



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317816-23

#### Development

Retention of change of use of Apartments 20, 21 and 38 from residential to serviced apartments for short term hotel letting use

#### Location

Apartment Nos. 20, 21 and 38, Drury Hall, 23-27 Stephen Street Lower, Dublin 2 (D02 VF50, D02 WA24 and D02 EV99) and Drury Court Hotel, 28-30 Stephen Street Lower, Dublin 2

#### Planning Authority

Dublin City Council South

#### Planning Authority Reg. Ref.

3838/23

#### Applicant(s)

Laragon Catering Limited

#### Type of Application

Retention permission

#### Planning Authority Decision

Refuse permission

#### Type of Appeal

First Party

#### Appellant(s)

Laragon Catering Limited

#### Observer(s)

None

**Date of Site Inspection**

24<sup>th</sup> July 2024

**Inspector**

Bernadette Quinn

## **1.0 Site Location and Description**

- 1.1. The site is located on Stephens Street Lower, Dublin 2 and comprises a six-storey building with the upper floors forming part of the Drury Court Hotel and an apartment development. The apartments to which the appeal relate are located on the third and fifth floor. The entrance to the apartments is via a ground floor pedestrian access on Stephens Street Lower. Drury Court Hotel is accessed via a separate entrance to the east of the entrance to the apartments. The surrounding area accommodates a mix of residential, hotel, office, commercial and restaurant uses.

## **2.0 Proposed Development**

- 2.1. The development for which permission is sought comprises the retention of change of use of Apartment Nos. 20, 21 and 38 from residential to serviced apartments for short term hotel letting use. The apartments are operated and managed by Drury Court Hotel. No works are proposed as part of this application.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Permission refused on 20<sup>th</sup> July 2023 for the following reason:

The development, by itself and by the precedent for which a grant of permission for it would set, would be contrary to the stated provisions of the City Development Plan 2022-2028 where the core principles of the Dublin Housing Strategy and Policy QHSN38 are to encourage the establishment of sustainable residential communities by ensuring a wide variety of housing typologies and tenures is provided throughout the city in accordance with the Housing Need Demand Assessment (HNDA). The HNDA recognises a high demand for long term residential rental properties such as apartments in Dublin City where the emerging trend shows an increase of rental demand for this type of residential accommodation. The development for retention, resulting in the permanent loss of apartment units for residential use, 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 and would create a precedent for similar type undesirable development. In addition the use of the apartments as short term letting could potentially have an adverse impact on the residential amenity of occupants within the existing apartments throughout the building and depreciate the value of property in the vicinity. The development for retention would therefore be contrary to the proper planning and sustainable development of the area.

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

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

The planners report reflects the decision to refuse retention permission and notes the following:

- The proposal would be inconsistent with Policy QHSN7, Section 5.1 and Policy QHSN38 in relation to the establishment of sustainable residential communities.
- Dublin City Council is in a Rent Pressure Zone. Section 5.5.1 of the Housing Strategy indicates a high demand for long term residential rental properties such as apartments and it is considered that the proposal, if permitted, would result in the loss of apartments in the City Centre which is of concern having regard to the existing housing shortage currently experienced within Dublin City.
- The proposal would be inconsistent with 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 development could potentially have an adverse impact on the residential amenity of neighbouring occupants within the building and depreciate the value of property in the vicinity.
- The retention of short term letting at this location could result in an unwanted precedent for similar type development.

### 3.2.2. Other Technical Reports

Drainage Division – No objection.

Transportation Planning Division – No objection subject to conditions.

### 3.3. Prescribed Bodies

- 3.3.1. TII – Requests a condition to apply the Section 49 Luas Line Levy if permission is granted and the development is not exempt from the scheme.

### 3.4. Third Party Observations

None

## 4.0 Planning History

### 4.1. Appeal Site:

2291/91: Permission granted on 09/04/1992 for a six storey over basement level building, uses to comprise retail/storage at basement level, retail/office at ground floor level, apartments and/or offices at first floor level & apartments at second, third fourth & fifth floor levels with plant room over.

Other Relevant History:

3638/23 / ABP Ref. 317578: Permission refused by DCC and ABP for retention of change of use of apartment to serviced apartment for short-term letting including air b&b use. The reason for refusal related to a negative impact on the availability of housing stock in the city and that the development would be contrary to Section 15.14.3 of the development plan.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The Dublin City Development Plan, 2022-2028 is the statutory development plan for the area. The site is zoned 'Z5 – City Centre'. Permissible uses on Z5 zoned lands

include bed and breakfast, guesthouse, hostel (tourist), hotel, residential, and student accommodation.

- 5.1.2. Section 6.5.6 Key Economic Sectors – Tourism, Hotels and Events, Policy CEE26 Tourism in Dublin, Policy CEE28 Visitor Accommodation and Policy CEE01 Study on the Supply and Demand for Hotels, Aparthotels and Hostels relate to tourism infrastructure and visitor accommodation.

Section 15.14.1 Hotels and Aparthotels seeks to ensure a balance between the provision of adequate levels of visitor accommodation and other uses.

Section 15.14.3 Short Term Residential Accommodation states that 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. This section also states that such applications will be considered on a case by case basis in certain locations that may not be suitable for standard residential development such as tight urban sites where normal standards or residential amenity may be difficult to achieve. Applications may also be considered in locations adjacent to high concentration of night / time noisy activity where standard residential development would be unsuitable.

Policy QHSN7 Upper Floors seeks to reverse the loss of residential use on upper floors and actively support proposals that retain or bring upper floors into residential use.

Policy QHSN38 Housing and Apartment Mix and Section 15.8.1 relate to the creation of sustainable residential neighbourhoods.

## **5.2. Natural Guidelines**

- 5.2.1. The following national guidelines are also relevant:

Guidance Note for Local Authorities for Regulating Short Term Letting (July 2019), Department of Housing, Planning and Local Government which includes a section addressing the determination of applications for short-term letting and the factors to be considered when deciding on these applications.

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

None relevant.

### **5.4. EIA Screening**

- 5.4.1. The development does not constitute a project for the purposes of EIA. Refer to Appendix 1.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. A first party appeal against the decision of the planning authority can be summarised as follows:
- The apartments do not meet the minimum standards for residential accommodation set out in the Apartment Guidelines as they are below the overall floor area requirements and have no storage space. Apartment 21 is north facing and has no private amenity space.
  - The apartments were permitted under the same permission (ref 2291/91) as the Drury Court hotel and the reception space is shared by the hotel and the apartments.
  - The retention of 3 units that are currently in use is for tourist accommodation would not have a significant impact on the housing stock in the city.
  - The apartments are not currently in use for housing, have not been used for housing for a number of years, and are not proposed to be used for housing and as such will have no impact on the availability of housing stock in the area and as such will not be contrary to the intent of Section 15.4.3 of the Development Plan.
  - The development complies with Policy CEE26 of the Development Plan relating to tourism infrastructure and the site is located proximate to key tourist attractions in the city making it ideal for tourist accommodation.

- There is a documented shortage of tourist accommodation which has the potential to have negative economic impacts on the city.
- The development complies with section 15.4.3 of the Development Plan which provides that short term tourist rental accommodation may be considered in locations adjacent to high concentrations of night time / noisy activity where standard residential development would be unsuitable as it would be difficult to achieve high levels of residential amenity at this location.
- The proposal would enhance street activity and the variety of uses at this location.
- Precedent exists for similar development in Dublin permitted by DCC and ABP and in Galway City Centre permitted by ABP. The assessment of these cases noted the demand in the area and the proximity to tourist attractions.
- Section 15.4.1.2 is relevant which states that permitted aparthotel units are required to comply with residential standards if they are to be converted into residential units in the future.
- The apartments are operated, managed and serviced by Drury Couty Hotel and are monitored under strict surveillance to ensure no negative impacts on neighbouring apartments. Guests are warned of the rules prior to arrival. No complaints have been received from neighbours.

## **6.2. Planning Authority Response**

### **6.2.1. Response received on 15<sup>th</sup> April 2023:**

- The Board is requested to uphold the decision to refuse permission. If permission is granted a condition requiring the payment of a Section 48 development contribution and a naming and numbering condition is requested to be included.

## **6.3. Observations**

None received.



## 7.0 Assessment

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

- Principle of Development
- Impact on Residential Amenity

7.2. Principle of Development

- 7.2.1. The apartments appear to have been constructed during the 1990's on foot of permission 2291/91 and are located in Dublin City which is designated a rent pressure zone. I note the area within which the appeal site is located contains a variety of uses, including apartments on the appeal site itself and on the surrounding streets and a variety of established night-time uses. From my site inspection and having reviewed the drawings submitted with the application I note that access to the apartments for residents is from a separate entrance to the hotel. I consider that given its central location and proximity to amenities the apartments are a suitable location for long-term residential use and I do not consider this to be a location where standard residential development is unsuitable due to nighttime noisy activity.
- 7.2.2. I do not agree with the first party's contention that as the apartments are currently in use for tourist accommodation the change of use will have no impact on the availability of housing. The permitted use of the apartments is residential and as such any change of use would reduce the availability of the units for long term residential use. I do not consider what appears to be a current unauthorised use as sufficient grounds to accept the first party's argument in this regard. I consider the permanent loss of three apartments from long term to short term accommodation would have a detrimental impact on the availability of housing stock both in itself and as a result of the potential precedent which would be set and would be contrary to Section 15.14.3 of the Development Plan which notes a general presumption against short term tourist rental accommodation.

- 7.2.3. Having visited the site and reviewed the drawings submitted with the planning application I do not consider the units unsuitable for permanent occupancy, or that normal standards or residential amenity would not be achieved. The apartments were constructed prior to the publication of the Apartment Guidelines and I do not consider the fact the apartments do not comply with current standards relating to size, storage and private open space to be sufficient grounds to permit the development. Furthermore, I would have serious concerns that granting permission on the grounds that the apartments do not meet the minimum standards would set an undesirable precedent for other such developments.
- 7.2.4. In relation to the first party's argument that Development Plan policy states that a change of use from apart hotel to residential can only be permitted where units meet current standards, I do not consider this relevant to this application and I do not consider it appropriate to grant permission on this basis.
- 7.2.5. I note the first party's comments relating to a shortage of tourist accommodation and policies contained in the Development Plan which seek to support tourist related infrastructure. However, having regard to the permitted residential use I consider the development is contrary to Policy QHSN38 which seeks to encourage the establishment of sustainable residential communities by ensuring a wide variety of housing typologies and tenures is provided throughout the city and to the provisions of Section 15.14.3 of the Development Plan 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. As such I do not consider it appropriate to grant permission for retention.
- 7.2.6. The appeal submission includes a list of applications which are considered to demonstrate precedent for the development for which retention permission is sought. I note that a number of precedents referred to were not permitted under the current DCC Development Plan or are not within DCC's administrative area. Furthermore, I consider that the appeal before the Board should be determined in relation to the particular set of circumstances pertaining to the site and its surroundings and to the policy and provisions set out in the Dublin City Development Plan 2022-2028.

7.3. Residential Amenity

7.3.1. In relation to concerns regarding impacts on the occupants of neighbouring apartments, I consider that the use of the apartments for tourist accommodation is unlikely to have a materially greater impact than their occupation for long term residential use on the amenity of neighbouring dwellings and I do not consider the development for retention likely to result in negative impacts on residential amenity to such an extent as to warrant a refusal of permission on these grounds.

#### 7.4. Conclusion

7.4.1. Having regard to the above, I consider that the development for retention, resulting in the permanent loss of apartment units for residential use would be contrary to Section 15.14.3 of the Development Plan 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. I also consider such a development would create a precedent for similar type undesirable development.

### 8.0 AA Screening

8.1. I have considered the proposed retention of change of use of apartments from residential to short term use in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located approx. 3km from the South Dublin Bay and River Tolka Estuary SPA (site code 004024) and 3.5 km from the South Dublin Bay SAC (000210).

The development to be retained comprises three no. apartments within an existing apartment block. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.

The reason for this conclusion is as follows:

- The nature and scale of the development to be retained.

- The location and distance from the nearest European site and the lack of any hydrological connectivity between the application site and the SAC/SPA.
- Taking into account the screening determination by Planning Authority.

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Recommendation**

- 9.1. I recommend that permission be refused for the reasons and considerations set out below.

## **10.0 Reasons and Considerations**

1. Having regard to the nature of the change of use proposed for retention, it is considered that the development would have a negative impact on the availability of housing stock in the city, would be contrary to Section 15.14.3 of the Dublin City Development Plan 2022-2028, and the granting of permission for retention would set a precedent for similar type development contrary to the Dublin City Development Plan 2022-2028. The 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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Bernadette Quinn  
Planning Inspector

24<sup>th</sup> July 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	ABP-317816-23			
<b>Proposed Development Summary</b>	Retention of change of use of Apartment 20, 21 and 38 from residential to serviced apartments for short term hotel letting use			
<b>Development Address</b>	Apartment Nos. 20, 21 and 38, Drury Hall, 23-27 Stephen Street Lower, Dublin 2			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>		
		<b>No</b> <b>X</b>	No further action required	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>		Class.....	EIA Mandatory EIAR required	
<b>No</b>			Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....		Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_