



An
Bord
Pleanála

Inspector's Report ABP-317174-23

Development	PROTECTED STRUCTURE: Change of use from offices to 2 apartments
Location	3 Burgh Quay, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	5465/22
Applicant(s)	Jacques Chelouche & Ariel Ziv
Type of Application	Permission – Change of Use
Planning Authority Decision	Grant Permission subject to conditions
Type of Appeal	First Party against a Condition
Appellant(s)	Jacques Chelouche & Ariel Ziv
Observer(s)	None
Date of Site Inspection	31 st August 2023
Inspector	Joe Bonner

1.0 Site Location and Description

- 1.1. The site of the proposed development is located at Burgh Quay on the southern side of the Liffey Quays, c45m east of O'Connell Bridge, and forms part of a triangular shaped block that includes Burgh Quay, D'Olier Street and Hawkins Street. The four storey over basement building faces north onto Burgh Quay and the River Liffey and the only means of access to the building is at ground floor level from Burgh Quay.
- 1.2. All of the immediately adjacent buildings are taller than the application site. Burgh Quay is dominated by twelve storey O'Connell Bridge house located on the corner of Burgh Quay and D'Olier Street to the west of the site, while Scotch House which is located at the eastern end of Burgh Quay on the corner of Hawkins Street, has recently been upgraded to include a new modern façade, while a 7-storey extension has been built adjacent to the rear of 3 Burgh Quay. The Trinity College School of Nursing and midwifery runs from D'Olier Street through to Hawkins Street, to the south of the site.
- 1.3. The existing building includes two separate commercial units at ground floor level, one of which is currently closed, while there is an existing apartment at first floor level. The second floor is in use as a workshop associated with jewellery making, while the third floor houses a solicitor's office. The application relates to the second and third floors.
- 1.4. The site has a stated area of 170sqm, and the building has an overall floor area of 431.35sqm. The two floors subject of this appeal each have floor areas of 66.7sqm at present.

2.0 Proposed Development

- 2.1. The proposed development comprises permission for a change of use from offices to two no. two-bedroom apartments. The second and third floor apartments would have floor areas of 67.7sqm and 70.6sqm respectively.
- 2.2. The application included a conservation report that outlined the historic context of the building, the existing condition of the two floors, the proposed intervention works and methodology to be used, and was accompanied by existing and proposed floor plans which identified the proposed interventions in the existing structure.

- 2.2.1. The response to the request for further information included an internal photographic record of the condition on the two floors and an additional conservation report. The applicant did not revise the floor plans as requested by the planning authority as their conservation expert considered that the proposed rear extension would not cause any negative impact on the protected structure but would provide much needed living space within the apartments, for the comfort of residents.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. A decision to grant permission was issued by Dublin City Council on 26th April 2023, subject to the attachment of 8 conditions, including Condition No. 2 which states:

2. The development shall be revised as follows:

a) The proposed rear extension shall be omitted from the proposal in their entirety.

b) The internal floor plan of the building shall be amended as follows:

i. The proposal shall be reduced from two bedroomed to one bedroomed apartments at each level.

ii. Revised floor plans are to be submitted, ensuring the legibility of the historic floor plan is retained, with sensitively placed partitions, doors or built-in furniture. Bathrooms and kitchens are to be placed with due care and consideration for the building's historic character and surviving historic fabric.

Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In the interests of orderly development and to protect the architectural character and integrity of the protected structure.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The Planning Officer's **first report** states that the principle of the change of use to residential is acceptable. The assessment largely reflects the comments of the Conservation Officer, and the following further information was requested:

- Revised drawings omitting the rear extension.
- Reconsider the layouts with a preference for one bedroom apartments on each floor or revised two bedroom apartments ensuring the legibility of the historic floor plan is retained with no insensitively placed partitions doors or built in furniture.
- Additional drawing and photographic records providing accurate records of historic fabric and architectural features.
- Details of methods of conservation works to be carried out.
- Drawings and details of historic internal doors.
- Details of the location and means of waste storage.

3.2.3. The **second report** of the Planning Officer is the basis for the decision to grant permission. It notes that the floor plans have not been amended as requested and states that the proposed layouts, with doors positioned across the chimneybreasts to the east room and the provision of built in furniture around chimney breasts in both rooms, together with the provision of poorly designed fire lobbies and ad hoc door locations will cause serious injury to the legibility and appreciation of the internal floor plan of this unusual double fronted structure.

3.2.4. Other Technical Reports

- **Drainage Division** – 13th January 2023 – No objection subject to condition.
- **Conservation Officer's First Report** – 3rd February 2023 – sought further information. The loss of the entire rear wall of the protected structure to accommodate the extension is an unacceptable loss of the original fabric and the architectural form of the structure and would dilute the prominence of the projecting enclosure to the historic staircase. They were not convinced that the works could be

carried out without causing serious injury to the fabric of the building. There is sufficient space within the existing building to provide for high quality kitchens for each apartment.

- A minimal intervention approach that is reversible is most appropriate.
- **Conservation Officer's Second Report** – 18th April 2023 – the comments of the applicant's conservation expert are noted. The comments from the first report are restated and proposed conditions are reflected in condition No. 2 and other conditions.

3.3. Prescribed Bodies

- TII –The site lies within the area of the Section 49 Luas Cross City Light Rail Scheme Contribution Scheme. If the development is not in category that is exempt, a Section 49 Contribution should be added.
- Submissions were also invited but not received from 1) An Taisce, 2) Department of Housing, Local Government and Heritage, 3) The Heritage Council, 4) Minister for Arts, Heritage & Gaeltacht, and 5) Failte Ireland.

3.4. Third Party Observations

None

4.0 Planning History

Application Site

- 4.1.1. **P.A. Ref. 2753/20** – Permission granted by Dublin City Council on 20th May 2021 for a similar development to that which is the subject of the current application. It was described in the public notices as:

- Planning permission for change of use from offices to one two-bedroom apartment at second floor, one two-bedroom apartment at third floor, comprising two dwelling units in total, with an extension and a balcony on the rear at each level.

The second condition of the grant of permission which was not appealed is similar to but more prescriptive than Condition No 2 attached to the current decision to grant. It stated:

2. The development shall be revised as follows:

a) The proposed rear extensions shall be omitted from the proposal in their entirety.

b) The internal floor plan of the building shall be amended as follows: The proposal shall be reduced from two bedroomed to one bedroomed apartments at each level. An open plan living / dining / kitchen space shall be accommodated within the original room floor plan to the right hand side of the entrance at each floor. The bathroom shall be located to the left hand side and to the rear utilising existing service routes. Development shall not commence until revised plans, drawings and particulars showing the above amendments have been submitted to, and agreed in writing by the Planning Authority, and such works shall be fully implemented prior to the occupation of the buildings.

Reason: In the interests of orderly development and to protect the architectural character and integrity of the protected structure.

- **P.A. Ref. 3084/15 (PL29S.246121)** permission granted for a 7 storey office extension c.15m to the rear of the building subject to the current application.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The relevant Development Plan is the Dublin City Development Plan 2022-2028, which came into effect on 14th December 2022.
- 5.1.2. The site is zoned 'City Centre - 'Z5'', the objective for which is 'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'. 'Residential' is a permissible use in Z5 zoned areas.
- 5.1.3. The building at No 3 Burgh Quay is:

- on the NIAH (Ref. 50020279)
- a Protected Structure
- located within O'Connell Street ACA and O'Connell Street Scheme of Special Planning Control;
- located within the boundary of the Liffey Quays Conservation Area.

5.1.4. The following Policies and sections of the City Development Plan are relevant:

- BHA2 – Development of Protected Structures
- BHA7 – Architectural Conservation Areas
- BHA11 – Rehabilitation and Reuse of Existing Older Buildings
- Section 5.5.2 'Regeneration, Compact Growth and Densification' including policies QHSN6 – 'Urban Consolidation' and QHSN7 – 'Upper Floors'
- Section 15.9 - Development Standards for apartments.

5.2. National Policy

The Architectural Heritage Protection Guidelines for Planning Authorities'

5.2.1. Section 6.8.1 of 'The Architectural Heritage Protection Guidelines for Planning Authorities' provides that:

- Extensions - It will often be necessary to permit appropriate new extensions to protected structures in order to make them fit for modern living and to keep them in viable economic use. Where the existing exterior appearance of a structure is of special interest, and its interior is of sufficient size, it may be possible to incorporate new functions or services within the existing envelope of the structure. With flexibility and imagination, it may be possible to use secondary spaces within the building, obviating the need to extend, where there would be minimal impact on fixtures and features of special interest. The cumulative effect of minor additions can compromise the special interest of a structure and the character of an ACA. The planning authority should consider this when assessing a proposal for even small extensions.

5.2.2. Section 6.8.5 states that: -

- In urban areas, careful consideration needs to be given to proposals for the construction of rear extensions to protected structures and buildings within ACAs. Rear elevations sometimes contain fabric that is useful in reading the history of the structure, for example surviving older windows or doors. The effect of extensions may have considerable impact on the appearance of buildings or on the setting of neighbouring buildings, or indeed on the appearance of the structure when viewed from a distance (or a set of similar structures such as in a terrace), and this should be considered by the planning authority when assessing applications.

5.2.3. Section 7.2.2 'Conservation Principles' states that: -

- Entry into the Record of Protected Structures does not mean that a structure is forever frozen in time. Good conservation practice allows a structure to evolve and adapt to meet changing needs while retaining its particular significance. The challenge facing owners, planning authorities and all others involved in architectural conservation is to identify how and where change can occur and to ensure that the heritage is not damaged by inappropriate intervention. Additions and other interventions should be sympathetic to the earlier structure and of quality in themselves and should not cause damage to the fabric of the structure, whether in the long or short term.

5.3. Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022)

- 5.3.1. The 'Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022)' note that for building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, which would include 3 Burgh Quay, many of the normal standards including private amenity space requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.

5.4. Natural Heritage Designations

None relevant

6.0 The Appeal

6.1. Grounds of Appeal

6.2. This is a first party appeal against Condition No. 2 of the decision to grant permission under P.A. Register Reference 5465/22. The applicant contends that the requirements of Condition No. 2 negate the viability of the entire proposal, does not in any way protect the historic features of the structure, is based on a misconception by the Planning Authority of the original and surviving features of the building and is contrary to the proper conservation of the Protected Structure.

6.3. The appeal includes the following planning related issues: -

- The proposed extension is at the rear, is unobtrusive and invisible and does not adversely affect the conservation of the Protected Structure.
- The two storey extension on top of an existing two storey extension is consistent with the requirements of paragraph 16.2.2.3 'Alterations and Extensions' (of the previous Development Plan 2016-2022) as:
 - The townscape is of a very poor quality in this part of the city and with such a medley of different extension already in situ, this proposed extension is an insignificant feature in the cityscape.
 - The change from low grade office to high quality apartments will enhance the area and help grow the community along the Quay's.
 - While there is no outside private space, the Planning Authority requested the removal of balconies from the previous application P.A. Ref. 2753/20.
 - The gap that would be filled will not affect the townscape as it consists only of a space enclosed by three blank walls that has no impact on the front of the building.
 - The proposed extension is at the rear, is subordinate and clearly different from the original building.
 - The south facing double glazed windows will represent a net heat gain and solar panels can be fitted on the flat roof.

- The development is in harmony with Chapter 7 of the Architectural Heritage Guidelines for Planning Authorities, which states that the entry of a building onto the RPS does not mean that it is forever frozen in time. The best method of conserving a building is to keep it in active use, which the proposed development will do.
- The first floor has been converted into a similar two bedroom flat.
- The second floor spaces have been extensively subdivided over the years, somewhat crudely and the rooms are in very poor condition.
- The top floor of houses was always used by servants and children and contained a warren of small rooms rather than two large rooms as incorrectly stated in the condition. The comments of the Conservation Officer with respect to the subdivision of the upper floor are challenged as there is no way to tell what the original space looked like, and no cornices remain on the third floor, as none ever existed there.
- The proposed floor plans are more reflective of the historic floor plans than the fictional restoration required by the Planning Authority and the creation of two large rooms at each level represents undesirable restoration that is not based on documentary evidence.
- Stud partition walls as proposed are entirely reversible and the proposal is not in conflict with the Architectural Heritage Guidelines or Development Plan Policy BHA2.
- All important and significant parts of the building will be retained and enhanced, including cornices, shutters, architraves and skirtings, consistent with BHA11 'Rehabilitation and Reuse of Existing Older Buildings' while original fabric including, windows, doors, roof coverings and other significant features will also be retained.
- The applicant disagrees entirely with the Conservation Officer because:
 - The rear extension does not represent overdevelopment and is not visible from any public space.
 - It does not detract from the identify of the original structure that remains clearly legible.
 - The existing internal space is not sufficient to accommodate a kitchen/living/dining area as the kitchen units spread along one wall is less than satisfactory for normal household use.

- The development of one bed apartments is neither socially desirable nor financially plausible.
- The original internal floor plans are not known. The unique feature of the building is the 4 bay double fronted structure with a staircase return as the rear wing, and the proposal does not diminish this plan form.
- The applicant is willing to amend the internal layout to make sure there are no impacts on the chimney breasts.

6.4. **Planning Authority Response**

- None

6.5. **Observations**

- None

7.0 **Assessment**

- 7.1.1. I have read all of the documentation attached to this file including the appeal and the report of the Planning Authority, in addition to having visited the site. I gained access to the interior of the building including the second floor jewellery workshop, while the third floor was not available for inspection, and I have relied on the submitted plans and photographs on file in respect of the interior of the third floor. The adjacent buildings at the rear of the structure were also visible and I am satisfied that I was able to gain sufficient information to carry out an assessment of the issues set out in the appeal and to make a recommendation.
- 7.2. This is an appeal against Condition No. 2 of the decision to grant permission of P.A. Register Reference 5465/22, which was issued by the Planning Authority on 26th April 2023 and the changes required by the Condition. I consider it is appropriate that the appeal should be confined to Condition No. 2 only and I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that it would be appropriate for the Board to use the provisions of Section 139 of the 2000 Act in this case.

7.2.1. I am satisfied that the main issues in the appeal can be dealt with under the following headings: -

- Previous application
- Impact of proposed rear extension
- Internal works
- Appropriate Assessment

7.3. **Previous Application**

7.3.1. The Planning Authority has granted permission for a similar development under P.A. Reg. Ref. 2753/20 while a similar condition was attached to that decision restricting the development to 1 bedroom apartments on each floor. The internal layout of the permitted apartments was different to those proposed in this application and the main difference between the applications is that the current application proposes to remove a greater extent of part of the existing rear wall on each of the two floors to create the extended kitchen area. Both the current and previously proposed extensions would have looked the same externally.

7.4. **Impact of proposed rear extension**

7.4.1. The reason for attaching condition No. 2 was in the interest of orderly development and to protect the architectural character and integrity of the protected structure.

7.4.2. The entire ground floor area of the site at 3 Burgh Quay is developed, while four storey buildings are located immediately along both the eastern and western side boundaries of the narrow rear section of the site. The proposed rear extensions would be located between the protruding rear stairwell core and the blank wall of the adjacent JR Mahon's pub building to the west and would be built immediately on top of an existing first floor extension. A building to the east abuts the eastern side of the protruding stairwell that provides access to the upper floors of the building. A three storey building with an interior stairwell overlooking the rear of the site marks the southern boundary of the site. A seven-storey office extension has recently been built adjacent to the south-western corner of the site. As a result of the presence of these adjacent buildings, I am satisfied that the proposed extension would not be visible from any part of the public realm, with only limited views available from the upper floors of a number of adjacent commercial buildings.

Architectural Heritage Protection Guidelines for Planning Authorities

- 7.4.3. The Architectural Heritage Protection Guidelines for Planning Authorities' note that while appropriate extensions may be necessary to make protected structures fit for modern living, rear extensions need to be carefully considered particularly where the fabric of the building is useful for reading the history of the structure. The proposed extension is proposed at a location where the building is not visible from the public realm and is only visible from the air or from parts of some adjacent buildings. The fabric of the existing protruding rear extension housing the stairwell will not be affected and I am satisfied that the proposed extension would not damage the heritage of the structure and would not be contrary to the principles of the Architectural Heritage Protection Guidelines.

NIAH

- 7.4.4. The building has a Regional Rating in the NIAH and is included in the Architectural and Social Categories of Special Interest. The NIAH 'Description' describes the front façade of the building only, while the 'Appraisal' notes that the building served as a residence in the upper floors and although it has lost some of its original fabric, it retains its early form and character, with the decreasing scale of fenestration, which was characteristic of early nineteenth-century townhouses, creating a pleasingly balanced façade. No reference is made in the NIAH to the internal layout or fabric of the building or to the rear facade. I am satisfied that the NIAH references to the building refer to the front façade only, which would not be changed or negatively affected by the proposed rear extension or the proposed internal works.

Protected Structure

- 7.4.5. Section 15.15.2.3 'Protected Structures' of the Development Plan states that the inclusion of a structure in the Record of Protected Structures does not prevent a change of use of the structure, and/or development of, and/or extension to the structure, provided that the impact of any proposed development does not adversely affect the character of the Protected Structure and its setting. It goes on to state that Dublin City Council would support new proposals to conserve, repair and adapt Protected Structures to ensure they stay in long term sustainable use. I am satisfied that Condition No. 6 of the decision to grant that requires detailed conservation methodologies, monitoring and best practice works etc. would ensure that any works

carried out would be consistent with Section 15.15.2.3 and would not adversely affect the character of the Protected Structure or its setting as the works are located to the rear of the building at a point where they are not visible from the public realm. I am also satisfied that the proposed extension would not affect the internal integrity of the existing stairwell just as the three storey building immediately abutting its eastern side has not affected the interior of the stairwell.

7.4.6. Under BHA2 'Development of Protected Structures' it is the Policy of Dublin City Council that development will conserve and enhance protected structures and their curtilage and will:

(b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.

(c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

7.4.7. While the exterior of the building will be affected, I am satisfied that the proposed rear extension is of a scale and design and is sensitively sited such that it would not negatively impact the special character or appearance of the protected structure, as no changes will be made to the front façade and the rear of the building is not visible from the public realm. The form and internal layout of the protruding stairwell will be retained, as access to the proposed extension will only be available from the interior of the proposed apartments and the proposed extension will not be visible from the windows on the rear of the stairwell.

Conservation Areas and Special Planning Control

7.4.8. Policy BHA7 is the relevant policy with respect to developments in 'Architectural Conservation Areas' and can be summarised as stating that:

- Development within or affecting an ACA must contribute positively to its character and distinctiveness, shall not harm buildings or features, which contribute positively to the ACA, shall have full regard to the guidance set out in the Character Appraisals and Framework for each ACA, will be complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of materials. Contemporary design which is in harmony with the area will be encouraged.

7.4.9. I am satisfied that the proposed rear extension would not have a negative impact on the character of the O'Connell Street Architectural Conservation Area, would not affect the objectives of the Scheme of Special Planning Control (O'Connell Street and Environs 2022) or the Liffey Quays Conservation Area.

7.4.10. There is significant policy support for the use of upper floors of older city centre buildings such as at 3 Burgh Quay for residential purposes and having visited the site and in particular the interior and viewed the buildings adjacent to the proposed rear extension I agree with the points made by the applicant in their grounds of appeal, that the proposed rear extension of over two floors, that would be built on top of an existing first floor extension, is not visible from the public realm, would be unobtrusive and would constitute an insignificant feature in the cityscape. I am further satisfied that while the proposed extension would be an addition to the existing plan form, it would not negatively affect that plan form, in particular the protruding stairwell which would remain intact and clearly legible as it has done following the building of a structure on the immediate eastern side of the building, and that it does not represent overdevelopment of this site.

7.5. **Internal Works**

7.5.1. The purpose of the application is to provide for two modern two bedroom apartments in an old building, while the planning authority has imposed a condition restricting the development to one bedroom only per apartment on the basis that it would reflect the historic layout of the two floors. Having reviewed the correspondence on the planning file, it appears as if neither the applicant nor the Planning Authority knows the exact nature of the original floor plan of either the second or third floors. The Planning Authority is relying upon photographs of cornices on the second floor as a basis for potential layout. The existing cornices are in poor condition but can be

restored, while new ones can be manufactured and installed by specialist companies on any new walls that would be constructed, in compliance with condition No. 6. The walls that would be built to create the two bedrooms and bathroom accommodation at second floor would have minimal contact with the existing cornices and would be entirely reversible, while no cornices exist at third floor level.

7.5.2. Section 7.3 of the Development Management Guidelines for Planning Authorities states that basic criteria for considering whether to impose a condition should include whether the condition is Enforceable, Precise and/or Reasonable.

7.5.3. On the basis of the information on file, I am satisfied that Condition 2b) (ii) which requires that 'revised floor plans are to be submitted, ensuring the legibility of the historic floor plan is retained' would prove impossible to comply with as any proposal that would be submitted would be at best a guess as to the original floor plan, meaning that the condition is not precise and for that reason I am also of the opinion that and it would not be enforceable. Considering the minimal amount of intervention that is proposed in respect of impact on the cornices at second floor level, I am satisfied that the proposed bedroom and bathroom layouts would not adversely affect the architectural character or integrity of the protected structure and the requirement to reduce the number of bedrooms from two to one in each apartment is unreasonable.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on the conservation objectives of any European site.

8.0 **Recommendation**

8.1. Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection

(1) of section 139 of the Planning and Development Act, 2000 to REMOVE Condition 2.

9.0 Reasons and Considerations

Having regard to:

- the Dublin City Development Plan 2022-2028 zoning objective Z5;
- the protected structure and NIAH status of the building;
- the limited nature, scale and use of the proposed extension at the rear that would not be visible from the public realm; and
- the limited extent of the proposed interventions to the existing building,

it is considered that the revisions required by the Planning Authority in condition No 2 are not necessary to protect the architectural character and the integrity of the building and the proposed development would be in accordance with 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.

Joe Bonner

Senior Planning Inspector

28th September 2023