



An  
Bord  
Pleanála

## Inspector's Report

### ABP-315519-23

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<b>Development</b>	Change of use of unit from communal residents' room to licensed cafe/restaurant
<b>Location</b>	Unit 602, Block V, The Charlestown Centre, Charlestown Place and St. Margaret's Road, Charlestown, Dublin 11, D11 PC9W
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	FW22A/0254
<b>Applicant(s)</b>	Rosnaree Property Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Rosnaree Property Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	17 <sup>th</sup> June 2023

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## 1.0 Site Location and Description

- 1.1. The subject site is located within the area of Charlestown Shopping Centre within the southern area of Fingal County Council, proximate to the administrative boundary of Dublin City Council. It is c. 1.5km north of Finglas Village, c. 4.2km east of Blanchardstown and c. 6.5km northwest of Dublin City Centre. The M50/N2 is c. 500m north of the site and Dublin Airport is c. 9km to the northeast.
- 1.2. The Charlestown Centre is a mixed use development of retail, commercial and residential units. The site in question relates to an existing ground floor vacant unit, 118sqm in area, within a six storey block, with five floors of apartments above. This block forms part of a perimeter layout of six apartment blocks and is described as Phase 2B of development. The block in question, where the unit subject of this application is located, is referred to by the applicant as Block V. There is a single width street running north-south to the east of the perimeter block, which turns east/west toward Block V and into the perimeter block. The street is designed for vehicular access for deliveries/service vehicles and appears to function mainly as a pedestrian street, and while the terminating area at the entrance to the perimeter block is described in the application as 'Charlestown Square', it is designed as a vehicular street, tarmac down the centre with bollards either side and a wider paved pedestrian area at the entrance to the perimeter block. At Block V the vehicular part of the street terminates but continues for pedestrians north to the adjoining road and bus stops. Opposite Block V is the Odeon cinema and Leisureplex complex, part of the perimeter of which comprises a number of vacant ground floor units with signs for multiple food places/restaurants on the windows indicating they will be opening soon. This apartment development and street/square appears to have opened relatively recently in 2022. The Charlestown shopping centre block with apartments and roof gardens above is located on the opposite side of the north-south street to the perimeter block and has been open a number of years. A pedestrian entrance into the shopping centre from the north-south street is aligned with the east-west street where Block V is located.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:

- Change of use of Unit 602 from communal residents room (vacant) to licensed cafe/ restaurant use (including preparation of hot food for consumption off the premises, homes deliveries and collection),
- Elevational changes associated with tenant signage, air extraction and ventilation units and all associated site and development works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission REFUSED on 8<sup>th</sup> December 2022 for the following reason:

The proposed development would remove a permitted communal facility to serve residents of the approved apartment development. The proposed development would adversely impact the residential amenities of this apartment development, would contravene materially Objectives DMS34, DMS04 and Charlestown and Meakstown 1 of the Fingal County Development Plan 2017-2023, set a poor precedent for other similar development and therefore would be contrary to the proper planning and sustainable development of the area.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Planning Officer's report generally reflects the decision of the Planning Authority.

##### **3.2.2. Other Technical Reports**

Environmental Health – Conditions recommended.

Transport – No objection subject to condition.

#### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

FW22A/0105 – Permission REFUSED on 14<sup>th</sup> July 2022 for Change of use of Unit 602 from 'communal residents room' (vacant) to cafe/restaurant use (including preparation of hot food for consumption off the premises), elevational changes associated with tenant signage, air extraction and ventilation units and all associated site and development works.

R1: The proposed development would remove a permitted communal facility to serve residents of the approved apartment development. The proposed development would adversely impact the residential amenities of this apartment development, would contravene materially Objectives DMS34, DMS04 and Charlestown and Meakstown 1 of the Fingal County Development Plan 2017-2023, set a poor precedent for other similar development and would therefore would be contrary to the proper planning and sustainable development of the area.

F19A/0146 – Permission GRANTED for modification to recently permitted Phase 2B development (reg ref F18A/0718) to provide an additional 58 no. apartments within a new building known as Building 600, in lieu of the previously permitted Building 550 and will result in an increase in the overall number of apartment units on the Phase 2B from 319 units to 377 units and a decrease in retail floorspace.

[I note Phase 2B relates to six apartment blocks, with the unit subject to this application a ground floor unit within the new Building 600].

## 5.0 Policy Context

### 5.1. National Policy

- Sustainable Residential Development in Urban Areas, Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual: A Best Practice Guide (2009)
- Sustainable Urban Housing, Design Standards for New Apartments, Guidelines for Planning Authorities (2020)
- Urban Development and Building Height Guidelines for Planning Authorities (December, 2018)

### 5.2. Fingal County Development Plan 2023-2029

#### Zoning

- TC ‘Town and District Centre’ - Protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities.

#### Chapter 2 Planning for Growth, Core Strategy, Settlement Strategy

- Charlestown & Meakstown are identified as being within the ‘Dublin City and Suburbs Consolidation Area’ of the Metropolitan Area.

#### Chapter 14 Development Management Standards

- Section 14.7.9 Communal Facilities - Applicants are encouraged to provide for a range of communal facilities for residents of a scheme, particularly as part of larger apartment developments. The range and mix proposed should form part of pre-planning consultation with the Planning Department in advance of lodgement of the planning application. Such facilities may include laundry rooms (in well-ventilated areas), community or meeting rooms or on-site management/maintenance facilities. Consideration may also be given to co-working spaces.

### **5.3. Natural Heritage Designations**

The nearest European sites are those associated with Dublin Bay, c. 7km-9km to the southeast, namely South Dublin Bay SAC, North Dublin Bay SAC, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA.

### **5.4. EIA Screening**

The proposed development is for a change of use where no construction works or intervention in the natural surrounds are involved. The proposed development does not therefore constitute a development project for the purpose of EIA. 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**

One appeal has been lodged by BMA Planning on behalf of the applicant Rosnaree Property Limited. The grounds of appeal as submitted by the first party is summarised as follows:

- The purpose of the application is to provide a viable use for the existing vacant unit and thereby activate the western edge of Charlestown Square with this use. The applicant has secured a tenant for the unit.
- The refusal of permission is restricting the applicant's ability to let and activate the unit. The associated security, service charge, and maintenance costs place an unnecessary burden on the application in circumstances where it was verified that there is no demand for community use.
- Permission was granted for the development in 2019 and a tenant and/or operator sought for the permitted residents room. The development was completed in 2021/2022. As confirmed in the letter submitted by Mason Owen Lyons, there is no interest from the existing residential owners at Charlestown and no interest from Charlestown residents or community groups to take on use of Unit 602.



- The permitted development is not a build to rent unit. As such the provision of amenities and facilities is not a planning requirement. In addition, Charlestown Residents have direct access to a wide range of community services and facilities within the Charlestown Centre.
- The Apartment Guidelines 2022 provide clear and unambiguous direction that communal facilities should be subject to negotiation and agreement with an applicant and not generally imposed by the planning authority. The refusal reason should be dismissed for this reason.
- The proposed café/restaurant adjoining a similarly permitted development within Unit 601 can be accommodated with no impact to existing residential amenity. The communal room has always been vacant and the owners of the apartment complex (Urbeo and Respond) have said that the unit is not required by them or the resident tenants.
- Café/restaurant uses at ground floor level with residential accommodation above has been accepted throughout Charlestown and would have no impact on residential amenity. This use was permitted in Unit 601 adjoining the proposed unit (FW22A/0107).
- There will be no impact in terms of issues with ventilation, deliveries/servicing, cycle parking and car parking. The applicant is satisfied to accept a condition in relation to operating hours.
- A distinction must be made between a proposal that contravenes an objective of a development plan and a proposal that materially contravenes an objective of a development plan. The proposal does not materially contravene objectives DMS34, DMS04 and Charlestown and Meakstown 1. These objectives are not specific to the proposal and the proposed change of use does not materially contravene these objectives.
- The local authority have provided no evidence demonstrating the need for communal facilities at Charlestown and have made no approach with regard to taking on, operating, or managing such a facility in Charlestown. The applicant has engaged with local community groups and residential landlords

through the agents (Mason Owen Lyons) and after two years of active marketing in 2021 and 2022 it has been verified that there is no demand.

- Should the Board deem it necessary to rely on Section 37(2) of the Act, permission can be granted for the proposed development in accordance with the Apartment Guidelines, in that the guidelines state that the provision of communal facilities should be subject to negotiation and agreement with an applicant and not generally imposed by the planning authority (PA).
- The PA has provided no evidence that the proposed change of use to café/restaurant within an established district will set a poor precedent for other similar development.

## **6.2. Planning Authority Response**

The PA response to the first party appeal is summarised as follows:

- There has been a significant quantum of residential development permitted in Charlestown, with the subject unit permitted as an ancillary residents' communal amenity space. It is the only communal residents' facility in the residential development permitted under reg ref F19A/0146.
- The loss of the unit is considered detrimental to the residential amenities of the scheme, would contravene a number of objectives of the Fingal Development Plan 2017-2023 and would set an inappropriate precedent for the removal of residents' facilities from apartment schemes.

## **6.3. Observations**

None.

## **6.4. Further Responses**

None.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, including all submissions received in relation to the appeal, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Zoning
- Residential Amenity

### 7.2. Zoning

7.2.1. The subject site is located within zoning objective TC, the objective for which is 'to protect and enhance the physical and social character of town and district centres and provide and/or improve urban facilities'.

7.2.2. The ground floor of Block V comprises six apartments, a 'communal residents' room', which is the subject of this application, and one restaurant unit (the adjoining unit, permitted by change of use from retail/commercial unit).

7.2.3. The provision of a café/restaurant is considered acceptable in principle within the zoning objective for the area, subject to assessment against all other normal planning criteria. I note the vision for the zoning objective TC relating to the area is to develop and consolidate centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses. I have concerns in relation to the impact of the change of use proposed on the residential use on the site, specifically on the residential amenity available to existing and future residents, which is addressed further hereunder.

7.2.4. I note the Fingal County Development Plan 2023-2029 came into effect on 5<sup>th</sup> April 2023. I note the Planning Authority's assessment of this application was undertaken under the previous development plan, which was in effect at the time and was also in force at the time of the appeal submission. I assess hereunder the application against the operative development plan, namely Fingal County Development Plan 2023-2029.

7.2.5. I note that the planning authority's reason for refusal states that the proposed development materially contravenes policies of the previous development plan, which was in effect at that time. While these policies are no longer in place, I note that the policies referenced were not in my opinion sufficiently specific so as to justify the use of the term "materially contravene" in terms of normal planning practice. The Board should not, therefore, have considered itself constrained by Section 37(2) of the Planning and Development Act 2000, as amended. I consider this also to be the case in terms of the current development plan, where no material contravention issues arise.

### **7.3. Residential Amenity**

- 7.3.1. 'Block V' comprises 56 units, with the total number of units across the six blocks within this perimeter block totalling 375 units. The density of this phase of the development is 97 units per hectare.
- 7.3.2. The applicant states the unit is not required as per the submitted estate agents letter and that no interest has been expressed by residents, the owners of the apartment complex (Urbeo and Respond), or other community groups. The applicant argues that there are sufficient amenities and services in the Charlestown area to serve residents.
- 7.3.3. The residents' communal unit was permitted as part of permission F19A/0146. I note from the planning documentation associated with F19A/0146 that two commercial/retail units and one communal residents room was proposed at ground floor level in addition to five apartments. By way of FI an internal passageway was omitted and the remaining area was to be incorporated back into the retail/commercial units and apartments by condition and compliance. A revised ground floor layout was agreed as compliance which increased the area of the retail unit (and amalgamated the two units proposed into one), retained the proposed communal residents room, and increased the size of one of five apartments from a two-bed to a three-bed unit. I note the residents' communal room was relocated from the eastern and southern elevation (adjoining the private courtyard open space) to a location with an eastern elevation only opposite the Odeon Leisureplex cinema block and the area of the residents' communal space was reduced from 122sqm to

118sqm. I further note a contribution-in-lieu condition was applied in lieu of full open space provision (F19A/0146). I note there are six apartments at ground level as part of this application, as opposed to the five approved by way of compliance, however, it may be a case that this was undertaken by way of a subsequent application that I don't have sight of. Either way, in the interests of clarity, this application relates only to the residents communal room and any changes to the apartments is a matter for the planning authority.

- 7.3.4. In the grounds of appeal the applicant quotes the apartment guidelines saying such a communal use should not be imposed upon an applicant, however, it is clear to me from the planning history that this was not imposed on the applicant by the council but was proposed by the applicant as part of an application to redesign and increase the number of residential units within this high density block. The Apartment Guidelines do not limit the provision of communal amenity spaces to BTR schemes, but rather recognise that communal rooms are of benefit in larger apartment developments. It is unfortunate that the management of this communal room was not addressed by the applicant as part of the parent permission, as such a use would normally come within the remit of the management company to manage on behalf of residents. It would appear the applicant is seeking a separate company/community group to manage the use. Regardless of the approach being taken to the management of the unit, the provision of this internal communal amenity space was included to address the amenity needs of residents of this and the surrounding five blocks. While the applicant says there is no demand for a residents communal room, there is no verifiable evidence submitted to demonstrate this, I note the development is not long occupied, and I do not accept that a high density scheme of 377 units, which has no other internal amenity space available, would have no demand for such a space or requirement for one. While there are services and facilities in the wider area, these cannot in my mind replace the function of a private internal amenity space for use by the residents of a block and those of neighbouring blocks. To remove this amenity space in its entirety by way of a change of use with no compensatory proposals for alternative internal amenity space would seriously detract from the residential amenity available to existing and future residents and is a diminution of the permitted residents' amenity.

7.3.5. I note the applicant's argument that the unit is not providing an active frontage onto the 'square'/space to the front of the building. The majority of the eastern frontage of this block is taken up by the adjoining permitted restaurant unit and furthermore I do not consider the frontage of a residents' communal room would detract from activity onto an existing pedestrian area. I note a number of the ground floor units in the opposite Odeon Leisureplex block have signs up indicating a number of restaurant/takeaways will be opening soon, therefore ground level activity is not anticipated to be an issue in the area of the communal residents' room. Should the applicant wish to relocate the communal residents' room (given it is indicated in the appeal that its location is not considered ideal), this could be considered by way of a future application, subject to an alternative internal amenity space at a suitable location and of a suitable scale being provided. I note the location of the communal room as proposed originally under F19A/0146 had frontage to the private residents' courtyard/playground space to the south as well as having frontage on the eastern elevation and was a preferable location, should the applicant wish to reconsider this area.

7.3.6. The original planning assessment examined the scale of development and future needs of occupants relative to the amenities proposed as part of that scheme and there is in my opinion no justification for the omission of the communal room. The proposed development would in my opinion adversely affect and would fail to contribute to the improvement of the residential amenities of existing and future occupants of this development.

7.3.7. Having reviewed the planning history of the site, the grounds of appeal, and all documentation submitted with the application, I am of the view that the change of use proposed would seriously detract from and injure the residential amenity of existing and future residents through the diminution of planned residential amenity space for this high-density development.

#### **7.4. Appropriate Assessment**

7.4.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

- 7.4.2. The subject site is located in the area of Charlestown Shopping Centre, in south Fingal County Council, which is c. 7km-9km from Dublin Bay and its associated European Sites, namely South Dublin Bay SAC, North Dublin Bay SAC, North Bull Island SPA and South Dublin Bay and River Tolka Estuary SPA.
- 7.4.3. Having considered the nature, scale and location of the proposed development, which is for a change of use of an as-constructed unit with no additional construction works, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site, given the nature of the works, the distance from the nearest European sites and lack of any hydrological connections. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## **8.0 Recommendation**

- 8.1. It is recommended that permission is refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the planning history of the site, in particular, the quantum of development, the permitted use of the existing unit as communal space to serve the overall development, and the extent of amenity space for residents, it is considered that the proposed change of use of the permitted internal communal residents' room would seriously injure the residential amenity of existing and future residents by reason of loss of amenity space. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Una O'Neill  
Senior Planning Inspector

19<sup>th</sup> June 2023