



An
Bord
Pleanála

Inspector's Report PL29S.247825

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| Development | Extensions to hotel to include replacement roof to the rear. |
| Location | 121-125 Lower Rathmines Road, Rathmines, Dublin 6. |
| Planning Authority | Dublin City Council |
| Planning Authority Reg. Ref. | 3270/16 |
| Applicant(s) | Wellington Hospitality Ltd. |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Type of Appeal | Third Party |
| Appellant(s) | Rathmines Initiative |
| Observer(s) | None |
| Date of Site Inspection | 3 rd of April 2017 |
| Inspector | Angela Brereton |

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1.0 Site Location and Description

- 1.1.1. The appeal site is located in Rathmines Town Centre and the surrounding area is characterised by a mix of commercial, retail, institutional and residential uses. The site comprises an existing 5-storey over basement building with a top floor set back over the front elevation. The existing building has a contemporary design with 6 entrances off Lower Rathmines Road at ground floor level and it is used as an aparthotel, bar and restaurant. While the hotel accommodation is in use the bar/restaurant area on ground and first floor levels is currently being refurbished. The building has a c.31.16m frontage along Rathmines Road Lower. At present the building is in two separate sections with blocks to the east and west of an internal courtyard area. There is a basement carparking area with vehicular access via a right of way to the rear onto Ardee Road. This is adjacent to the gated entrance to Sadler's Court to the north.
- 1.2. There is a Lidl and residential block adjoining to the south of the site with frontage onto Rathmines Road Lower. The blank side elevation of Lidl faces the site. The upper floor of the rear of the residential can be seen from the courtyard area of the site. Saddler's Court residential development is to the north and is currently seen from the courtyard area. There is residential fronting onto Ardee Road to the south of the site.
- 1.3. Photographs and maps in Appendix 1 describe the site and location in some detail.

2.0 Proposed Development

- 2.1. This is to comprise of the following:
 - a) An extension to the front of the 4th floor to provide 3 additional bedrooms, a rear extension of the 1st to 4th floors to provide 20 additional bedrooms, and a rear extension of the ground and 1st floors to provide 6 additional bedrooms, all to the eastern/front bedroom block fronting onto Lower Rathmines Road;
 - b) The replacement of the pitched roof of the western/rear bedroom block with a new storey to provide 9 additional bedrooms, and re-planning and extension at 2nd floor level to provide 2 additional bedrooms.

The application form provides that the total site area is 2,472sq.m, the total area of buildings to be retained on site is 5,770sq.m. It is provided that the total area of all extensions is 1,626sq.m. Therefore, the total floor area will be 7,393sq.m. The proposed plot ratio is 2.99 and the proposed site coverage is 58%. It is also provided that the existing 5,770sq.m is as an aparthotel with bar restaurant.

A letter has been submitted with the application by Horan Rainsford Architects, this has regard to pre-planning consultations and provides a rationale for the application.

A Site Layout Plan, Floor plans, Sections and Elevations have been submitted. Shadow Analysis and 3D Photo-Montage Views have also been submitted.

Documents submitted include the following:

Flood Risk Assessment Report – July 2016 – Punch Consulting Engineers

Engineering Planning Report - Ditto

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 6th of December 2016, Dublin City Council granted permission for the proposed development subject to 10no. conditions. These generally relate to infrastructural and construction issues. It is of note that Condition no.10 restricts the use of the development to the permitted uses only and does not allow for a change or intensification of use.

3.2. Planning Authority Reports

- 3.2.1. The Planner's Report refers to the locational context of the site, planning history and policy and to the submissions made. This noted that this application proposes an extension to the existing 5 storey development facing Rathmines Road Lower, comprising a new 5 storey hotel extension to the southern site boundary, a two storey extension to the northern site boundary and a 4th floor extension to the western boundary. They noted that Rathmines was not characterised as a medium/high rise area in the DCDP 2011-2017 and that is therefore a 'low rise' area where up to 4 floors of residential/commercial is deemed appropriate in order to

protect the character and amenities of the area. Therefore, they considered the proposal would materially contravene the DCDP and that revised plans should be submitted to show that the development complies with this policy. They also had regard to the high Plot Ratio and considered the request to reduce the scale of the proposed development would help address this issue. They noted there will be a net loss of car parking. They considered that revised Public Notices and plans should be submitted relative to the proposed development. Their Further Information request included the following:

- Revised Plans to show the proposed new build reduced to 4 stories in height in compliance with policy (Section 17.6.2 of the DCDP 2011-2017).
- Revised elevations of the proposed structure to demonstrate clearly the details of the materials and finishes to be used.
- To submit revised plans omitting the proposed 5th floor extension onto Rathmines Road Lower.
- Revised elevation drawings of the proposed 2 storey extension to the northern site boundary (Southern and Northern elevations required). Details to show the proposal in context of Saddlers Court and Ardee Road and also include photomontages and revised context drawings.
- To submit revised details of the Plot Ratio proposed on site as a consequence of amendments to the proposed scheme made.
- To submit revised plans clearly identifying the proposed change of use at basement level. Details submitted to confirm loss of carparking as a consequence of the proposal.
- Revised Public Notices

3.2.2. Further Information response

Horan Rainsford Architects submitted Further Information on behalf of the applicants, including revised Public Notices and Drawings.

- The 5th storey to the proposed extension on the Southern Site Boundary has been omitted, thereby reducing this element of the proposed scheme from 5 storeys to 4.

- The elevations on the revised drawings have been annotated with the materials and finishes proposed.
- In response to Rathmines Initiative concerns they have omitted some corridors to improve natural light to the existing building.
- The proposed forward extension to the top level of the existing 5 storey block where it faces onto Lr. Rathmines Road is now shown omitted. Accordingly, the existing building line onto this road will not be changed.
- Details are given of drawings and photomontages that have been submitted to provide further clarity regarding the cumulative impact of the existing and proposed development on the residential and visual amenities of the area.
- Details are given regarding the historically higher plot ratio on this site, and the reduction to that originally proposed in the current application, as a result of amendments made.
- The proposed expansion of kitchen/storage/cold storage areas at Basement Level is now shown omitted. Accordingly, the issue of change of use at this level does not arise.
- As a consequence, the Basement Level will remain as is and there will be no net loss of car parking at this level.
- They have regard to operations of the Bar/Restaurant and provide they would not be surprised to see a condition restricting usage and late opening hours.
- While no objection was raised to this proposal by the Council's Drainage Division, the possibility of flooding was raised by one of the Observers. To allay any concerns in this regard they refer to the Copy Report from Punch Engineers.
- They conclude that the concerns raised in the three observations received have been studied carefully and addressed in their Additional Information response.

3.2.3. Planner's Response

The Planner had regard to the F.I submitted and considered that the applicants have adequately addressed concerns raised. They provided that the proposal is in

accordance with policy for the provision of additional hotel bed spaces within the city area. Having regard to the alterations now proposed as a consequence of the applicant's response to the A.I they considered the revised proposal to be acceptable.

3.3. Other Technical Reports

Engineering Department -Drainage Division

They have no objection to the proposed development.

Waste Regulation Section – Waste Management Division

This has regard to the need for a Construction and Demolition Waste Management Plan to be submitted prior to the commencement of development and to waste management during construction and operational phases.

Irish Water

They have no objection to the proposal subject to recommended conditions.

3.4. Third Party Observations

A number of Submissions have been received from local residents, including the subsequent Third Party, Rathmines Initiative. Concerns include the following:

- The proposed height of the extensions is not in character with, and will detract from the character of the area. It is contrary to planning policy and would exceed the heights in the DCDP.
- The existing plot ratio already exceeds the indicative plot ratio in the DCDP and this proposal will further exacerbate this and will result in an over development of the site.
- The rear extension at Ground and First Floor effectively eliminates natural light into the existing building.
- They are concerned that the Restaurant/Bar area could be used for other entertainment type uses such as concert hall, dance hall or night club. They consider the restrictions in the parent permission (Reg.Ref.2018/96) relative to this should be reiterated.

- There is ambiguity as to the what will be the usage of the proposed café terrace area permitted under Reg.Ref.2359/15.
- The site is in an area of High Flooding Risk.
- Impact on public services including sewerage and drainage capacity.

4.0 Planning History

4.1.1. The Planner's Report refers to an extensive planning history relative to the site, much of the hotel development occurring in the late 1990's. These include:

Reg. Ref. 2018/96 – Permission granted for an aparthotel comprising 51 bedrooms, 757sq.m. of bar and restaurant area and 377sq.m. function room, along with offices, support accommodation and ancillary car parking in a 5 storey over basement building, and a 4 storey building at the centre of the site with rear access via apartments at 28-30 Ardee Road to the rear. The development was amended by way of the following conditions:

- The 377sq.m.function room was to be omitted in the interest of amenity.
- The bar/restaurant was not to be used as a concert hall, dance hall or night club.

Reg. Ref.2358/15 – Permission refused for modifications to the E elevation of the ground and mezzanine floors of the first two bays on the south and to all of the first and second floors. Permission refused for 1 reason related to:

Having regard to the vertical emphasis of the existing building, the proposed alterations to the materials of the facade would create an overly horizontal appearance to the elevation which would sever the visual relationship between the ground floor commercial frontage and the building above, visually obtrusive and distract from the character and visual amenities of the building and the established streetscape.

Reg. Ref. 2359/15 – Permission originally refused by the Council for Modifications to the east elevation of the ground and mezzanine floors of the three bays on the north, also forming of a café terrace under colonnade within the building at 121 to 125

Lower Rathmines Road, and subsequently granted on appeal subject to conditions by the Board (Ref.PL29S.244951 refers). This included:

- Condition no.4 – *The development shall comply with the terms and conditions of the parent permission for the building granted under Reg.Ref. no.2018/96.*
- Condition no.5 – *The café terrace shall not be used before 0900 hours or after 2200 hours.*

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

As shown on Map H, the subject site is located in an area zoned Z4, with the Objective: *To provide and improve mixed-services facilities.* Rathmines is identified as a Key District Centre, one of eight such centres in the City, which can provide a strong sense of urban place, are centres for local services and form a basis for sustainable neighbourhoods.

Chapter 16 provides the Development Standards and refers to Design, Layout, Mix of Uses and Sustainable Design.

Section 16.5 refers to Plot Ratio and Section 16.6 to Site Coverage standards.

Section 16.7.2 refers to Height Limits and Areas for Low-Rise, Mid-Rise and Taller Development. The Table shows that this is up to 16m for commercial and residential in low rise areas outside of the inner city and not adjacent to rail hubs. Regard is also had to the pre-existing height in low rise areas.

Section 16.10.11 refers to Mixed Use Development and includes: *To create a vibrant city, it is important that development accommodates a mix of uses. In considering proposals for mixed-use developments, the protection of amenity and the reduction in potential conflict between the various uses will be of paramount importance.*

Section 16.11 has regard to criteria for Guest Accommodation, including hotels.

Section 16.28 refers to Off-Licences.

Section 16.29 refers to Restaurants.

Section 16.32 refers to Night Clubs/Licensed Premises/Casinos/Private Members Clubs.

Relevant to consideration of all of the above uses is the impact on residential amenities, and having regard to the number of such facilities in the area.

Appendix 16 provides Guidance on ApartHotels.

5.2. Rathmines Local Action Plan (Draft)

- 5.2.1. The site is located within the LAP area. Fig. 2.4 includes regard to the Land use Zoning Map. This notes that: *Mixed use commercial lands zoned Z4 to provide for and improve mixed service facilities. The commercial zone extends from the junction of Richmond Hill in the north to the junction with Rathmines Avenue in the south and occupies a central location with the study area. The commercial area includes significant public buildings such as the Town Hall and Library.*

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A Third Party Appeal has been submitted from Rathmines Initiative (c.o. Ciaran Ferrie). They note that many of their concerns expressed in their submissions to the application at Council stage, have been addressed by way of the revised plans submitted with the additional information. However, they consider that the permission granted does not adequately address concerns regarding the intended use of the 'bar/restaurant' space. They ask the Board to further condition the grant of permission and to remove ambiguity and provide greater clarity on the permitted uses within the building.

- 6.1.2. They refer to the original permission Reg.Ref. 2018/96, described by the applicant as the 'parent permission', included the following condition:

For the avoidance of doubt the bar/restaurant shall not be used as a concert hall, dance hall or night club.

Reason: In the interest of the proper planning and development of the area.

They provide that despite this condition the bar/restaurant was used as a night club for several years up to its closure in 2012 and resulted in serious disturbance to local residents.

- 6.1.3. They are concerned that the Council's grant of permission did not repeat this condition as anticipated by the applicant in the F.I submitted. They consider that this omission leaves some ambiguity about the intension of the grant of permission and uses that are now permitted within the building and opens up the possibility of the applicant, or any future owner of the property, arguing that use as a night club is not prohibited.
- 6.1.4. The area described as a 'bar/restaurant' on the drawings amounts to approximately 750sq.m over two levels and has limited natural light. They consider that this does not seem a likely location for a restaurant and that it is hard to see what other use would be possible here other than a night club or music venue.
- 6.1.5. The Rathmines Initiative does not consider that a night club of this scale is an appropriate use in what is a densely populated residential area and provide that the grant of permission should reaffirm the prohibition of this and similar uses. They recommend in the interests of clarity and certainty that the Board append a condition to the grant of permission reiterating that the building is not to be used as a concert hall, dance hall or night club.

6.2. **Applicant Response**

- 6.2.1. Brock McClure has submitted a response on behalf of the First Party to the Third Party grounds of appeal. This includes the following:
 - They welcome the statement by the appellant that many of the concerns of the Rathmines Initiative have been addressed in the additional information.
 - They are of the opinion that the notification of the Council's decision to grant, permits an appropriate level of development on the site.
 - This development is in accordance with the relevant statutory Development Plan context.
 - The main concern of the appellants is the intended use of the 'bar/restaurant space'.

- They have had the opportunity to review in full all details relating to the relevant planning files i.e Reg.Ref.3270/16 (ABP – 247825), Reg.Ref.2359/15 (ABP-244951) and Reg.Ref.2018/96 (parent permission).
- They note the condition in the parent permission restricting ‘concert hall, dance hall or night club’ usage. They note that a previous night club use contravening this condition has ceased prior to their purchase of the site.
- They note condition no.4 of the Board’s permission (Ref. PL29S.244951 refers) also restricts such use, relative to compliance with the conditions of the parent permission.
- In implementing this permission, the applicant, or any other beneficial or future owners of the lands, would be in direct contravention of this permission should they decide to operate the café as a nightclub.
- They provide that whilst permission is sought for an increased number of bedrooms on site, there is no attempt to revise the permitted café element of the overall development proposal.
- This permission is not constructed as a revision to previous permissions, instead it is a stand-alone permission that acts independently from those permitted on site.
- This is a determining factor as regards the issue of the permitted café and the continued relevance of the original permission and condition no. 4 of Ref.PL29S.244951.
- They confirm that the previous permissions remain relevant and can be wholly relied on by the Council, or any other third party to enforce and prohibit the use of the café as a concert hall, dance hall or night club.
- Notwithstanding the explicit restrictions on the use of the café bar and restaurant they invite the Board should they consider it necessary to attach a condition which confirms the fact that a night club cannot operate at this location under the terms of the permission associated with the site.
- Whilst they recognise the remit of the Board in dealing with all planning cases de novo, in this instance, they ask them to consider dealing only with the ‘use’ issue raised by the appellants.

6.3. Planning Authority Response

- 6.3.1. Dublin City Council response to the grounds of appeal, provides that they have no further comment to make and considers that the planner's report on file adequately deals with the proposal.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. As shown on land-use Map H of the Dublin City Development Plan 2016-2022, the site is within the Z4 District Centre zoning where the objective seeks: *To provide for and improve mixed-services facilities*. Permissible uses include those proposed in the current application i.e: hotel, restaurant, public house. Regard is had to Policy CEE12 (i) of the DCDP 2016-2022 which seeks to: *To promote and facilitate tourism as one of the key economic pillars of the city's economy and a major generator of employment and to support the provision of necessary significant increase in facilities such as hotels, apart hotels, tourist hostels, cafes, and restaurants, visitor attractions, including those for children*. Regard is also had to Appendix 16 of the DCDP which provides Guidance for Aparthotels. This includes: *In any application for an aparthotel, a range of different unit styles and sizes will be required in order to cater for the needs of visitors; the planning authority will resist the over-provision of single-bed aparthotel units and shall require a mix of unit sizes and styles*.
- 7.1.2. It is noted that this proposal is for extensions to an existing aparthotel and is acceptable in principle on this land use zoning and having regard to the recent planning history and extant permission. Also the importance of the regeneration of this site in the context of the Rathmines area having regard to sustainable development relevant to the character of the area and the impact on the amenities of adjoining properties needs to be highlighted, in terms of the assessment of the current application. Regard is had to this and to the planning issues and concerns raised by the Third Party appeal, including the use issue in the Assessment below.

7.2. Issue of Appeal Against Conditions

- 7.2.1. Section 8.11 of the Development Management Guidelines 2007 refers to *Appeals against Conditions*. This includes: *The Board has complete discretion to give to the planning authority whatever directions it considers appropriate relating to the attachment, amendment of or removal from the grant of permission of the condition or conditions the subject of the appeal, or any other conditions.*
- 7.2.2. Section 139 (c) of the Planning and Development Act 2000 (as amended) provides that where: *the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted.* Generally, this would relate to an appeal against conditions. In this case, it is noted that there is a Third Party Appeal from Rathmines Initiative. This notes that many of their concerns were addressed in the additional information submitted. However, they are concerned that the Council's permission does not address their concerns regarding the intended use of the 'bar/restaurant' space. In this respect the First Party Response requests that this case be dealt be relative to the use issue only. Indeed, the First Party invites the Board to attach a condition which confirms that a night club cannot operate at this location under the terms of the permission associated with the site.
- 7.2.3. However, whereas this is the primary issue raised by the Third Party they do mention other concerns and they do not specifically mention that their appeal is against a particular condition. Also there are issues raised relative to the history of the site. Therefore, it is considered that taking into account the particulars of this case, and the documentation submitted, including the fact that it is not stated by the Third Party that this this is an appeal against any particular condition, it is considered the application does need to be considered by the Board, de novo.

7.3. Design and Layout

- 7.3.1. The documentation submitted provides that it is proposed to extend the existing facility as a modern, purpose built aparthotel using the existing 3 and 5 storey structures with a new-build hotel extension located on either side of the existing courtyard area between the existing buildings. The proposed new build area between the existing structures is to comprise of new bedroom sectors to the south

and to the north divided by an internal roof garden located at ground floor level. It is provided that the northern bedroom sector will develop at ground and first floor, while the southern sector will develop from ground floor through to fourth floor. Initially a corridor was to be provided at ground and first floor to create a link between the two structures. The drawings show 8no additional bedrooms are proposed at ground level and 8no. at first floor level and 6no. at second floor level (this includes the family bedrooms). It is noted that the extension proposed on the northern elevation adjacent to Sadler's Court is two storey. The windows proposed face the courtyard and a blank elevation is to face Sadler's Court, so overlooking will not occur.

- 7.3.2. As originally submitted it was proposed to alter the existing 5 storey structure fronting Rathmines Road Lower to include the extension of the existing 4th floor to upgrade the existing studio double bedrooms. As shown on the plans it is proposed to add a third floor onto the western block which faces the courtyard and the rear of the separate residential block, which faces Ardee Road, thereby creating a third floor providing additional bedrooms. The third floor plans show it is proposed to provide 6no. additional bedrooms and 8no. studio apartment suites on this floor by way of an extension to the existing southern and western elevations. As the western element is above the existing footprint and in view of the distance to the separate residential block it is not considered that it will adversely impact on the amenities of this block to the rear. In total having regard to the public notices it was proposed to provide an additional 40no. bedrooms.
- 7.3.3. The original plans submitted at, application stage also proposed to provide a restaurant/bar area, kitchens and stores area, cycle spaces, showers changing facilities and archive/storage area at Lower Ground Floor within the basement footprint. A car parking area and ancillary facilities, laundry, plant room water storage tanks etc were also to be provided comprising of the footprints of the existing rear structure and the new build area between the existing structures.
- 7.3.4. Regard is had to the Photomontages and 3D Aerial Views submitted. The latter gives an idea of the massing and impact of the proposed new build with the existing blocks and views of the blocks from the NW, NE, SW and SE.

7.4. Regard to changes made

- 7.4.1. A number of Submissions were received from local residents including the subsequent third party appellant Rathmines Initiative. These included concerns regarding the height and massing and overdevelopment of the site. Subsequent to the Council's Further Information request, Additional Information was submitted including revised drawings. These provided for a number of changes and a reduction to the floor area and height of the proposed development. This included that the 5th storey to the proposed extension on the Southern Site Boundary has been omitted thereby reducing this element of the proposed scheme from 5 to 4 stories. As shown on the plans this provides for the omission of 4 no. bedrooms formerly proposed at the 4th floor southern elevation. These were adjacent to the blank Lidl side elevation which faces the site, but it is considered that they could adversely impact on the outlook of the residential apartments above Lidl and it is therefore, beneficial that this upper level has now been shown omitted.
- 7.4.2. The proposed forward extension to the top level of the existing 5 storey block where it faces onto Rathmines Road Lower is also shown omitted. The revised 4th floor plans show the 5no. road facing studio suites omitted and 9no. bedrooms are now included in the eastern facing elevation at 4th floor level, rather than 7no. bedrooms and 5 studio suites as previously shown. Therefore, there are now no studio apartments proposed on the 4th floor level. This is similar to the existing 4th floor plan, although one of the bedrooms is to be removed to allow for the installation of a new lift. Accordingly, the existing Building line on this road frontage elevation will not be changed, so this proposal will not impact adversely on the streetscape. The revised plans show that 36no. new bedrooms are to be created, this includes additions to some double rooms to allow for family rooms and also 8no. studio apartments on the third floor. Therefore, this will improve the variety of hotel accommodation on offer.
- 7.4.3. The elevations shown on the revised plans have been annotated with the materials and finishes proposed. This is not a Conservation Area but it is important that the external finishes integrate well with the existing buildings. Internal changes include that the ground and first floor corridors are shown omitted, which is beneficial in that it will increase light to these areas. Alterations to the basement layout to allow for

more parking and retain the existing layout are discussed further in the context of the proposed usage section below.

- 7.4.4. Further details are given on the drawings and photomontages submitted to clarify the cumulative impact of the existing and proposed development on the residential amenities of the area. This includes residential with Sadler's Court to the north and the Ardee Road to the south and west. It is provided that the photomontages demonstrate that none of the proposed extensions would have any visual impact on Ardee Road. Also that they would enhance the privacy of and not adversely impact on the residential amenities of Sadler's Court.
- 7.4.5. It is considered that the revised plans offer an improvement particularly relative to reduction in height and bulk to those previously submitted. The photomontages submitted demonstrate that the proposal will integrate better with the surrounding environment and will not visually impact on the streetscape.

7.5. Issues regarding Over Development of Site

- 7.5.1. Concerns have been raised relative to issues regarding the high plot ratio and overdevelopment of the site. The details submitted with the F.I provide that the Plot Ratio as per the parent permission (2018/96): 2.78, i.e. area of building constructed on foot of this permission was 5,770sq.m on a site area of 2,075sq.m, the existing plot ratio remains at this figure. The proposed plot ratio under the scheme as originally submitted with the current application was 2;99 i.e. site area (inc. recently purchased lands): 2,472sq.m and the area of existing and proposed: 7,396sq.m. The scheme as revised as a consequence of the amendments made to the proposed scheme in response to the Council's Additional Information request reduced the combined of the existing and proposed floor area to 7,086sq.m resulting in a plot ratio of 2:87. It is provided that this represents a minor net increase in plot ratio of (0.09) C. 3%.
- 7.5.2. It is noted that as per Section 16.5 of the current DCDP the plot ratio is higher than the Indicative Plot Ratio for the Z4 area of 2.0. In their initial response to the A.I Rathmines Initiative (the subsequent appellants) were concerned that this proposal would result in an overdevelopment of the site. However, as above the permitted plot ratio has already been higher on this site which is adjacent to public transport links.

Therefore, in view of these issues, it would not be contrary to the criteria that allows for higher plot ratios in certain circumstances in Section 16.5.

7.6. Impact on the Character and Amenities of the Area

- 7.6.1. There were concerns in the submissions made, that the proposed development would amount to an overdevelopment of the site which would impact upon key civic buildings on the streetscape and be overly visible in the wider area including from the Rathmines Road Lower. It is noted that the Third Party welcomes the decision as submitted in the F.I. to omit the proposed fifth floor extension to the front of the building facing Rathmines Road Lower. It is considered that this extension as originally proposed would have broken the existing building line at this level and the resulting building mass would have dominated the streetscape. It is now considered that the revised plans have been more carefully considered and the proposed new build would not impact adversely on the character of the streetscape or on the amenities of adjoining residential properties.

7.7. Proposed Usage

- 7.7.1. The issue of clarity regarding the various uses in the building is of primary concern to the Third Party. There are concerns that what was referred to in the previous application permitted by the Board (Reg.Ref.2359/15 – Ref.PL29S.244951 refers) described as a café terrace is now referred to as a bar/restaurant. Also that the proposed use of the entire site needs to be clarified and the conditions (originally part of the parent permission 2018/96) restricting the use of the property as a nightclub, concert hall or dance hall should be reiterated in any further grant of permission made.
- 7.7.2. As per the F.I submitted the basement plan has reverted to its existing layout i.e as carparking area. The originally proposed kitchen, cooled beer store and restaurant/bar and kitchen stores is shown omitted. There is concern that there is a lack of clarity as to how a Restaurant /Bar of C.750sq.m over two levels is to be serviced without any clearly identified kitchen or storage facilities. Also that there is no identification of how refuse waste is to be stored and managed. It is noted that there is an existing refuse area within the basement carpark.

- 7.7.3. Section 16.32 of the DCDP is of note and provides: *The development of ‘superpubs’ will be discouraged and the concentration of pubs will be restricted in certain areas of the city where there is a danger of over-concentration of these to the detriment of other uses.* It is also provided that: *the onus is on the applicant to demonstrate that such proposed development will not be detrimental to the residential, environmental quality or the established character and function of the area.* Matters to be taken into account in assessing such application proposals include regard to the amenity of neighbouring residents and occupiers, hours of operation, traffic management, shop frontage treatment and impact on streetscape, proposed signage.
- 7.7.4. The First Party F.I response provides that they understand the manner in which the Bar/Restaurant has been operated in the past, by others (sometimes up till 3 am). Therefore, the applicants stated that they would not be surprised to see the original condition, as set out in the parent permission (Reg.Ref. 2018/96), specifically barring any part of the building being ‘used as a concert hall, dance hall or night club’ to be repeated in any Decision to Grant Permission, which might issue.
- 7.7.5. As per the documentation submitted and in particular having regard to the First Party response to the grounds of appeal it does not appear to be the intension of the applicants to allow for the creation of a ‘superpub’ or a ‘nightclub’ or to evolve the usage further than Bar/Restaurant. The café terrace recently permitted under Ref. PL29S.244951 has not been indicated in the plans currently submitted. While this is an extant permission the usage has not commenced. It appears as part of the bar/restaurant area in the plans currently submitted. Having viewed the site and seen the extent and layout (albeit currently not in use and being refurbished) of the space for the bar/restaurant area it is considered that night club usage should be restricted as per the original parent permission.

7.8. **Regard to Condition no.10**

- 7.8.1. Condition no.10 of the Council’s permission is of note relative to the restrictions on use issue and is as follows:

a) The use of the existing development shall be strictly in accordance with permitted uses only. No change of use or intensification of use, by virtue of

internal horizontal or vertical subdivision shall be carried out in the absence of a prior grant of permission for same.

- b) *The use of the development hereby permitted shall be strictly in accordance with particulars received on 04/07/16, as amended by plans and particulars received on 21/10/16. No change or intensification of use, by virtue of internal horizontal or vertical subdivision shall be carried out in the absence of a prior grant of permission for same.*

Reason: In the interests of proper planning and sustainable development.

- 7.8.2. The issue is that the current application does not specifically include the bar/restaurant areas in the works proposed, rather extensions to the hotel bedroom areas, although the basement plan originally included ancillary facilities to serve the bar/restaurant area. These have now been omitted in the revised plans. However, in view of the concerns raised by the Third Party and noting the First Party appear to be in agreement that the provision of a nightclub, concert hall or dance hall are not proposed, it is recommended in the interests of clarity and residential amenity, that if the Board decide to permit that a Condition imposing such restrictions be included. However, the enforcement of such a condition, the principle of which is already in existence in the context of the parent permission Reg.Ref.2018/16 is not within the remit of the Board and is rather a matter for the Council's Planning Enforcement.

7.9. Access and Parking

- 7.9.1. The Punch Consulting Engineers Report provides that as per the existing arrangement, primary pedestrian access for the proposed development will be via the Rathmines Road Lower frontage. The site will be serviced from Ardee Road to the rear. There is an existing vehicular access from Ardee Road on the western boundary of the development, via a ramp down to the Lower Ground Floor level. It is proposed to raise the ramp to form a crest on the access road for flood protection purposes (c.425mm above Ardee Road level). Figure 8 of the Punch Consulting Engineers Document relative to Flood Risk Assessment shows these levels.
- 7.9.2. There are two main pedestrian entrances at Upper Ground Floor Level from Rathmines Road Lower i.e one main entrance for Bar/Restaurant and one entrance for the Hotel. It is provided that there are four fire exits to the front of the

development towards Rathmines Road Lower and two fire exits to the rear of the development. Fire Safety is not within the remit of the Board.

- 7.9.3. Deliveries will be made via the existing vehicular access off the Ardee Road. It is noted that 'Transit' type vans are used by the hotel operator to service the hotel as per the existing scenario.
- 7.9.4. The plans submitted as part of the F.I show that the existing parking layout in the basement is now not to be altered as part of the current proposal. It is provided that no significant increase in traffic generation to and from the building is expected as a result of the proposed development. It is noted that there is public transport, in particular a variety of bus routes on Rathmines Road Lower adjacent to the site. Also the site is well served by the streetscape pedestrian facilities in the area. It is recommended that if the Board decide to permit that it be conditioned that an area allocated for cycle parking be included in the basement parking layout.

7.10. **Drainage issues**

- 7.10.1. Punch Consulting 'Engineering Planning Report', provides details relative to drainage issues. Drawings showing connections to the existing drainage system are included with the application. The Report includes regard to surface water drainage, and notes that the existing site has 100% hard cover, comprising both roofs and hard standing areas. Details are provided of the existing surface water regime. It is provided that the proposed redevelopment will not result in any increase in surface water run-off from the site and there is no new connection required to the public system. It is proposed to supplement the existing attenuation to meet the 1 in 100 year storm event plus 10% climate change requirements. Surface Water Attenuation Tank Design Calculations are included in Appendix B.
- 7.10.2. It is noted that the proposed development has been assessed in relation to Sustainable Urban Drainage Systems (SuDS). Green roofs are to be provided as a SuDS measure on the new build areas where new foundations are to be provided. It is not proposed to accommodate a rainwater harvesting tank in the proposed development as it is provided that the volume of rainwater collected from a green roof will be less than the volume collected from a white roof. It is stated that it has been established that through the provision of a green roof, petrol interceptor and

attenuation of surface water that the proposed redevelopment will have a reduced impact on the receiving environment.

- 7.10.3. There is concern in some of the submissions as to the impact of the development on public services (e.g. sewerage) and as to whether services are equipped to cope with this level of development. Details are given of the existing foul drainage system. It is proposed to discharge the additional foul drainage from the extension to the existing private foul sewer system within the grounds of the hotel. It is provided that the foul drainage system is designed in accordance with current standards including the GDSDS.
- 7.10.4. The details submitted in the Punch Engineering Report relate to the development as originally submitted and note that the proposed aparthotel development will have 40 no. additional bedrooms which will accommodate approx. 80 people. It is provided that the restaurant area will cater for approx. 336 people based on the furniture layout and the bar/pub area will cater for approx. 40 people based on the occupancy load factor. Also that the overall facility will be served by approx. 32 day staff. Details are included relative to proposed foul loadings. It is provided that the increase in flow is negligible in relation to the capacity of the existing system.
- 7.10.5. Details are given of the existing water main and it is noted that currently the existing buildings within the proposed redevelopment site are serviced by a watermain that connects to the main watermain running to the east of the site on Rathmines Road Lower.
- 7.10.6. It is of note that the Council's Engineering Department Drainage Division does not object to the proposed development subject to the developer complying with the relevant standards and codes of practice. Provided these are complied with it is not considered that drainage is an issue in this application.

7.11. Flooding issues

- 7.11.1. A Flood Risk Assessment Report (July 2016) by Punch Consulting Engineers has been submitted with the original application. This has regard to mapping and notes that the proposed development is located in Flood Zone C, over 800m away from the River Poddle. Regard is had to the Eastern CFRAM Study and it is noted that this does not include a map for the site of the proposed location as it is outside of the

flood risk area. (Appendix C refers). The Pluvial Flood Mapping notes that areas may be at risk of pluvial flooding in the vicinity of the site. It is provided that while significant more recent pluvial flood events were reported, there was no incident recorded at Rathmines Road Lower on the OPW National Flood Hazard Mapping.

- 7.11.2. The FRA notes that the published flood maps for Dublin City indicate that the site of the proposed development is outside the areas defined as being at risk from a 1 in 1,000 year for both coastal and fluvial flooding. Regard is also had to the 'Planning System and Flood Risk Management Guidelines'. It is provided that given that the flood zone maps indicate that the area of the proposed development is not at risk from a 1 in a 1,000 year fluvial event and the Ground Floor of the building is much higher than the expected extreme coastal flood levels they conclude that the development is in Flood Zone C, where the probability of flooding from rivers and the sea is low.
- 7.11.3. Section 5.0 of the FRA deals with Impacts and Mitigation Measures. It is provided that as the impermeable areas of the proposed development will be similar to the existing therefore there will be no increase in flow rates to receiving waters. Also that as there will be no hydrological impacts, mitigation was not considered. Details of mitigation measures relative to Pluvial Flooding are given in Table 2. This has regard particularly to measures to prevent flooding to the lower ground floor. It is of note that this was concerned with measures to prevent flooding having regard to the changes to the basement floor plan, originally proposed.
- 7.11.4. The issue of flooding has been raised in one of the Submissions to the application. This is concerned regarding the possible impact on flooding of the now culverted Swan River that flows through the site on its way to the Londonbridge Road. They provide that there have been many serious flooding issues in the locality over the last 16 years (including 2011) and that the current drainage system is over 150 years old and has already been overwhelmed for decades. They consider that until this drainage infrastructure deficit is adequately addressed, no further development should be permitted.
- 7.11.5. A Memorandum from Punch Engineers in response to the concerns raised has been included with the F.I submitted. They note that the River Swan was not studied as part of the PFRA and Eastern CFRAM Studies or the DCC SFRA. They provide that

with regard to the culverted River Swan, that this is not a significant flood risk to their site according to the relevant statutory agencies. They provided that the underground culverted River Swan crosses the site from South to North but there are no access points to the River Swan culvert from within the site boundary and that hence flooding of their site from any surcharging of the culvert cannot happen. They note that the basement has been constructed to be watertight and it would not be affected by any groundwater fluctuations and hence flooding from this source could not happen either. They note that there is no mention on the OPW Flood Hazard Mapping Website of the River Swan causing any floods at the site location.

7.11.6. It is of note that the Council's Engineering Department- Drainage Division does not object subject to compliance with relevant drainage standards including SuDS. They provide that the mitigation measures as outlined in the Flood Risk Assessment by Punch Consulting Engineers should be implemented. Therefore, provided the appropriate measures are implemented it is not considered that flooding is a significant issue in this application.

7.12. **Appropriate Assessment**

7.12.1. Having regard to the nature and scale of the development sought under this application together with the availability of connection to public services in this urban area and its separation from any designated European site it is not considered that an 'NIS' or 'Stage 2 Appropriate Assessment' is necessary in this case. Therefore, having regard to the nature and scale of the proposal, no appropriate assessment issues arise and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. Having regard to the documentation submitted including the submissions made and the Third Party appeal, the assessment above and to my site visit, it is recommended that planning permission be granted for the proposed development subject to the conditions below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the provisions of the Dublin City Development Plan 2016-2022, to the mixed use land use zoning, to the location and context of the proposed development as extensions to an established Aparthotel within the Rathmines urban area, and to the existing pattern of development in the vicinity of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of properties in the vicinity, would not be detrimental to the character and amenity of the area, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 on the 21st day of October 2016 and by the further plans and particulars received by An Bord Pleanála on the 8th day of February, 2017, 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. (a) The developer shall comply with the terms and conditions of the parent permission for the building granted under planning register reference number 2018/96. This includes that the bar/restaurant shall not be used as a concert hall, dance hall or night club.

(b) The use of the development including that hereby permitted shall be strictly in accordance with the permitted uses and the plans submitted on the 4th of July 2016 as amended by the plans and particulars received on the

21st of October 2016. No change of use or intensification of use, by virtue of internal horizontal or vertical subdivision shall be carried out in the absence of a prior grant of permission for same.

Reason: In the interests of clarity and the proper planning and sustainable development of the area.

3. Details of the materials, colours and textures of all the external finishes to the proposed building, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Sample panels shall be erected on site for inspection by the planning authority in this regard.

Reason: In the interest of visual amenity.

4. No signage, advertising structures/advertisements, security shutters, or other projecting elements, including flagpoles, shall be erected within the site or any 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.

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

Reason: To protect the visual amenities of the area.

6. Water supply and drainage arrangements including the 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. Bicycle parking spaces shall be provided within the site in accordance with the requirements of the planning authority. Details of the layout and marking demarcation of these spaces shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To ensure that adequate bicycle parking provision is available to serve the proposed development, in the interest of sustainable transportation.

8. A plan containing details for the management of waste and recyclable materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

Reason: To provide for the appropriate management of waste and recyclable materials, in the interest of protecting the environment.

9. Site development and building works shall be carried out only between 0700 hours and 1800 hours Mondays to Fridays, between 0800 hours and 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 the interest of protecting the residential amenities of adjoining properties.

10. (a) 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.

(b) The plan shall include a detailed method statement to mitigate potential nuisance including noise and dust. The plan shall outline how it is proposed to prevent spillage or deposits of clay, rubble or other debris on adjoining roads during construction.

Reason: In the interests of sustainable waste management and to mitigate potential construction nuisance.

11. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including noise management measures and off-site disposal of construction/demolition waste.

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

12. 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.

Angela Brereton
Planning Inspector

5th of April 2017