



An
Bord
Pleanála

Inspector's Report ABP 313543-22

Development	Amendments to permitted hotel development.
Location	16-18 Pembroke Street Lower and Windsor Place, Dublin 2.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3302/22
Applicant	Rathdrinagh Investments Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party against refusal
Appellant	Rathdrinagh Investments Ltd.
Observers	Mrs. Maura O'Sullivan & Ms. Fiona Bolger
Date of Site Inspection	20/02/23
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The L-shaped site, occupying Nos.16-18 and with a stated area of 0.138 hectares, is located on the western side of Pembroke Street Lower. The site extends westwards to the rear, with an access lane off Windsor Place. A hoarding has been erected along the street frontage with elements of the existing four-storey building previously in use as offices now demolished. It is bounded by Nos. 51-52 Fitzwilliam Square to the south-west and Nos.14-15 Pembroke Street Lower to the north-east, all of which are protected structures.
- 1.2. Fitzwilliam Square is located to the south east with the junction with Baggot Street Lower a short distance to the north. Georgian buildings facing onto the street adjoin the northern and southern side boundaries and are largely in office use. The rear gardens of the two properties to the south, Nos 50-51, have been converted into office car parks with entrances off and access from Laverty Court, a rear access lane.
- 1.3. Terraced houses adjoin the northern site boundary to the rear of No;. 15 Pembroke Street. The houses located on Mackies Place date from the nineteenth century, many of which have been extended. Three blocks in a gated campus in commercial use are on the west side of Windsor Place opposite the rear of the site.

2.0 Proposed Development

- 2.1. Amendments to a permitted hotel development including:
 - Replacement of existing 84 sq.m. storage room with a new 411 sq.m. 4th floor level providing for 10 no. hotel bedrooms and new plant enclosure.
 - Alterations to the 3rd floor to accommodate access to the floor above.
- 2.2. The application is accompanied by:
 - Planning Report
 - Planning Submission - Drainage
 - Demolition Plan
 - Daylight and Sunlight Assessment Report
 - Construction Management Plan

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above described development for 1 reason which can be summarised as follows:

The proposal would be unduly prominent and would constitute overdevelopment of the site. It fails to have regard to the scale and form of adjoining properties and does not adequately respond to the prevailing heights along the historic streetscape of Pembroke Street or the 2/3 storey residential properties to the rear. It would be contrary to policy SC7 of the City Development Plan, would seriously injure and depreciate the value of property in the vicinity and would set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report notes:

- It is important that any proposed extension to the roof of the scheme is not unduly prominent and does not impact on the visual amenity or the integrity of vistas from within the south city Georgian core including views from within and across Fitzwilliam Square.
- Whilst there is an 83 sq.m. 4th floor storage room, this structure is set well back from the front façade and is relatively modest in scale. The proposed 4th floor level is closer to the front of the building than that permitted. The buildings along this line of the streetscape appear to have a relatively uniform height, in particular the neighbouring property at 51-52 Pembroke Street Lower and the terrace of buildings which move southwards along the street. There is concern that the proposed 4th floor level would perch excessively above the framed view of the site and would be unduly prominent. Having regard to policy SC7 of the City Development Plan which seeks to enhance important views and view corridors into, out of and within the city, the proposal

by reason of visual intrusion would have a significant and detrimental impact on views and vistas on Pembroke Street.

- There are serious reservations regarding the possible impact the additional scale and massing will have on the surrounding context including the residential units to the rear.
- The inclusion of an additional floor would be considered overdevelopment of the site and is likely to create a precedent.
- The omission of the 4th floor under permission PL29S.246463 noted.

A refusal of permission for 1 reason recommended.

3.2.2. Other Technical Reports

Engineering Department – Drainage Division has no objection subject to conditions.

Transportation Planning Division has no objection subject to conditions.

Senior Environmental Health Officer recommends a condition should permission be granted.

3.3. Prescribed Bodies

Transport Infrastructure Ireland notes that the Section 49 Supplementary Development Contribution Scheme – Luas Cross City is applicable.

3.4. Third Party Observations

Objections to the proposal received by the planning authority are on file for the Board's information. The issues raised relate to

- Inappropriateness of the amendments to the Georgian streetscape in terms of scale, height and design,
- Impact on amenities of adjoining property,
- Contravention of condition 2 attached to permission PL29S.246463.

4.0 Planning History

PL29S.246463 (2445/16) – permission granted in August 2016 for a change of use from offices to a 108 no. bedroom hotel.

Condition 2: The top floor of the proposed building (proposed fourth floor as indicated on drawing No. 254-P-02-02 received by the planning authority 15th, February 2016) shall be omitted in its entirety. Revised drawings providing for this omission to be submitted and agreed to in writing with the planning authority prior to the commencement of development.

Reason: In the interests of visual amenity and to protect the integrity of vistas from within the south city Georgian core including views from within and across Fitzwilliam Square.

The duration of the permission has been extended under ref. 2245/16/X1 until 07/01/27.

ABP 303942-19 – permission granted in June 2019 for amendments to permitted development (PL29S.246463) providing for internal reconfigurations and provision of 4 no. additional bedrooms.

3303/22 (lodged at the same time as the application subject of this appeal) – permission granted in May 2022 for amendments to the permitted hotel development providing for internal alterations and reconfiguration resulting in the net increase in floor area of 118 sq m and 23 No. additional hotel bedrooms, providing for a total of 125 No. bedrooms and a gross floor area of 5,638 sq m. The permission also provides for the demolition of the front (southeast) facade and the construction of a new front (southeast) facade to include juliet balconies and revised pedestrian entrances.

5.0 Policy Context

5.1. Development Plan

Since the planning authority's decision the Dublin City Development Plan 2022 came into effect.

The front part of the site is within Zone Z8 - Georgian Conservation Areas, the objective for which is to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.

The rear of the site is zoned Z1 - Sustainable Residential Neighbourhoods the objective for which is to protect, provide and improve residential amenities.

The site is outside of but immediately adjoins the Fitzwilliam Square Architectural Conservation Area.

Policy BHA7 – ACAs

(a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA 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. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

(c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA.

Contemporary design which is in harmony with the area will be encouraged.

The site is within a Conservation Area. Whilst these areas do not have a statutory basis in the same manner as protected structures or ACAs, they are recognised as areas that have conservation merit and importance and warrant protection through zoning and policy application.

Policy BHA9 Conservation Areas

- to protect the special interest and character of all Dublin's Conservation Areas – identified under Z8 and Z2 zoning objectives and denoted by red line conservation hatching on the zoning maps. 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.

Appendix 3: Achieving Sustainable Compact Growth Policy for Density and Building Height in the City

City Centre and within the Canal Ring (inner suburbs) - In general, and in accordance with the Guidelines, a default position of 6 storeys will be promoted in the city centre and within the canal ring subject to site specific characteristics, heritage/environmental considerations, and social considerations in respect of sustaining existing inner city residential communities.

5.2. Natural Heritage Designations

None in the vicinity.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Tom Phillips Associates on behalf of the 1st party against the refusal of permission which is accompanied by an amended option for consideration by the Board refers. The amended option provides for a 4th floor of 338 sq.m. reduced from 411 sq.m with an increased setback from the front façade. This would provide for 8 no. bedrooms, a reduction from 10 as originally proposed. This would give a total of 109 bedrooms.

The appeal submission can be summarised as follows:

- Whilst the requirement to omit the 4th floor by way of condition attached to PL29S.246463 is noted the planning context has evolved.
- The permitted development includes a substantial storage room at the same level as the proposed additional hotel bedroom floor. The existing storage room was temporarily removed due to structural issues in the context of the wider demolition. A visual impact assessment must be made with reference to the photomontages submitted rather than what is currently on site.
- The pre-existing height is a relatively unique consideration in terms of the site context. For this reason it is not accepted that the proposal creates a precedent.

- The option put forward to the Board provides a front façade more similar to that permitted.
- It is not accepted that the proposed floor would perch excessively above the framed view or be unduly prominent. There are very limited views of the upper levels from Pembroke Street or Pembroke Street Lower due to the limited long distance views available.
- The Conservation Comment and Visual Conservation Impact Assessment accompanying the application does not identify any conservation concerns on Pembroke Street Lower and Fitzwilliam Square.
- The 2 and 3 storey buildings to the rear are an anomaly in terms of building heights at a location within the city centre and should not unreasonably dictate the height of nearby developments.
- As per the sunlight and daylight assessment submitted the proposal would result in an imperceptible level of effect on neighbouring properties and would not be seriously injurious to their amenities.
- Whilst the development will be visible it does provide for a transition in scale by reason of the setback from the front, rear and side elevations.
- The proposed additional floor area at 411 sq.m. is quite limited particularly in the context of the wider development.
- The new development plan states that a default position of 6 storeys will be promoted in the city centre and canal ring.
- The height of the building should be based on the Pembroke Street Lower elevation as it is the principal elevation.
- The proposal complies with the 10 performance criteria set out in the new development plan against which higher buildings are to be assessed although it is considered that the criteria do not apply in this instance.

6.2. Planning Authority Response

None

6.3. Observations

The submission by Joe Bonner, Town Planning Consultant on behalf of the observers can be summarised as follows:

- The provision of an alternative option suggests that the applicant is not confident that the development as submitted is appropriate for the site and is a de facto acceptance that the refusal of permission was the correct decision.
- The provisions of the permission granted under ref. PL29S.246463 and omission of the top floor by way of condition 2 should still apply. The proposal materially contravenes that condition.
- The development as permitted provides for a 7 storey building in the vicinity of their dwellings. The amenities of long established dwellings cannot be disregarded. The applicant would have been aware of the site constraints.
- The proposal would have a significantly greater impact on their dwellings than the previously permitted development.
- The storage room is not as substantial as claimed.
- The amended option, whilst providing for a greater setback from the front elevation, does not provide for any changes to the rear of the structure which will impact on the observers' homes.
- Despite the change in policies that may have occurred since the original permission was granted the potential impact on their dwellings has not altered.
- The plot ratio arising reflects the overdevelopment of the site.

7.0 Assessment

- 7.1. In the interests of clarity and to aid in the assessment of the current proposal I consider that a synopsis of the planning history pertaining to the permitted hotel development is beneficial.
- 7.2. The parent permission under ref. **PL29S.246463** (2245/16) (as extended) allows for the change of use of the existing office building to a 108 bedroom hotel to include

demolition of late 20th century structure at the rear and construction of a new extension. Condition 2 attached to the permission required the omission of the 4th floor in its entirety resulting in a loss of 10 hotel bedrooms. Arising from this the storage room was to be retained and is delineated accordingly on the compliance drawings submitted to the planning authority.

- 7.3. Arising from structural issues in the context of the wider demolition the said 4th floor storage room was removed.
- 7.4. Permission was subsequently granted on appeal under ref. **ABP 303942-19** (4264/18) for amendments to the permitted development including internal reconfigurations including the extension of the front access stairs enclosure to the 4th floor, reconstruction of existing 4th floor 84 sq.m. storage room and provision of a 1.6 metre high roof top plant enclosure to the rear. The amendments allow for an increase in the number of bedrooms from 98 to 102 bedrooms.
- 7.5. The Board is advised that amendments to the development were also permitted under ref. **3303/22** which was lodged with the planning authority at the same time as the application which is subject of this appeal. As per the information available the amendments as permitted provide for internal alterations and reconfiguration resulting in the net increase in floor area by 118 sq m and 23 no. additional hotel bedrooms, providing for a total of 125 No. bedrooms and a total gross floor area of 5,638 sq m. The permission also provides for the demolition and replacement of the front (southeast) facade to include juliet balconies and revised pedestrian entrances. Section 1.4 of the Planning Report accompanying the application subject of this appeal notes that the proposals subject of the two applications, by their nature, cannot be implemented at once and, depending on the outcome of the planning application process, the applicant will determine which will be implemented in future.
- 7.6. Having regard to the nature and extent of the development as permitted on the site under ref. PL29S.246463 (2445/16) (as extended) and the subsequent amendments to same as detailed above I consider that the substantive issue in the current appeal is the acceptability of the additional floor space to be provided at 4th floor level. The works entail the replacement of a 84 sq.m. storage room with a new 411 sq.m. 4th floor providing for 10 no. hotel bedrooms and new plant enclosure. Alterations to the 3rd floor are required to accommodate access to the floor above. As per the details

accompanying the application the proposed amendments would result in 313 sq.m. additional floor space at 4th floor level and would provide for a net increase of 9 no. bedrooms bringing the total to 111 bedrooms with a total gross floor area of 5833 sq.m.

- 7.7. Whilst the appellant places significant emphasis on the original storage room and its presentation to the streetscape and contends that due regard should be had to it, it is reasonable to conclude that the Board in its assessment and adjudication on the parent permission would have had regard to same.
- 7.8. As proposed the 4th floor would be set back 2.7 metres from the front elevation, is forward of the building line of the original storage room and is comparable (although not identical) in footprint to that omitted by the Board by way of condition on the parent permission. Its height, also comparable to that originally proposed, exceeds that prevailing along the streetscape. The elevational treatment to Pembroke Street is contemporary in execution and is reminiscent of that originally proposed, albeit with alternative fenestration and terrace treatments. As put forward by the observers the proposal materially contravenes condition 2 attached to the parent permission.
- 7.9. Although it is argued that the policy context has changed in the period since the parent permission was granted and indeed I note both the Building Height Guidelines and new City Development Plan, I submit that the site context remains the same. The building is within an important Georgian streetscape designated as a Conservation Area. It immediately adjoins the Fitzwilliam Square Architectural Conservation Area to the south and abuts a number of protected structures. Given the sensitive location, homogeneity of Georgian architecture in the streetscape and strongly defined parapet line without additions above other than the original storage room on the building and chimney stacks historically at roof level, the additional floor is not acceptable. Also, as noted by the Inspector in her assessment of the parent application the top floor, if omitted, would address concerns as to the stepping down and subservience in height to the block and adjoining buildings on the street frontage and also to the buildings to the rear including the residential properties at Mackies Place and Windsor Place. Due to the site levels and building design the building as permitted presents as 6 storeys over basement to the rear. The proposed development would, in effect, provide for a 7th storey.

- 7.10. I consider that the proposal would contravene the current Z8 Georgian Conservation Areas zoning provisions for the site, the objective for which is to protect the existing architectural and civic design character. It would also be contrary to the provisions for the immediately adjoining ACA as set out in policy BHA7 and the provisions of policy BHA9 as pertain to Conservations Areas in that it would not contribute positively to its character and distinctiveness, is not complementary or sympathetic to its context and is inappropriate in terms of scale or height.
- 7.11. Although the policy considerations in the current development plan with regards to building height have changed materially from those as set out in the previous plan and which reflect the Building Height Guidelines, the provisions of Appendix 3, in stating that a default position of 6 storeys will be promoted in the city centre and within the canal ring, notes that this is subject to site specific characteristics and heritage/environmental considerations which clearly arise in this case. I note, of course, that the rear of the building presents as 6 storeys.
- 7.12. In terms of the residential amenities of adjoining property the Daylight and Sunlight Assessment report concludes that the impact on surrounding properties by the additional height would be largely imperceptible.
- 7.13. I note the amended plans accompanying the appeal put forward for the Board's consideration. The revised option provides for a reduction in the 4th floor area from 411 sq.m. to 338 sq.m. with an increased setback of 5.2-6 metres from 2.7 metres. This arrangement would provide for 8 no. bedrooms reduced from 10 providing for 109 bedrooms in total. I am not convinced that the setback would satisfactorily address the concerns as detailed above especially when viewed from the east and south-east with the extension as presented to the rear to remain as proposed. I consider that insufficient detail has been provided in support to reach a definitive conclusion. I therefore do not consider that the option be considered at this juncture.

Appropriate Assessment

- 7.14. Having regard to the location of the site and the existing uses thereon and the nature and scale of the proposed development no appropriate assessment issues arise, and it not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the existing character and prevailing pattern of development within the designated Georgian Conservation Area, immediately adjoining an Architectural Conservation Area and Protected Structures it is considered that the proposed development by reason of its height and design would be out of scale with its surroundings and would seriously detract from the architectural character and setting of the streetscape generally. The proposed development would, therefore, materially and adversely affect the visual amenities of the Georgian Conservation Area and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development would, by reason of the provision of a 4th floor, contravene materially a condition attached to an existing permission, namely condition number two attached to the permission granted by An Bord Pleanála on the 18th day of August 2016 under appeal reference number PL29S.246463.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2023