



Planning and Development Acts 2000 to 2018

Planning Authority: Dún Laoghaire-Rathdown County Council

Planning Register Reference Number: D17A/0951

Appeal by Donal Kavanagh of 43 Greenfield Road, Mount Merrion, Dublin and by others against the decision made on the 16th day of April, 2018 by Dún Laoghaire-Rathdown County Council to grant subject to conditions a permission to Tomose Limited care of Cathal O'Neill and Associates of 33 Pembroke Road, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: Permission for demolition of the existing four-storey building of 1593 square metres and its replacement with a 1,164 square metre two-storey, public house/restaurant with terraces and set-back penthouse (three storeys in all) and two number three-storey apartment building and additional set back penthouses (four storeys in all), of area 2,724 square metres and 2,519 square metres respectively, with balconies, retractable awnings, green roofs and photovoltaic panels, each containing 25 number apartments (11 number one-bedroom, 30 number two-bedroom and nine number three-bedroom in total); together with two levels of basement car parking accessed from the existing entrance off Wilson Road, (the existing Deerpark Road vehicular entrance to be closed off), consisting of 119 car

spaces, 12 motorbike spaces, a goods loading bay/plant/sub-station/attenuation tanks/ refuse storage; individual residents' storage rooms and 66 bicycle spaces; 11 number street-level cycle parking spaces, associated communal and public open space landscaping, including a public terraced area at site of Union Café and Kennedy's Public House, bounded by Deerpark Road, North Avenue and Wilson Road, Mount Merrion, Blackrock, County Dublin.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions 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 zoning designation of the site, the historic use of the site, and the planning history of the site and general area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of the area, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. 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 submitted to the planning authority on the 7th day of February, 2018 and the 21st day of March, 2018, 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.

Reason: In the interest of clarity.

2. The ground floor bar shall only operate during normal licensing hours. The first floor restaurant shall only be used as a licensed restaurant/café and shall not be used as a dance hall or nightclub or for functions. The first floor restaurant shall be used primarily for the consumption of food in association with the proposed restaurant use and shall not be provided with speakers or amplified music and shall not be used as a public bar, dance hall or nightclub or for functions.

Reason: In the interest of protecting the residential amenities of the area.

3. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. No additional development shall take place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, unless authorised by a further grant of planning permission.

Reason: To protect the residential amenities of property in the vicinity and the visual amenities of the area.

5. Comprehensive details of the proposed external lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The agreed lighting system shall be fully implemented and operational, before the bar/restaurant/function room commences operation.

Reason: In the interest of public safety and visual amenity.

6. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

7. The proposed green roof shall meet the requirements of Appendix 16: Green Roofs Guidance Document as set out in the Dún Laoghaire-Rathdown County Development Plan 2016-2022.

Reason: In the interest of clarity.

8. No music or other amplified sound or internal light spillage shall be emitted to the public street or broadcast in such a manner as to cause nuisance to the occupants of nearby properties.

Reason: To safeguard the amenities of the area and in the interest of orderly development.

9. (a) Amplified music or other specific entertainment noise emissions from the premises shall not exceed the background noise level by more than 3 dB(A) during the period 0800 to 2200 hours and by more than 1 dB(A) at any other time, when measured at any external position adjoining an occupied dwelling in the vicinity. The background noise level shall be taken as L90 and the specific noise shall be measured at LAeq.T.
- (b) The octave band centre frequencies of noise emissions at 63 Hz and at 125 Hz shall be subject to the same locational and decibel exceedence criteria in relation to background noise levels as set out in (a) above. The background noise levels shall be measured at LAeqT.
- (c) The background noise levels shall be measured in the absence of the specific noise, on days and at times when the specific noise source would normally be operating, either
- (i) during a temporary shutdown of the specific noise source, or
 - (ii) during a period immediately before or after the specific noise source operates.
- (d) When measuring the specific noise, the time (T) shall be any five minute period during which the sound emission from the premises is at its maximum level.
- (e) Any measuring instrument shall be precision grade.

Detailed plans and particulars indicating sound-proofing or other measures to ensure compliance with this condition shall be submitted to, and agreed in writing with, the planning authority prior to use of the premises. An acoustical analysis shall be included with this submission to the planning authority.

Reason: In order to protect the amenities of property in the vicinity having particular regard to the nuisance potential of low frequency sound emissions during night-time hours.

10. (a) All entrance doors in the external envelope shall be tightly fitting and self-closing.
- (b) All windows and roof lights shall be double-glazed and tightly fitting.
- (c) Noise attenuators shall be fitted to any openings required for ventilation or air conditioning purposes.

Details indicating the proposed methods of compliance with the above requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To protect the residential amenities of property in the vicinity.

11. The developer shall control odour emissions from the premises in accordance with measures which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of public health and to protect the amenities of the area.

12. The site 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:
- (a) A plan to scale of not less than 1:500 showing –
 - (i) the species, variety, number, size and locations of all proposed trees and shrubs which shall not include prunus species,
 - (ii) details of screen planting which shall not include cupressus x leylandii,
 - (iii) details of roadside/street planting which shall not include prunus species,
 - (iv) hard landscaping works, specifying surfacing materials, furniture play equipment and finished levels,
 - (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment, and
 - (c) A timescale for implementation.

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 or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

13. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site and adjoining lands under the control of the applicant unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

14. Prior to the occupation of the development, a Parking Management Plan shall be prepared for the site and shall be submitted to and agreed in writing with the planning authority. This plan shall provide for the permanent retention of the designated residential parking spaces and shall indicate how these and other spaces within the development shall be assigned, segregated by use and how the car park shall be continually managed, including external signage. This plan shall also include details for the provision of future electric charging points for vehicles if and when required and shall include measures for the management of the designated bike parking area.

Reason: To ensure that adequate parking facilities are permanently available to serve the proposed residential units in addition to the proper management of parking for the proposed bar/restaurant element.

15. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006.

The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

Reason: In the interest of sustainable waste management.

16. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

17. Noise monitoring locations for the purposes of the construction phase of the proposed development shall be agreed in writing with the planning authority prior to commencement of development. The planning authority shall be notified prior to works of the timing and details of all underground piling and excavation works.

Reason: To protect the residential amenities of property in the vicinity.

18. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the current Development Plan for the area.

19. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development until taken in charge.

20. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

Dated this day of 2018.