicant Response

The applicant begins by outlining how the design of the fourth floor has been revisited in a bid to overcome the Planning Authority's concerns that were evident in its omission of this floor from the parent permission. The case planner's report and the subsequent decision of the Planning Authority signal its success in this bid.

Notwithstanding the applicant's view that the grounds of appeal raise issues that were previously fully discussed at the application stage, it proceeds to respond to these grounds as follows:

(a) Building height

- While concern is expressed over height, the proposal would be 17.2m high at roof level and existing Georgian houses on Baggot Street Lower, e.g., No. 129, would have a ridge height of 16.5m, i.e., a difference of 0.7m, which would not be discernible from street level.
- The parapet heights of the permitted building and the bank to the north would align: the proposed fourth floor would be setback behind this parapet and so it would not "read" as being in the same plane.
- The heights of selected new and older buildings within the vicinity of the site indicate that the proposal would come within the range of heights exhibited by these buildings.
- The critiqued precedents are all within a 2-minute walk of the site and so they are relevant in illustrating instances of significantly taller buildings being granted permission adjoining shorter protected structures.

(b) Visual impact

- While the proposed fourth floor would not be invisible, its visual impact would be mitigated by its redesign, which would incorporate setbacks from the main

front and exposed northern side elevations and the careful selection of finishing materials.

- The applicant has undertaken a comparison between the corner of the block that the site is on and the other three corners of this Georgian block. Insofar as this corner dates from a later period and so is laid out differently, it is readily distinguishable from the other corners. The impact of the proposal would, correspondingly, be far less.

(c) Urban Development and Building Heights Guidelines

- These Guidelines recognise that “Increased building height is a significant component in making optimal use of the capacity of sites in urban locations where transport, employment, services or retail development can achieve a requisite level of intensity for sustainability.” The proposal would ensure that the site is used optimally.

(d) Undesirable precedent

- The appellant envisages a situation wherein five storey buildings may be proposed for lands to the rear of the site. However, insofar as these lands tend to comprise the curtilages of protected structures within the above cited Georgian block, they would be constrained in the scale of their future development.

(e) Context photographs

- The applicant provides a commentary on the photographs submitted by the appellant. Points arising can be summarised as follows:
 - The two-storey buildings on the site at present would, under the parent permission, be replaced by a four-storey building. Consequently, views over these buildings of the backs of Georgian properties on Baggot Street Lower would be lost under this permission, as well as under the current proposal.
 - The proposal would be a storey lower than the building nearing completion at Nos. 27 – 29 Pembroke Street Lower and as previously discussed it would not affect the parapet level of the permitted four storey

building on the site, which aligns with that of the bank's parapet to the north.

6.3. **Planning Authority Response**

Section 49 and 49 conditions requested.

6.4. **Observations**

- Attention is drawn to the location of the site in the South Georgian Core and beside the iconic bank on the corner of Baggot Street Lower and Pembroke Street Lower. The view is expressed that the permitted building would be excessively high and that the current proposal to add a further storey would overwhelm and dominate the neighbouring bank.
- The architectural importance of Pembroke Street Lower is emphasised. Within the context of surrounding streets, this Street has a greater variety of mainly lower buildings that contribute to the character of the South Georgian Core.
- Exception is taken to the citation of examples of other similarly sized buildings as precedents for the proposal. Their contexts differ. Furthermore, the view is expressed that the test of the proper planning and sustainable development of an area has imbedded within it the quest for improvement, and so previously permitted buildings should not necessarily be emulated.

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of national planning guidelines, the Dublin City Development Plan 2016 – 2022 (CDP), relevant planning history, the submissions of the parties and the observer, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Height, conservation, and streetscape,

- (ii) Amenity,
- (iii) Water, and
- (iv) Appropriate Assessment.

(i) Height, conservation, and streetscape

- 7.2. General advice on height is set out in the Urban Development and Building Height Guidelines and the CDP. The Guidelines state that in city centres the default objective should be at least six storeys at street level. The CDP categorises the site's location as low-rise inner city and it states that residential building heights should not exceed 24m or 8 storeys. The Guidelines accept that in historic settings this general advice needs to be informed by the advice of the Architectural Heritage Protection Guidelines. Likewise, the CDP's Policy CHC4 addresses conservation areas and seeks contemporary architecture that is in harmony with such areas and that is not visually obtrusive or of dominant form.
- 7.3. Under the parent permission granted to 3327/20, a recessed fourth floor was proposed. However, Condition No. 6(a) attached to this permission omitted this "aluminium clad" floor in the interest of visual and residential amenities. Such omission had been sought under further information, but it was not forthcoming. The case planner's report draws attention to the bank to the north of the site, which is a protected structure (RPS ref. no. 428), and how the floor in contention would cause the proposed building to be taller than it. This report also draws attention to the adjoining three storey building to the south. Consequently, it expresses the view that without the fourth floor the proposed building would "sit more comfortably into the streetscape". An all brick finished building would also be "more in keeping with the historic streetscape."
- 7.4. Under the current proposal, the applicant proposes the reinstatement of the fourth floor, albeit with some modifications to its original design. The key change is that instead of this floor being recessed by 1m along its northern elevation, it would be recessed by 2.7m. Consequently, the profile of the floor, when viewed from the junction between Baggot Street Lower and Pembroke Street Lower with the historic bank in the foreground, would be lessened. The floor area of the fourth floor would, likewise, contract slightly from 86.2 sqm to 81.7 sqm. Other changes would be nominal in their effects.

- 7.5. Under Attachment A of the applicant's supporting case, 3-D visualisations of the originally proposed fourth floor and the currently proposed one are presented. These visualisations show the reduction in the profile when viewed from the above cited junction and the re-specification of the finishing material from the darker grey Corten steel to the lighter grey powder coated aluminium. Under the parent permission, a complementary photomontage of the proposal was submitted, under further information, with the south-western corner of the proposed building in the foreground. Apart from the re-specification of the finishing material, this view continues to approximate to what is now proposed.
- 7.6. The Planning Authority in granting permission to the current proposal considers that it is a more mannerly design response to its context than its predecessor and so no objection is raised on the grounds of visual amenity. The appellant and the observer dissent. The appellant draws attention to the visibility of the proposed fourth floor from the street and, also, from the rear, where it would be particularly evident. The building nearing completion at Nos. 27 – 29 Pembroke Street Lower is cited as an example of one that with the addition of a fifth floor is too high for its context and so it illustrates the appellant's current concern. The observer draws attention to the relationship that would emerge between the building, as now proposed with a fourth floor, and the historic bank to the north. The view is expressed that this building would tend to overwhelm the bank. In this respect, the step change in height from the adjoining single storey portion of the bank to the proposed five storey building would not be analogous to the examples of the juxtaposition of shorter and taller buildings cited by the applicant in its supporting case.
- 7.7. The applicant has responded to the appellant by illustrating how the bank would align horizontally with the permitted building for the site. Critically, the parapet height of the four storey part of this bank would run through to the parapet height of the new building, as the proposed fourth floor would be recessed behind the line of this parapet. Both of these parapet heights are/would be slightly higher than the parapet height of the four storey over basement Georgian house at No. 129 Baggot Street Lower, i.e., the bank is 14.065m, the building would be 14.650m, and the house is 13.960m. The applicant also emphasises the re-specification of the finishing material for the fourth floor, although this re-specification was forthcoming under the parent

permission under further information, albeit over a more extensive portion of the building.

- 7.8. During my site visit, I observed the building nearing completion cited by the appellant. The fifth floor to this building is readily visible, due partly to this building's siting in a corner position to the junction between Pembroke Street Lower and Pembroke Lane. The applicant's contiguous north-west and north-east elevations (drawing no. 320) illustrate how it corresponds across the entrance to the Lane with the four storey over basement, plus an additional recessed top storey, building at Nos. 19 – 24 Pembroke Street Lower. Within the context of the streetscape to the north, this building "steps up" to the corresponding one to the south. During my site visit, I observed that the top storey to Nos. 19 – 24 is not as conspicuous as the top storey to the building nearing completion, except from vantage points on Pembroke Lane.
- 7.9. By contrast with the building nearing completion, the site does not occupy a corner position. Instead, it is in a mediating position between the historic bank to the north, which is a protected structure, and the three and two storey buildings to the south. As a four storey building with a principal elevation composed of three distinguishable patterns of design, the proportions of this building would be in scale with the bank and it would be respectful of the urban grain of the accompanying streetscape. The southern most of the patterns would entail a street-fronted three storey element, which would acknowledge the projecting ground floor shop front at No. 33 Pembroke Street Lower. This element's parapet height would also coincide with the adjoining parapet height at No. 33. Its third floor would be recessed and so the building would acknowledge No. 33. The resulting cut away south-western corner would be visible from street level, as would the recessed third floor.
- 7.10. The above cited acknowledgment would be contradicted by the proposed fourth floor, which would be highly visible from street level in the immediate background to the south-western corner. The southern elevation of this floor would be flush with the southern elevation of the third floor beneath and so the southern portion of this floor would be highly visible. Likewise, the cut away south western corner would open up a more extensive view of the western portion of the fourth floor. The contrasting design and powder coated aluminium finishing material of this floor would detract from the more considered design and brick finishing material of the four storey

building beneath. I, therefore, take the view that the proposed fourth floor would be visually obtrusive and that the Planning Authority's original view that this floor should be omitted to ensure that this building sits comfortably within the streetscape remains valid.

- 7.11. The proposal would be visible from more limited public vantage points to the rear of the site on Pembroke Lane and Baggot Court. The rear elevation of the proposed fourth floor would be flush with the rear elevation of the four storey building beneath and so the visual impact of the addition height would only be relieved by the change in finishing material.
- 7.12. I conclude that the proposed fourth floor would be visually obtrusive, and it would detract from the visual appeal of the permitted four storey building within the context of the streetscape. Consequently, this floor would fail to be in harmony with its host conservation area.

(ii) Amenity

- 7.13. Quantitatively, the proposed fourth floor would accommodate 1 no. two-bed/four-person apartment over a floorspace of 81.7 sqm. An accommodation schedule for this apartment is set out on drawing no. 310. This schedule indicates that it would be compliant with the relevant areas and dimensions cited as minimum standards in Appendix 1 to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines.
- 7.14. Qualitatively, principal elevation of the proposed fourth floor apartment would face west north-west. Secondary bedroom windows would face in other directions and rooflights would supplement the lighting afforded by windows.
- 7.15. The applicant has submitted two documents that examining the impact upon lighting of the proposal, i.e., Shadow Diagrams and Report and Sunlight and Overshadowing Analysis.
- The former document compares existing overshadowing from the site with that which would ensue under the proposal. It states that windows in the rear elevations of the Georgian houses (in use as offices) to the north-east of the site at Nos. 128 & 129 Baggot Street Lower would experience a reduction in direct sunlight after 4pm in the spring and the autumn. Their respective rear

gardens would also experience a reduction in direct sunlight. As permitted, the four storey building would entail less of a reduction in these respects. The document concludes that the early evening reductions should be weighed against the continuing reception of sunlight earlier in the day.

- The latter document compares the existing two storey buildings and their relationship with No. 129 Baggot Street Lower and that which would emerge under the current five storey proposal. It also compares this relationship under the scenarios presented by the permitted four storey building and the five storey one currently proposed. These comparisons track the vertical sky component (VSC) of the windows in the main rear elevation to No. 129, the windows in its return (W5, 6 & 7), and the windows in its single storey rear extension (W2, 3 & 4). They indicate that the windows in the return and the extension which face west north-west towards the site would be most effected. Under the first comparison, each of these windows would fail the reduction in VSC of more than 0.8 test. Under the second comparison, the first floor windows in the return (W6 & 7) would no longer fail this test and the remaining windows would fail by a lesser margin.

The Sunlight and Overshadowing Analysis tracks whether 50% of the rear garden would receive more than 1.5 hours of sunlight on the spring and autumn equinoxes. Under either four or five storey building scenarios this test would be passed.

- 7.16. I conclude that, under the proposal a satisfactory standard of amenity would be afforded to future occupiers of the apartment. I also conclude that the permitted proposal for the site would have less of an impact on the lighting of neighbouring properties to the north east than the currently proposed one.

(iii) Water

- 7.17. The proposal would be the subject of the same water supply and foul and surface water drainage arrangements as were envisaged under the parent permission.

(iv) Appropriate Assessment

- 7.18. The site is not in or beside any European site. It is a fully serviced urban site. Under the proposal, this site would be developed to provide a fourth floor to a building with permission for four storeys. No Appropriate Assessment issues would arise.
- 7.19. Having regard to the nature, scale, and location of the proposal, and proximity to the nearest European site, it is concluded that no Appropriate Assessment issues arise as the proposal 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

That permission be refused.

9.0 Reasons and Considerations

Having regard to Policy CHC4 of the Dublin City Development Plan 2016 – 2022 and the site's location within a conservation area and adjoining protected structure (RPS reg. no. 428), it is considered that the proposed fourth floor would be visually obtrusive and that it would detract from the proportionate and sympathetic design of the previously permitted four storey building within the context of the local streetscape. Consequently, this floor would be seriously injurious to the visual amenities of the area, and it would contravene Policy CHC4 by failing to harmonise with the existing conservation area. As such, the proposed fourth floor would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

21st September 2022