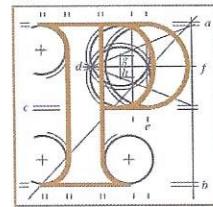


Our Case Number: ABP-308841-20



An
Bord
Pleanála

Neasa Hourigan
Leinster House
Kildare Street
Dublin 2

Date: 06 April 2021

Re: Demolition of existing warehouse, boundary wall and dwelling, retention of Hendrons Building and construction of 280 no. Build to Rent shared living accommodation apartments and all other associated site works.
Hendrons' Building and wider site, 36-40 Dominick Street Upper, Broadstone, Dublin 7.
(www.westernwayshd.ie)

Dear Sir / Madam,

An Bord Pleanála has made a decision in respect of the above mentioned Strategic Housing Development. A copy of the Board Order is enclosed.

In accordance with section 146(5) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.leanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please mark in block capitals "STRATEGIC HOUSING UNIT" and quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Hereunder contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended.

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

Teil Glaobh Áitiúil Facs Láithreán Gréasáin Ríomhphost	Tel LoCall Fax Website Email	(01) 858 8100 1890 275 175 (01) 872 2684 www.leanala.ie bord@leanala.ie
--	--	--

64 Sráid Maoilbhhríde 64 Marlborough Street
Baile Átha Cliath 1 Dublin 1
D01 V902 D01 V902

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

Yours faithfully,



Ciaran Hand
Executive Officer
Direct Line: 01-8737295

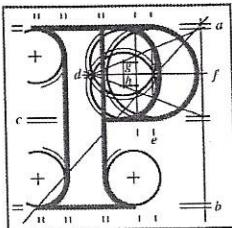
SHA32



Teil Glao Áitiúil Facs Láithreán Gréasáin Riomhphost	Tel LoCall Fax Website Email	(01) 858 8100 1890 275 175 (01) 872 2684 www.leanala.ie bord@leanala.ie
--	--	--

64 Sráid Maoilbhhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902



Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Application for permission under section 4 of the Planning and Development (Housing) and Residential Tenancies Act 2016, in accordance with plans and particulars, lodged with An Bord Pleanála on the 7th day of December 2020 by Western Way Developments limited care of John Spain Associates of 39 Fitzwilliam Place, Dublin 2.

Proposed Development comprises of the following:

Four to nine number storeys across two number buildings (described as Blocks, A, B, C, D and E [Blocks A and B over basement]) provides for the retention and re-use of the Hendrons Building, to include the addition of an extra storey and adaptive works and the extension of the building to provide a development of circa 11,384 square metres, including 10,951 square metres of Build to Rent Shared Living Accommodation inclusive of amenity space, 280 number units [281 number bedspaces], circa 433 square metres of other uses including a gym, café, shop and yoga studio. The development will consist of:

- Demolition of the existing vacant warehouses and boundary wall fronting Palmerston Place and the existing dwelling at number 36 Dominick Street Upper (circa 2,362.8 square metres) and the construction of Build to Rent Shared Living accommodation on site the including; Block A fronting Palmerston Place (four – five number storeys), Block B, the Hendrons Building (five number storeys including fifth floor setback), Block C on the corner of Dominick Street Upper and Western Way (nine number storeys), Block D

fronting Western Way (seven – eight number storeys) and Block E fronting Western Way (five – six number storeys);

- Adaptive re-use of and related works to the existing Hendrons building, a protected structure under Record of Protected Structure Reference Number 8783; for use for shared living accommodation and a café or shop; including retention of existing ‘Hendrons’ signage, the construction of an additional storey resulting in a five number storey building [Block B]), involving alterations and additions, including removal of original and non-original internal dividing walls, construction of openings within the original walls on the northwest, southeast and rear elevations to accommodate new doors and windows; removal of two number external emergency exit stairs, reinstatement and restoration of original window openings on all façades and retention and repair of the existing glass blocks, original railings, stairs and lift shaft;
- Block C will accommodate a gym, yoga and pilates studio and changing rooms (circa 260 square metre) at lower ground floor level; Block B will include café or shop (circa 173 square metre) upper ground floor;
- Resident internal amenity space is provided within the upper levels of the Hendrons Building (Block B) and throughout the scheme including; living, kitchen dining areas, co-working spaces, a sky lounge, laundry, cinema room, games room, waste management facilities, bicycle repair station, storage and lounge areas (2,186 square metre), 175 number bicycle spaces, three number motorcycle spaces and plant at basement level;
- External amenity space (total circa 1267.1 square metres) is provided in the form of two number roof terraces at Block A (fourth floor level – Palmerstown Place 303.7 square metres) and Block D (seventh floor level – Western Way 93.2 square metres) [levels include upper and lower ground floor] and within a central courtyard and outdoor seating areas (870.2 square metres);
- Provision of an ancillary single storey Electricity Supply Board substation and switch-station including access via Western Way (and removal of a section (circa two metres) of the boundary wall (Record of Protected Structure Reference Number 8483) to accommodate this;

- Provision of site wide landscaping including pathways, lighting, sedum roofs and all ancillary site development works including boundary treatments all located at this site of approximately 0.3285 hectares at numbers 36 – 40 Dominick Street Upper, Broadstone, Dublin. The site includes the 'Hendrons' Building, and adjacent railings, comprising Record of Protected Structure Reference Number 8783 and the boundary wall of the application site on Western Way, comprising Record of Protected Structure Reference Number 8783. The site has frontages to Palmerston Place, Dominick Street Upper and Western Way.

Decision

Refuse permission for the above proposed development based on the reasons and considerations set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



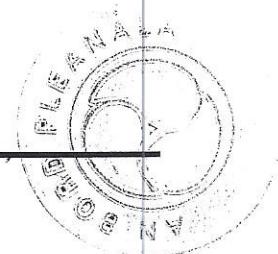
Reasons and Considerations

Having regard to the potential negative impact that the proposed development would have on the Protected Structure (Hendrons Building) within the site, in particular the height, design and materiality of the proposed development as provided for in Block C, it is considered that the proposed development would not be in accordance with Policy CHC1 and Policy CHC2 of the Dublin City Development Plan 2016-2022 to preserve Protected Structures. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

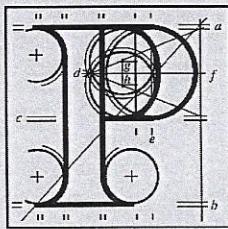


Stephen Bohan

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 1st day of April 2021



An
Bord
Pleanála

Board Direction
BD-007786-21
ABP-308841-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 30/03/2021.

The Board decided, by a margin of two to one, to refuse permission for the following reasons and considerations with a single reason for refusal.

Reasons and Considerations

In coming to its conclusion, the Board has had regard to the following:

- Dublin City Development Plan 2016-2022,
- Architectural Heritage Protection guidelines,
- Urban Development and Building Height Guidelines 2018,
- Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2020
- The submissions and observations received from third parties and prescribed bodies,
- The report of the Chief Executive.
- The report of the Planning Inspector

The Board agreed with the Inspector's assessment and conclusions in respect of the following:

- Compliance with Z3 Zoning
- Housing Tenure and acceptability of Co-living
- Open Space and Residential Amenity

- Transportation and Water Services; and
- Archaeology

Furthermore, the Board broadly considered and accepted the submissions of the Chief Executive (in respect of the above mentioned issues) and considers the proposed development to be consistent with the zoning objective for the area, that co-living at this location is acceptable in principle and that subject to amending conditions as recommended by its inspector, the open space and residential amenity of existing and future residents has been adequately addressed, and that issues arising under the above mentioned headings would not warrant refusal. Furthermore, issues relating to archaeology, transport and water services could be adequately resolved by way of condition.

The Board also accepted and agreed with the Inspector's assessment and conclusion in respect of EIA screening and Appropriate Assessment Screening.

Having regard to the site's location within a central urban location, which is well served by public transport, the Board considered the site to be suitable for a significant quantum of development and additional height. It is accepted that any reasonably dense and urban proposal for this site would alter the character of the site and would introduce a new feature in the skyline. Having regard to the vacant buildings on site and the highly visible location of this brownfield site within the city centre, the Board considered the redevelopment of the site, including extensive new build and additional height, to be acceptable and appropriate in principle.

However, the Board was not satisfied that the detailed design of the proposal submitted was the appropriate and optimal design solution for this site, in particular having regard to its visual dominance and poor architectural interaction with the Protected Structure on site.

The concerns for the Board arise, and where the Board differs from the Inspector and the Chief Executive, in respect of the following:

- Design Approach
- Height
- Built Heritage

As the Board generally agreed with the Inspector in respect of Blocks A and B, but differ significantly in respect of Blocks C, D and E, in the interest of providing a clear direction and detailed reasons for its decision, the Board therefore, sets out its consideration of both elements of the development separately below.

Blocks A & B - including Hendron's Building (Block B)

The Board concurs with the third-party submissions, the Planning Inspector and the Conservation Section of Dublin City Council and acknowledges that the Hendron's Building makes a positive contribution to its setting and is a long-established landmark on a prominent site.

Having regard to the historical and cultural significance of the Hendron's Building and its status as a Protected Structure, the refurbishment and reuse of this building (as proposed within Block B) is considered appropriate. The height and design of the extension to Hendron's building (Block A) comprises 4 storeys sitting below the eaves of the Hendron's building and is considered acceptable in terms of its interaction with the Hendron's building as it protects the setting of the Protected Structure.

The Board accepted the Planning Inspector and Dublin City Council's Conservation Report that further details of the works to the Protected Structure were required.

The Board noted the concerns raised that the proportion / height of the top floor glass and metal clad extension above the Hendron's Building was overly dominant relative to the proportions of the principle façade of the Hendron's Building, and the recommendation that this be reconsidered and either reduced in height or modified in another manner to reduce its impact. The Board did not consider that the removal of this element was required, and the Board noted the additional residential amenity

offered within this new area, but considered that the scale and materials proposed required reconsideration.

The Board noted the concerns raised that the proposed 5-storey block on Palmerston Place would overwhelm the 19th century terraced 2-storey-over-basement brick houses on the east side of Palmerston Place (Nos. 23 – 27 inclusive). The Board further noted the recommendation to omit a storey from the northern 2-bay block on Palmerston Place, thereby reducing the potential impact on the adjacent terraced houses. The Board considered that such an amendment was not required, and that if the proposal were to be granted the matter could be dealt with by condition.

Having regard to the vacant warehousing building fronting onto Palmerston Place and the state of dis-repair of no. 36 Dominick Street Upper, as identified in the inspector's report, the Board have no objection in principle to the demolition of the unlisted vacant warehouses or the change in use and associated interventions in respect of the Protected Structure, and considered that the proposed contemporary design approach would improve the visual amenity of the site.

In conclusion, in respect of Blocks A and B, the Board agreed with the Planning Inspector and the Chief Executive that that the redevelopment of this site and the conservation and reuse of the Hendron's' Building would enhance the character and public realm at this location, in particular noting the current and on-going vacant/derelict state of the building, and the benefit to a Protected Structure to find a new use and to be redeveloped sympathetically. In this regard, subject to some minor amendments the redevelopment and reuse of Hendron's Building (Block B) and its extension in the form of Block A, the Board was satisfied that the proposed development in respect of Blocks A and B would be generally in accordance with the Planning Authority's objectives for the area.

Blocks C, D and E

The Board's primary concern related to the buildings proposed along Western Way, and in particular Block C, being immediately adjacent to Hendron's Building

(Protected Structure). Notwithstanding that the Inspector and the Planning Authority, were generally satisfied with this intervention, and noting the applicant's design statement and justification, the Board was not satisfied with the design approach taken and considered the proposal in terms of Block C would not to be in accordance with Dublin City Council Policy CHC2 to ensure the special interest of Protected Structures is protected. The Board is not satisfied that Block C is the most appropriate design response and considers that the scale of the proposed development in respect of this element, immediately adjacent to the protected structure, overwhelms the size, and scale of the Hendron's Building, and its unique architectural language is overwhelmed by the scale and design of Block C.

The Board concurs with the Inspector (and Chief Executive) that the site can absorb significant development and additional height, and that there is a significant planning benefit to be gained by the redevelopment of the site, however the extent to which the immediate setting and context of the existing building, which is a Protected Structure, is impacted is considered excessive and not justified.

The Board acknowledges the detailed assessments and consideration given to this issue, and as outlined in the Planning Inspectors report. The Board notes the Planning Inspector's and the planning authority concerns in respect of the design approach along Western Way, which primarily focused on the breaking up the horizontal scale of this elevation.

However, the Board was not satisfied that the appropriate solution or resolution of this issue was achieved by the Planning Authority's recommended condition which sought the redesign of the elevation of combined Blocks C, D and E to be amended to allow for greater visual separation between the blocks to reduce the visual scale of the building. The Board agreed with the Inspector that having regard to the variation in height, the curved nature of the elevation and the urban location of the site, that Blocks C, D and E provide an appropriate urban edge to this site and would improve the streetscape.

The Board noted the Inspector's view and recommendation that a change in material for Block D would allow adequate variety in the elevation. The Board considered that

this was a reasonable approach to the breaking up of the visual mass of this elevation, and did not consider there to be a need or justification to create separate buildings along this street, given the terraced nature of buildings generally along the streets in this area. However, the Board considered there to be a further impact to be addressed, in relation to Block C, prior to considering materiality of this elevation, and that related to the height of Block C and its visual dominance over the Protected Structure.

The Board accepted, in part, the concerns of the third parties with regard to the design approach and the proposed height of the development in respect of Block C, which the Board considered to be excessive and would have a negative impact on the architectural quality of the area. The Board did not accept the Inspector's conclusion that the most appropriate location for additional height was closest to the Protected Structure (at Block C), although similarly did accept that it would not be appropriate at Block E which would have an adverse impact on neighbouring residential properties. The Board were of the view that the same sensitivity, as provided for by Block E, in respect of its height and change in materials immediately at the edge of its interaction with the existing buildings would provide for a more appropriate design solution, and would allow the protected structure of Hendron's building to remain the focal point and architectural landmark within the redevelopment of the site. The Board considered that greater architectural/visual sensitivity and distinction would be required immediately adjacent to the Hendron's building, which may be resolved by way of a further setback and reduction in height and change in architectural language/design at this location.

The Board notes the submission from the Arts Council who raised concerns that the development does not take sufficient account of the historical and cultural status of the Hendon's Building and the submission from An Taisce who considered that the scale and density of the development would overwhelm the protected structure and not in accordance with Dublin City council policy to ensure the special interest of protected structures is protected. In this regard, and only in respect of Block C, the Board agrees with this conclusion.

Reason for Refusal.

1. Having regard to the potential negative impact that the proposed development would have on the Protected Structure (Hendron's Building) within the site, in particular the height, design and materiality of the proposed development as provided for in Block C, it is considered that the proposed development would not be in accordance with CHC1 and CHC2 of the Development Plan to preserve Protected Structures. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

Note :

The Board considers that, subject to amendments by condition(s), Blocks A, B, D and E respond well to their context, and are of an appropriate scale and height for this inner city location (particularly noting the scale and visual prominence of the Protected Structure (Hendron's building) on site. The Board is generally satisfied that these blocks, which perhaps could have been of a more ambitious architectural design/style, would not negatively impact on the setting of the Protected Structure or its social or cultural importance, and would in fact allow for the redevelopment and reuse of the site, ensuring the on-going viability of the protected structure and enhanced public realm.

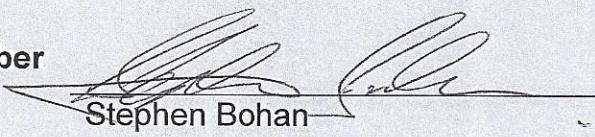
Block C, however, is of a scale and design that would overwhelm Hendron's building, visually detracting from it, and as such would not be in accordance with Policies CHC1 and CHC2 of the development plan to protect and enhance protected structures and the proposed design approach is inappropriate in this instance.

The Board considered a split decision, which would allow the redevelopment of the site and the reuse of the protected structure within a timely manner to ensure it did not fall into further disrepair and allowing for the enhancement and regeneration of this derelict site in the shorter term, while design options for Block C were considered (by way of a new permission or alternative under s.146b and allowing for further public participation and involvement in the process). However, it was agreed

by the Board that the level of intervention and redesign required was such that a more optimal solution would be realised if the development in its entirety was refused. Therefore, the Board considered that the proposed development as submitted would not be in accordance with the proper planning and sustainable development of the area.

Note to Section: Please issue a copy of the Board Direction with the Board Order.

Board Member

A handwritten signature in black ink, appearing to read "Stephen Bohan".

Date: 30/03/2021