



An  
Bord  
Pleanála

## Inspector's Report

### ABP-321097-24

|                                |   |                    |  |
|--------------------------------|---|--------------------|--|
| <b>Development</b>             | <i>Permission for subdivision of existing four bedroomed 6<sup>th</sup> floor apartment into 4 two bed apartments, together with change of use of the 7<sup>th</sup> floor sun room and private garden space to communal spaces to serve these apartments</i> |                    |  |
| <b>Location</b>                | <i>33 Alexander Court, 11-14 Fenian Street, Dublin 2</i>  |                    |  |
| <b>Planning Authority Ref.</b> | <i>3898/24</i>  |                    |  |
| <b>Applicant(s)</b>            | <i>Sherborough Enterprises Ltd</i>  |                    |  |
| <b>Type of Application</b>     | <i>Permission</i>   | <b>PA Decision</b> | <i>Grant Permission with conditions</i>    |
| <b>Type of Appeal</b>          | <i>Third</i>  | <b>Appellant</b>   | <i>Alexander Hall Owners Mgmt. Company</i> |
| <b>Observer(s)</b>             | <i>None</i>   |                    |  |
| <b>Date of Site Inspection</b> | <i>11/12/2024</i>   | <b>Inspector</b>   | <i>Andrew Hersey</i>                       |

#### Context

**1. Site Location/ and Description.** The site is located on the 6<sup>th</sup> Floor of Alexander Court being an apartment building on Fenian Street, Dublin 2. Access to the site is to be via an existing stairwell within the apartment building. There is parking at basement level which is accessed from Fenian Street.

**2. Description of development.** *The proposed development comprises of*

- *Permission for subdivision of existing four bedroomed 6<sup>th</sup> floor apartment into 4 two bed apartments,*
- *Change of use of the 7<sup>th</sup> floor sun room and private garden space to communal spaces to serve these apartments.*
- *Internal works to facilitate the above*

**3. Planning History.**

- Planning Reg. Ref. 0175/97 granted to Erect an apartment development with Hotel garage at no's. 11-14 Fenian Street and 12-16 Denzille Lane, Dublin 2. The development consists of 35 apartments; 11 one bedroom units and 24 two bedroom units on 1st to 6th floor levels over ground floor retail showrooms. Carparking for apartment and hotels are located in the basement, ground and first floor levels. Access and egress to car parking at Fenian Street.

**4. National/Regional/Local Planning Policy**

*Dublin City Development Plan 2022-2028*

- Dublin City Development Plan 2022-2028 is the statutory development plan in the area where the proposed development site is located.
- Within the plan the site is subject to zoning objective 'Z5' –*'To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity'*

The primary purpose of this use zone is to sustain life within the centre of the city through intensive mixed-use development (see also Chapters 6, 7, and 15 for policies, objectives and standards). The strategy is to provide a dynamic mix of uses which interact with each other, help create a sense of community, and which sustain the vitality of the inner city both by day and night. As a balance, and in recognition of the growing residential communities in the city centre, adequate noise reduction measures must be incorporated into development, especially mixed-use development, and regard should be given to the hours of operation (see also Chapter 15: Development

Standards). Ideally, a mix of uses should occur both vertically through the floors of buildings as well as horizontally along the street frontage. A general mix of uses, e.g. retail, commercial, residential, will be desirable throughout the area and active, vibrant ground floor uses promoted.

- Policy QHSN6 To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaptation of existing housing stock and use of upper floors subject to the provision of good quality accommodation.
- Appendix 18 Section 6.0 Subdivision of Dwellings 'Dublin city will consider the subdivision of larger homes in the city subject to compliance with the relevant standards for apartment units
- Section 15.9 Development Standards Apartment Units states that The Sustainable Urban Housing: Design Standards for New Apartments (December 2020) or any other future amendment thereof is the standard for apartment units in Dublin City.

*Sustainable Urban Housing: Design Standards for New Apartments (2024)*

- Sets out the relevant standards for new apartment buildings

## **5. Natural Heritage Designations**

The nearest designated sites are:

- Grand Canal pNHA (Site code 002104) is located 700 metres to the east of the site
- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) is located 2.6km to the east of the site.
- South Dublin Bay SAC (Site Code 000210) is located 2.6km to the east of the site

## **Development, Decision and Grounds of Appeal**

**6. PA Decision.** Permission was granted on the 29<sup>th</sup> September 2024 subject to 7 conditions. Conditions of note include;

- Conditions 2 and 3 relate to noise levels and working hours during construction phase
- Condition No. 6 refers to the use of each apartment as a single residential unit only and shall not be subdivided or used for short stay accommodation
- No S48 contribution imposed

## **7. Submissions**

There are 9 submissions on file which in summary raise the following issues;

- That the apartments will be for use as short term lets.
- Lack of bicycle storage
- Noise and disturbance during construction
- That there will be more residents using the lift and the one stairwell as a consequence of the proposal and it was never designed to cater for the same. There are currently 33 units within the building.
- Increased noise levels as a consequence of more residents
- That the application form cites the current use as a 'Hotel' which is contrary to the permitted residential use.
- No details have been submitted to clarify if works will result in physical impact to other apartments within the building.
- Fire Safety concerns.
- A daylight and sunlight assessment has not been submitted. Two apartments have no private open space provision
- That the existing bin storage area has not been assessed to see if it is sufficiently sized to cater for more apartments.

## **8. Internal Reports**

- Transportation Planning Section (dated 10<sup>th</sup> July 2024) – no objection subject to 2 no. cycle parking spaces being provided and that refuse bins are not stored on the public footpath
- Engineering Dept. Drainage (1<sup>st</sup> July 2024) - no objection

### **9. First Party Appeal.**

A third party appeal against was lodged by Hayes Higgins Partnership obo Alexander Hall Management Company on the 21<sup>st</sup> October 2024. The appellant raises the following issues:

- That condition 6 refers to 'short stay accommodation' is not sufficiently clear to prevent the use of these apartments as short term lets. There are concerns that the apartments will be used for aparthotel use.
- It is recommended that a condition is imposed stipulating a minimum occupation period of 1 year
- That a condition be imposed stipulating that a construction plan be agreed with the management company prior to the commencement of works.
- That a survey be carried out prior to works and post construction works to establish if any damage has been caused as a consequence of the works.
- Impact to residential amenities of the residents

### **11. Observations**

None received

### **12. Planning Authorities Response**

None received

## **Environmental Screening**

### **13. EIA Screening**

Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Planning & Development Regulations 2001(as amended), I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. See Form 1 and Form 2 attached to this report.

#### **.14. AA Screening**

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

The subject site is located within the vicinity of the following Natura 2000 sites;

- South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) is located 2.6km to the east of the site.
- South Dublin Bay SAC (Site Code 000210) is located 2.6km to the east of the site

The proposed development comprises of the subdivision of single residential apartment into four apartments in an urban area. 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 minor nature of the works proposed
- The distances to the nearest Natura 2000 site and the absence of any hydrological connect from the site to the same and
- Having regard to the screening report/determination carried out by the 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.

## 2.0 Assessment

### 2.1. Introduction

- 2.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to relevant local development plan policies and guidance.
- 2.1.2. I am satisfied the substantive issues arising from the grounds of this third party appeal relate to the following matters-
- Principle of Development
  - Residential Use
  - Sustainable Urban Housing: Design Standards for New Apartments (2024)
  - Other Issues

### 2.2. Principle of Development

- 2.2.1. The proposed development site is located within an area designated with zoning objective Z5, in the Dublin City Development Plan 2022-2028. Zoning objective Z5 seeks *‘To consolidate and facilitate the development of the central area, and to identify, reinforce, strengthen and protect its civic design character and dignity’*
- 2.2.2. Policy QHSN6 of the Plan also applies which seeks *‘To promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaptation of existing housing stock and use of upper floors subject to the provision of good quality accommodation’*
- 2.2.3. Additionally, Appendix 18 Section 6.0 Subdivision of Dwellings states that *‘Dublin city will consider the subdivision of larger homes in the city subject to compliance with the relevant standards for apartment units.’*
- 2.2.4. The proposed development is for the conversion of a single apartment on the 6<sup>th</sup> Floor of Alexander Court, Fenian Street into four, two bed apartments

- 2.2.5. Having regard to the above zoning objective, the above policies and subject to compliance with the Section 28 Ministerial *Guidelines Sustainable Urban Housing: Design Standards for New Apartments (2024)* it is considered that the subdivision of this single residential apartment into 4 apartments at this location is acceptable in principle.

### 2.3. Residential Use

- 2.3.1. It is noted that condition No. 6 of the schedule of conditions issued in the grant of permission issued by the council, in part states that;

*Each of the proposed apartments shall be used as a single residential unit only and shall not be subdivided or use for short stay accommodation'*

- 2.3.2. The appellant has raised concerns that short stay accommodation is not defined in the condition and that a stronger condition should be imposed to prevent the use of the apartments for aparthotel use.
- 2.3.3. I note from the Residential Tenancies (Amendment) Act 2019 that short term lets are defined as a lease or licence of a house (including an apartment) or part of a house for a period of 14 days or less.
- 2.3.4. The appellant states that the minimum stay should be for 1 year.
- 2.3.5. The application details, and in particular the details submitted as a response to further information state that the apartments are for the purposes of sale or long term letting.
- 2.3.6. I note that a residential use is considered as permissible use under this land use zoning designation (Z5) and a 'Build to Rent' type development is also 'open to consideration'.
- 2.3.7. The appellants clearly desire a situation where the apartments are resided in on a long term basis in order to reduce the impact to their residential amenities. The use of the apartments for aparthotel accommodation or short term rental will potentially impact upon their enjoyment and security of the building as a result of unknown persons using the communal areas. This is considered reasonable.
- 2.3.8. I note that the City Development Plan under Section 14.7.5 promotes residential use on lands zoned Z5 and states, in part, that ;



*In the interests of promoting a mixed-use city, it may not be appropriate to allow mono office use on Z5 zoned lands, particularly on large scale development sites, or to allow an overconcentration of hotel uses in a particular area. Therefore, where significant city centre sites are being redeveloped, an element of residential and other uses as appropriate should be provided to complement the predominant office use in the interests of encouraging sustainable, mixed-use development. A residential use is therefore encouraged over a tourism use i.e. the use of the apartments of short term lets.*

- 2.3.9. Condition 6 of the schedule of conditions is therefore considered reasonable. I also consider it reasonable to prohibit the use of the apartments for 'tourism purposes' by way of condition and specifically state that the use of the apartments is for residential use only.

#### **2.4. Sustainable Urban Housing: Design Standards for New Apartments (2024)**

- 2.4.1. I refer to Section 3.4 of the above guidance which states that the minimum area for a 2 bedroomed apartment is 73sq.m. Each of the apartments proposed exceed this minimum threshold. I also note that the room sizes proposed also meet the minimum sizes as set out in the guidelines.
- 2.4.2. I also note that a two bed apartments as per the guidelines require 5sq.m. (as set out in Appendix 1 of the guidelines). The two apartments facing the street appear to have 'Winter Garden' areas of open space though it is not clear from the details submitted. In any rate, while it would appear there is no individual areas of private open space proposed for the apartments, a generous 100sq.m. roof garden is proposed solely for the use of these four apartments
- 2.4.3. I refer to Section 3.39 of the guidelines which states that;
- 'For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha, private amenity space requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.'*
- 2.4.4. Having regard to the generous roof garden proposed I consider that this accommodates the open space requirements of the apartments subject to detailed design proposals being agreed prior to the commencement of development.

- 2.4.5. I note that 3.27 of the guidelines allows for up to 12 apartments per floor for a single stairwell/lift core. Only 4 apartments are proposed on this floor.
- 2.4.6. The guidelines also requires that 33% of apartments are dual aspect, but that this can be relaxed in cases of refurbishment projects. I note that just one apartment is dual aspect or 25% of the proposal. I consider this acceptable in this context.

## **2.5. Other Issues**

- 2.5.1. With respect to bin storage the applicant has shown in submissions that there are already ample storage facilities on site.
- 2.5.2. I note that 12 cycle parking spaces are to be provided at basement level to accommodate the requirements of the future residents I note that 8 spaces are required in accordance with Table 1 of Appendix 5 of the Plan. The Plan does not require the provision of car parking at this location.
- 2.5.3. Part V Exemption Certificate has been included with the application

## **3.0 Recommendation**

- 3.1. I recommend that permission for the development be granted permission.

## **4.0 Reasons & Considerations**

- 4.1. Having regard to the information submitted with the application and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with the zoning objective for the site and the policies with respect to apartment developments as set out in the Dublin City Development Plan 2022 – 2028, would not be injurious to the visual or residential amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 5.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 9th day of September 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars</p> <p><b>Reason:</b> In the interest of clarity.</p> |
| 2. | <p>Each of the proposed apartments shall be used as a single residential unit only and for residential purposes only, shall not be subdivided or used for short stay accommodation or for any tourism accommodation.</p> <p><b>Reason:</b> In the interests of orderly development</p>   |
| 3. | <p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health</p>   |
| 4. | <p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Monday to Fridays, between 0800 and 1400 hours on Saturday and not at all on Sundays and Public Holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> To safeguard the residential amenities of adjoining property in the vicinity</p>   |

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| 5 | <p>Prior to commencement of works, the developer shall submit to, and agree in writing with the planning authority, a Construction Management Plan, which shall be adhered to during construction. This plan shall provide details of intended construction practice for the development, including hours of working, noise and dust management measures and off-site disposal of construction/demolition waste.</p> <p><b>Reason:</b> In the interest of public safety and amenity.</p>   |
| 6 | <p>The roof garden on level 7 shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:</p> <ul style="list-style-type: none"> <li>(a) A plan to scale of not less than 1:200 showing – <ul style="list-style-type: none"> <li>(i) The species, variety, number, size and locations of all proposed trees and shrubs</li> <li>(ii) Hard landscaping works, specifying surfacing materials, furniture [play equipment] and finished levels.</li> </ul> </li> <li>(b) A timescale for implementation including details of phasing.</li> <li>(c) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</li> </ul> <p><b>Reason:</b> In the interest of residential and visual amenity.</p> |

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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Andrew Hersey

Planning Inspector

23<sup>rd</sup> January 2025