

Planning and Development Acts 2000 to 2020

Planning Authority: Dublin City Council

Planning Register Reference Number: 3249/20

Appeal by Niall and Moira Fitzmaurice care of Conor Sheehan of 5 Inchicore Square North, Dublin against the decision made on the 19th day of October, 2020 by Dublin City Council to grant subject to conditions a permission to Grange House Limited care of Hughes Planning and Development Consultants of 70 Pearse Street, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: The development will consist of: for a temporary period of three years, a proposal involving: (i) change of use of part of 36 Rathmines Road Upper's rear courtyard to an outdoor dining area (84 square metres in area) associated with the Uppercross House Hotel. The outdoor dining area will be accessible from the Uppercross House Hotel and will be operational between the hours of 12 noon and 9.30 p.m.; (ii) installation of six number picnic benches and associated parasols, temporary astro turf ground treatment and temporary two metre high fencing; and (iii) all ancillary works necessary to facilitate the development, all at The Uppercross House Hotel, 26-30 Rathmines Road Upper, Rathmines, Dublin and 36 Rathmines Road Upper, Rathmines, Dublin (a Protected Structure).

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 existing restaurant use in the hotel at Numbers 26-30 Rathmines Road Upper, the confined, enclosed and limited size and small-scale nature of the proposed outdoor dining space at the rear of Number 36 Rathmines Road Upper, and the separation distance from adjoining residential properties to the east beyond the east boundary wall, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of adjoining properties by reason of noise and nuisance, overlooking or overspill of outdoor lighting, would not adversely affect the integrity, character and setting of the existing building which is included on the record of protected structures, or the residential conservation area, would not result in the intensification of use of the access route to the hotel carpark from Church Gardens. The proposed development 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, 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 duration of the grant of permission shall be for a three year period from the date of this Order, following which all structures and fittings shall be removed and the outdoor dining space returned to its original state, unless a prior grant of permission has been obtained.

Reason: In the interest of clarity.

3. Prior to the operation of the development, temporary fencing shown on Drawing number 20147/2/DWG002 lodged with the application on the 25th day of August, 2020 shall be erected along the eastern boundary and retained in place throughout the duration of the grant of this permission.

Reason: In the interests of clarity and the protection of the residential amenities of adjoining properties.

4. Details of fencing to be erected on the southern boundary with the adjoining property at Number 38 Upper Rathmines Road shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. It shall be erected prior to the operation of the outdoor dining and retained in place throughout the duration of the grant of this permission.

Reason: In the interests of clarity and the protection of the residential amenities of the adjoining properties.

5. The hours of operation shall be confined to the hours of 12.00 p.m. to 9.30 p.m. Monday to Sunday inclusive. There shall be no amplified music, live music or other form of outdoor entertainment, including television screens and broadcasting, at the proposed outdoor dining space.

Reason: In the interests of clarity and the protection of the residential amenities of the adjoining properties.

6. (a) Noise levels from the proposed development shall not be so loud, so continuous, of such duration and pitch and occurring at such times as to give reasonable cause for annoyance to a person in any premises in the neighbourhood or to a person lawfully using any public place.
- (b) The noise level arising from the outdoor dining area, as measured at the nearest noise sensitive location shall not exceed:-
- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive.
- (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.
- (c) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

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

7. 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.

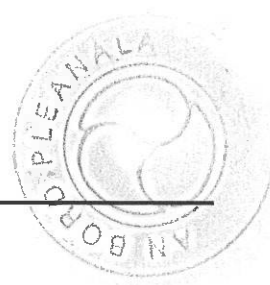
Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



Dave Walsh

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 29th day of April 2021