



An  
Bord  
Pleanála

## Inspector's Addendum Report

**ABP-316120-23**

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<b>Development</b>	Refurbishment and change of use to aparthotel.
<b>Location</b>	38/39 Abbey Street Upper, Dublin 1
<b>Planning Authority</b>	Dublin City Council North
<b>Planning Authority Reg. Ref.</b>	5510/22
<b>Applicant(s)</b>	Middle Abbey Properties 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>	Middle Abbey Properties Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> August 2024 (external) 15 <sup>th</sup> January 2025 (external)
<b>Inspector</b>	Joe Bonner

## 1.0 Introduction

- 1.1. This report is an addendum to the Inspector's report I previously prepared in respect of ABP-316120-23, dated the 30th of September 2024. It has been prepared in response to Board Direction BD-018524-24, dated the 18<sup>th</sup> of December 2024, which states:

'The Board decided to defer this case and request the Inspector to prepare an addendum report. At a Board meeting on the 14/10/2024 it was decided to issue a Section 132 to the applicant on foot of the New Issue identified by the Inspector in his report dated 30<sup>th</sup> September 2024.

- 1.2. On the 21<sup>st</sup> of October 2024 the Board issued a Section 132 notice that required the applicant to respond, on or before the 11<sup>th</sup> of November 2024, to the following:

The Board note, from the Inspectors site inspection, works on the buildings have occurred since this appeal was lodged. In addition, the Board noted that permission has been granted by Dublin City Council, planning reference number 4722/23, for this site that post-dates this appeal.

You are requested to submit:

- updated existing floor plans,
- details of the current use of the building and
- to provide clarity on the implications, if any, of these works and the recent planning decision on this appeal.

- 1.3. The Board direction noted that the applicant responded to the above request, which it circulated under Section 131, and that no further submissions were received.

- 1.4. The Board direction also states that:

'The inspector is requested to prepare an addendum report, having regard to the submission received from the applicant in response to the Section 132 request and include in that addendum report a recommendation.'

## 2.0 Applicant's Response to Board's Section 132 Notice

- 2.1. The Applicant's agent submitted a response to the Board's request on the 11<sup>th</sup> of November 2024. Included with this response letter is correspondence confirming a

change of agent representing the applicant. The applicant's response to the individual elements of the request is set out below.

## **2.2. Issue 1 - Updated existing floor plans**

- 2.2.1. The response was appended by what are described in the cover letter as 'as built' drawings, including roof plans, elevations and sections. The plans themselves describe the floor plans as 'proposed' and are dated April 2023. However, the applicant states that the drawings submitted in response to the Section 132 notice 'represent the current as built condition of the building' and goes on to state that 'these drawing (sic) indicate that the building has been laid out as 8 no. short stay residential units identical to the layout as proposed under Reg. Ref. 5510/22'.
- 2.2.2. The response also states that 'no external works have been carried out whatsoever'.

## **2.3. Details of the current use of the building**

- 2.3.1. The applicant has responded by stating that the building is currently vacant, that the previous unauthorised residential use has ceased, that it retains its permitted use as office and that no planning permission has been implemented changing the use of the building from office to residential.

## **2.4. Provide clarity on the implications, if any, of these works and the recent planning decision on this appeal**

- 2.4.1. The work carried out consists of the laying out the buildings in the format of 8 no-short stay residential units identical to the layout proposed in the current application. The works were carried out in anticipation of a positive decision in respect of this appeal and have been completed under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- 2.4.2. The completion of the 4(1)(h) exempted works have 'resulted in the cessation of the former unauthorised residential use'. The response goes on to state that 'the cessation of the unauthorised use of the building and the removal of the substandard accommodation is wholly positive' and the exempted internal works have no implications for the current appeal'.
- 2.4.3. The decision to grant permission under reg. Ref. 4722/23 has no bearing on the current appeal and if the board grants permission for the current application the development permitted under 4722/23 can be built as an extension thereto. There is no conflict at all between the two applications.

### 3.0 Circulation of Applicant's Response

- 3.1. On the 18<sup>th</sup> of November 2024 the board circulated the applicant's response to 'Dublin City Council North Planning & Development' and request that any submissions or observations in respect of the applicant's submission be made on or before the 9<sup>th</sup> of December 2024.
- 3.2. No submissions or observations were received in response to this invitation.

### 4.0 Assessment

- 4.1. With regard the matters raised in the applicant's response to the Section 132 Notice, I consider that new material issues arise, and I also consider it appropriate, in the interests of clarity and for the Board's information, to address the issues raised therein under the headings of the Section 132 notice.

- Updated existing floor plans
- Details of the current use of the building
- Provide clarity on the implications, if any, of these works and the recent planning decision on this appeal 4722.23

#### 4.2. Updated existing floor plans

##### Internal

- 4.2.1. The applicant has submitted revised plans that confirm that works have been carried out to the interior of the building such that the building is now laid out as 8 no apartments (4 no studios and 4 No 1 bed apartments), whereas when the application was submitted to the planning authority it consisted of 6 no apartments and two meeting rooms.
- 4.2.2. It is evident from a comparison of the 'as built' plans versus the existing floor plans submitted to the planning authority as part of the application, that significant changes have been made to the interior of the building. These changes include:
- Ground Floor – Internal amendments to the ground floor restaurant to facilitate revised stairs layout. Installation of a new external door serving proposed new apartments No's 4 and 5, which are accessible from the Abbey Cottages/side elevation.

- First Floor – Change from two meeting rooms to 2 no studio apartments accessed via Abbey Cottages. Change from 1 no 1-bed and 2 no 2-bed apartments to 1 no 1 bed and 2 no studio apartments. This is an overall increase from 3 to 5 apartments at first floor level.
- Second Floor – Change from 1 no 2-bed to 1 no 1 bed apartment.
- Third Floor – Change from 1 no 2-bed to 1 no 1 bed apartment.
- Fourth Floor – Change from 1 no 3-bed to 1 no 1 bed apartment.

4.2.3. The overall development will result in a change from 6 apartment with 12 bedrooms to 8 apartments with 8 bedrooms or studios.

4.2.4. Having examined the plans I am satisfied that works have been carried out to give effect to a change of use to residential, regardless of whether the use of the apartments be short or long term and I will address the current use in more detail in sections 4.3 and 4.4 below.

#### External Works

4.2.5. The applicant's response states that 'no external works have been carried out whatsoever'. That is incorrect, and in that context I note that the submitted drawings are titled 'Proposed' and are dated April 2023, 20 months before this response was submitted to the board. I revisited the site in January 2025 and inspected the exterior of the building and I am satisfied that works have been carried out to the exterior of the building that are not represented on any of the elevations before the board. I am satisfied that the 'Proposed Rear Elevation' and 'Proposed Abbey Cottage Elevation' that have been submitted on drawing C-200, in response to the Section 132 notice, do not match the existing elevations, while I further note that the applicant did not submit an 'as built' eastern elevation. The differences between the 'as built elevations' in drawing C-200 and the ground level on-site inspection are:

- Rear Elevation – A new window has been added at third floor level that is not shown on the elevation but is on the corresponding floor plan (C-113), while an 'as built' window that is shown on both the plan and elevation, is not in place. At second floor the elevation shows one window while the floor plan shows two windows close to the Abbey Cottagers side of the building.

- Abbey Cottages Elevation - As well as the new door that has been added to the western (Abbey Cottages) side elevation, significant amounts of ducting and air source heat pumps are installed on this elevation significantly changing the character of this elevation from how it is represented on the 'Proposed Abbey Cottages Elevation in drawing C-200. All of this was in place at the time of the original site visit in August 2024, but it is not clear how long it has been in situ or if it is associated with the apartments or the ground floor uses. However, in responding to the Section 132 notice, the applicant did not avail of the opportunity to clarify these matters in the form of plans, elevations or in their written response, but simply stated that no external works have been carried out.

4.2.6. The response to the Section 132 notice did not include an eastern side elevation. The existing East Elevation that was submitted to the planning authority indicated that there were 5 windows on that elevation (Drawing P-20). One window has been closed at each of the second and third floor levels, meaning that external works have been carried out to this elevation.

4.2.7. I am satisfied that the elevations in drawing C-200, dated April 2023, are not representative of current exterior of the building and I am further satisfied that works have been carried out to the exterior of the building, despite the applicant's response to the contrary.

#### 4.3. **Details of the current use of the building**

4.3.1. The applicant has indicated that the current use of the building is office. I noted on the occasion of the site visit on the 15<sup>th</sup> of January 2025 that a video doorbell is in place outside the recently constructed side entrance to the building on Abbey Cottages with separate doors intercoms available for apartments 4 and 5. The front entrance to the building from Abbey Street has a similar doorbell in place with individual intercoms for the other six apartments. There was no evidence that the building was in use for any purpose on the occasion of the site visit. I will address the current use in more detail in section 4.4 below.

#### 4.4. **Provide clarity on the implications, if any, of these works and the recent planning decision on this appeal (P. a Reg. Ref. 4722/23)**

4.4.1. The applicants response to this query was that the work have been carried out to lay out 8 no-short stay residential units identical to the layout proposed in the current

application, effectively confirming that they have already carried out the works element of the application currently under consideration by the board.

- 4.4.2. Their response also states that the works were carried out in anticipation of a positive decision in respect of this appeal and have been completed under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended). This response is in contrast to the justification for carrying out the internal works which they provided to the planning authority in response to the request for further information on P.A. Reg. Ref 4722/23, the drawings and documents of which form part of the appeal file. In that regard, I refer the board to Section 4.7 of my report of September 20<sup>th</sup> 2024, where I concluded that the works that the applicant has stated are carried out, were done so out under what is now Article 10(6) of the Planning and Development Regulations 2001 (as amended), meaning that the use of the building is now residential. I do not accept the applicants claim in their response to the Section 132 notice that the works have been carried out under the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- 4.4.3. Section 4(1)(h) does not permit a change of use from office to residential. The applicant also seems to be relying on a view that the while they have accepted that works have been carried out to lay out the building as 8 units/apartments, as the 8 apartments have not been occupied the default use of the building is the previously authorised office use.
- 4.4.4. I do not agree with the applicants view as expressed above in light of Section 2 of the Planning and Development Act states that that “habitable house” means ‘a house which ... (c) was provided for use as a dwelling but has not been occupied’. Furthermore, section 2 also defines a “house” as meaning a building ...which .....was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building. By reference to the works carried out to the existing building, this is what the applicant accepts they have done. I am satisfied that the building subject to the proposed change of use, which has been laid out as 8 apartments, is consistent both with the definition of ‘house’ and ‘habitable house’, as the works carried out means that the building has been provided for use as multiple dwellings, whether or not the use has commenced. I also consider that it is a moot point whether or not the 8 units have been occupied or not at this time or whether Section 4(1)(h) or Article 10(6) is relied upon by the

applicant in relation to the works carried out. I am satisfied that the use of the building has already been changed to residential. I am not considering matter related to potential enforcement matters related to the works and change of use, as they are outside the scope of the board in considering this appeal.

4.4.5. Therefore, I conclude that as the use of the building has already been changed to residential, it would not be possible to give effect to the change of use sought in this application permitted use as storage and office ancillary to the restaurant use, but currently in use as residential, to 8 no. short stay apartments.

4.4.6. I am also satisfied that it is not possible to give effect to that part of the application involving the 'refurbishment' of the building, as the majority of the works have already been completed. Therefore, I would be recommending that the application is dismissed for the reasons I will set out in section 5 below

#### **4.5. Short-term v permanent accommodation**

4.5.1. One further issue arises in that the public notices referred to the permitted storage and office being 'currently in use as residential'. While the applicant stated that the residential use had ceased, by virtue of the works that have been carried out, as described in the submitted 'as built' plans, and my conclusion that the use is now residential, a view could be formed that the description of the development is now accurate, and that the board could decide to grant permission, notwithstanding that the works part of the development have largely been carried out.

4.5.2. Should the board not agree with my recommendation to dismiss the appeal, in the interest of completeness I consider it is necessary to address the nature of the proposed use as the applicant has not adequately addressed this matter in their response.

4.5.3. In refusing permission, the planning authority stated that the proposed development would result in the permanent loss of 6 apartment units for residential use and would be contrary to Section 15.14.3 of the Dublin City Development Plan 2022-2028.

4.5.4. Addressing Section 15.14.3, the grounds of appeal noted that while it contains a general presumption against the provision of dedicated short term tourist rental accommodation in the city, the applicant considered that the application meets the locational exception provided for in the policy, as it is located in an area of high concentration of night time and noisy activity, where standard residential would be



unsuitable, including on account of early morning deliveries. They went on to state that the development would provide less than ideal residential accommodation as it would not comply with private open space requirements and would have low levels of natural light, then followed on to state that the second, third and fourth floors can only accommodate 1 bed apartments, excluding the potential for family accommodation and that there is an inability to place windows, in either the first floor eastern or western elevations. They also stated that there is a lack of communal open space and private open space and no external space for bin storage or cycle parking. They concluded that for these reasons, the building cannot comply with the Apartment Guidelines and relevant standards in the development plan and the proposed use for short term tourist rental accommodation should be favorably considered under 15.14.3. I have previously set these ground out in 6.1.5-6.1.7 of my first report dated 30<sup>th</sup> September 2024.

- 4.5.5. While the applicant may be correct that the development cannot comply with all of the floor space requirements of the Apartment Guidelines, Article 10(6)(vi) of the Planning and Development Regulations 2001(as amended), only stipulates that two of the many criteria from the guidelines are required to be met. It states that ‘Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines’.
- 4.5.6. The information regarding the 8 no apartments that is relevant to Article 10(6)(vi) is provided on the ‘as built’ drawings submitted in response to the Section 132 notice and is set out in the table below:

Unit No	Unit Type	Floor area required	Floor area provided	Storage Required	Storage Provided
1	1 bed	45 sqm	54.22 sqm (+20.48%)	3 sqm	4.1 sqm
2	Studio	37 sqm	41.06 sqm (+10.97%)	3 sqm	2.3 sqm
3	Studio	37 sqm	38.70 sqm (+4.59%)	3 sqm	3.04 sqm
4	Studio	37 sqm	42.70 sqm (+15.4%)	3 sqm	3.0 sqm
5	Studio	37 sqm	39.2 sqm (+5.94%)	3 sqm	2.3 sqm
6	1 bed	45 sqm	46.5 sqm (+3.33%)	3 sqm	3.21 sqm
7	1 bed	45 sqm	51.72 sqm (+14.93%)	3 sqm	3.19 sqm
8	1 bed	45 sqm	50.79 sqm (+12.86%)	3 sqm	3.21 sqm

- 4.5.7. All eight units meet the minimum floor space requirement and 5 of the 8 units have floor space in excess of 10% above the minimum requirement although this requirement does not apply to the conversion of existing buildings. While two of the units fall short of the minimum storage area requirement, they are large enough to be capable of accommodating the shortfall and that would make the units compliant with Article 10(6)(vi).
- 4.5.8. Following from the applicants argument that I have set out in 4.5.4 above, Article 10(6) does not refer to a requirement to provide a minimum amount of private or communal amenity space. Similarly, while Article 10(6) does not refer to minimum bedroom sizes, the four no. 1-bed apartments all have bedrooms equal to or in excess of the minimum floor area requirement of 11.4sqm. All four of the one bedroom apartments have combined living/dining/kitchen areas in excess of the required 23sqm, while three of the four studio units have a floor area in excess of the required 30sqm, with the one unit that has a shortfall having 28.6sqm and an overall floor area of 39.2sqm, which is 2.9sqm over and above the minimum required floor area.
- 4.5.9. Section 6.9 of the Apartment Guidelines states that planning authorities are also requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes..., where property owners must work with existing building fabric and dimensions and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors.
- 4.5.10. Having reviewed the 'as built' plans submitted by the applicant in response to the Section 132 notice, I am satisfied that the deviations from the minimum floor area requirements as set out in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, are minimal in the context that each unit provides more than the minimum requirement floor area and I conclude that these 8 apartments are of a size capable of being occupied on a permanent basis.
- 4.5.11. Therefore, if I was not recommending a dismissal of the appeal for the grounds set out below I would recommend that permissions is refused on the basis that the proposed development would resulting in the permanent loss of 8 apartment units for residential use, and would be contrary to Section 15.14.3 where there is a general

presumption against the provision of dedicated short term tourist rental accommodation in the city due to the impact on the availability of housing stock. The refusal reason would be similar to the reason issued by the planning authority in its decision to refuse permission .

4.5.12. I have not assessed the development against all of the other parameters of Article 10(6) of the Planning and Development Regulations 2001 (as amended).

## **5.0 Recommendation**

Having considered the information received in respect of the application, and the appeal as well as the additional information provided by the applicant in response to the Section 132 Notice issue by the board, I recommend that board should DISMISS this appeal in accordance with the provisions of Section 138(b)(i) of the Planning and Development Act, 2000 (as amended) for the reason set out below.

## **6.0 Reasons and Considerations**

1 Since this appeal was submitted to the board, works have been carried out to both the interior and exterior of the building to give effect to a change of use of the building from permitted office/storage use to residential use and this has been confirmed in the applicant's response to the Section 132 notice. A comparison of the 'as built' plans which were submitted to the board in response to the Section 132 notice versus the 'existing plans' which were submitted to the planning authority with the application confirm that the following works for which permission is sought in this application have already been carried out:

- internal alterations to the layout to create 8 apartments, that gives effect to a change of use of the building from its previously permitted use as storage and office ancillary to restaurant use, to residential use including a change of use from meeting rooms to 2 no 1<sup>st</sup> floor studio apartments;
- a new access onto Abbey Cottages;
- a lightwell;

In these circumstances, the board is satisfied that the majority of the works that are the subject to this application have already been carried out and cannot be given effect to, while the use of the building has already been changed from office/storage ancillary to restaurant use to residential. Therefore, the board satisfied that the applicant cannot give effect to either the development or change of use that are the subject to this application and it cannot consider this application further and dismisses this appeal in accordance with the provisions of Section 138(b)(i) of the Planning and Development Act, 2000 (as amended).

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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Joe Bonner

Senior Planning Inspector

17<sup>th</sup> January 2025