



An
Bord
Pleanála

Inspector's Report ABP-301262-18

Development

Development of restaurant at comprising (1) New retractable canopy. (2) New garden railings and planting. (3) Change in the hours of opening from between 8am and 6pm on Monday to Friday only, to between 8am and 11pm on Monday to Wednesday, to between 8am and 11.30pm on Thursday and Friday, to between 10am and 11.30pm on Saturday, and to between 10am and 11pm on Sunday. (4) Internal alterations in seating and at the servery. (5) Works consequent on new Fire Safety Certificate and Disabled Access Certificate Applications.

Location

10, Grand Canal Street Upper,
Ballsbridge, Dublin 4

Planning Authority

Dublin City Council South

Planning Authority Reg. Ref.

4594/17

Applicant(s)

Grade Hospitality Ltd.

Type of Application	Permission.
Planning Authority Decision	Split Decision
Type of Appeal	First Party
Appellant(s)	Grade Hospitality Ltd.
Observer(s)	None.
Date of Site Inspection	4 th July 2018.
Inspector	Brid Maxwell

1.0 Site Location and Description

1.1. The appeal site 151m² relates to an established commercial premises, located on the northern side of Grand Canal Street Upper in Ballsbridge. The premises, No 10 comprises a mid-terrace brick faced building which includes a coffee shop / café at ground floor level with terraced seating area provided to the front of the building with office use at first floor level. Residential development predominates to the east. No 12 is entirely residential in use as a family home whilst No 8 Grand Canal Street Upper is in retail use at ground floor level with a dental clinic at first floor level.

2.0 Proposed Development

2.1. The application seeks permission for a number of elements including development of a restaurant comprising (1) New retractable canopy, (2) New garden railings and planting (3) change in the hours of opening from between 8am and 6pm on Monday to Friday only to between 8am and 11pm on Monday to Wednesday to between 8am and 11.30pm on Thursday and Friday, to between 10am and 11:30 on Saturday and to between 10am and 11pm on Sunday. (4) Internal alterations in seating and at the servery (5) Works consequent on new Fire Safety Certificate and Disabled access certificate applications.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 23rd February 2018 Dublin City Council issued notice of its decision for split decision as follows:

Permission granted for new garden railings and planting and internal alterations to the seating and the servery subject to 10 conditions including the following

Condition 2 Use of area to the front of the café restricted to operating hours as per Condition No 2 of 1402/07 and shall not be used between the hours of 6.00pm and 8.00am on a daily basis.

Condition 3 No speaker announcements, amplified music or other audible material to be played or broadcast in the external seating area.

Condition 4. Signage details to be agreed.

Refuse permission for the increase in opening hours and the motorised terrace cover for the following reasons:

1. The proposed extension to the previously permitted opening hours would not be in accordance with the Dublin City Development Plan and in particular Section 16.29 as it would seriously injure the existing residential amenity of the adjoining properties in terms of noise and general disturbance and as such would depreciate the value of property within the vicinity.
2. By virtue of its nature and scale the proposed motorised terrace, would have a significant negative impact on the existing residential terrace and the architectural integrity of the Z2 area. As such the proposal would be contrary to the Z2 zoning for the site which seeks to protect and/or improve the amenities of residential conservation area. It is therefore contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's report notes location within a transitional zone between commercial uses to the north and west and existing residential use to the south and east. Considers that an increase in opening hours would result in a significant negative impact on the residential amenities of the area. Motorised terrace cover considered visually inappropriate. A split decision was recommended granting for new garden railing and planting and internal alterations to the seating and servery. Refusal for increase in opening hours and motorised terraced cover /canopy.

3.2.2. Other Technical Reports

Engineering Department Drainage Division report indicate no objection subject to compliance with the Greater Dublin Regional Code of Practice for Drainage Works.

Planner's report refers to a report of the Environmental Health Officer seeking clarity in regard to nature of intended business whether associated facilities / music / liquor licence involved. The report has not been provided on the appeal file and having interrogated www.dublincity.ie is not available on line either.

3.3. Third Party Observations

A number of third party submissions to the local authority object as follows:

- Mr Mark Brangam, 37 Grand Canal Street Upper indicates no objection to use of this premises as a café / tea room however the proposed extension to opening hours unacceptable given the residential nature of the area.
- Mr R Sheridan and A Sheridan 39 Grand Canal Street Upper object on grounds of adverse impact on residential amenity arising from nuisance in terms of noise, parking, air quality and odour. Application misleading. Area oversupplied with restaurants. Conditions regarding opening hours should be maintained.
- Mr Jean Paul Mosnier, and Ms Grace Aungier, 18 Upper Grand Canal Street object to the proposal in a residential neighbourhood, amenity, parking and traffic.
- Enda Storen, 45 Upper Grand Canal Street, objects to the development negative impact on residential amenity.
- Lisa Wright and Patrick Kilroy 33, Upper Grand Canal Street. Negative impact on residential amity, noise, light pollution, health and safety.
- Fiona Hanley 35 Upper Grand Canal Street. Objects to proposal on ground of impact on residential amenity.
- Submission by O Brien Finucane Architects on behalf of James McManus and Marie Bramble, 12 Grand Canal Street Upper. Application will significantly and materially injure residential amenity of adjoining property – No 12 in terms of acoustic environment, air quality environment rights to enjoy established private open space amenity, reduction in available parking to residents, anti-social behaviour and risk of

further intensification. Historic applications have not been complied. Reference to continued restaurant use misrepresents the situation as the permission is limited to tea room use. Pre-planning statements regarding consent are misleading.

Precedents cited support issue of not having late night commercial use adjacent to residential use. Validity of application questioned

4.0 Planning History

1400/99 Permission granted for retention of existing commercial unit and alteration of existing shopfront at ground floor level and retention of existing residential use at first floor level.

1452/02 Retention of 2 First Floor Commercial Unit. Invalid.

1402/07 Change of use at ground floor level for the existing commercial unit from shop (hire and sales) to tea room along with alterations to the existing shopfront at ground level and internal alterations with a total ground floor area of 86 sq.m and associated site works. Condition 2. No external area to rear of building to be used as seating area connected with tea room. Condition 4. The tea rooms / café use shall not open between 6.00pm and 8am daily. Condition 6. Café shall not operate hot food takeaway.

1402/04/X1 Extension of time granted until May 2014 to implement 1402/07.

3420/15 Retention of existing shopfront and signage painted timber glazed structure to the front of the premises including tables and chairs within this space. Condition 2. Limited permission to 3-year period after which structures to be removed and land returned to its former state. Condition 3. Use of the area to the front of the café restricted to the operating hours as per condition 2 of 1402/07 and shall not be used between the hours of 6.00pm and 8.00 am on a daily basis. Condition 3 Frame of the structure to be reduced in height to 1.8m in accordance with the existing boundary wall to no 12 Grand Canal Street Upper.

E0173/17 Enforcement History.

5.0 Policy Context

5.1. Development Plan

The site is zoned Z2 Residential Conservation Area. The objective is “to protect and/or improve the amenities of residential conservation areas”.

16.29 Restaurants. In considering applications for restaurants issues to be taken into account will include the effect of noise, general disturbance, hours of operation and fumes on the amenities of nearby residents. Traffic considerations, waste storage facilities, number and frequency of restaurants and other retail services in the area.

16.30 Street Furniture

16.24.3 Signs of Shopfronts and Other Business Premises.

Dublin City Council Shopfront Design Guide.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The appeal is submitted by De Blacam and Meagher Architects on behalf of the first party and seeks the Board to reconsider the hours of opening and grant permission for extension of hours on four evenings only that is Wednesday, Thursday, Friday and Saturday to 9.30pm finishing at 10pm.

- Well managed neighbourhood restaurants are an amenity.
- Limited extension now requested is reasonable and consistent with the business and established use of 10 Grand Canal Street.
- The location of the extract flue from the kitchen carefully planned and extended to above the ridge of the roof of 10 to discharges away from No 12.
- The applicant is pleased to reinstate the front garden boundary enclosure in keeping with the rest of the street and to omit the motorised terrace enclosure.

- In order to address the matter of noise transmission the applicant would be pleased to raise the height of the stone wall between numbers 10 and 12 Grand Canal Street to a height of the bottom of the name board as illustrated on drawing no 6.
- Acoustic detail to improve attenuation of transmission of sounds between numbers 10 and 12 Grand Canal street to be constructed over the whole of the party wall between the two houses.

6.2. **Planning Authority Response**

The Planning Authority did not respond to the ground of appeal.

7.0 **Assessment**

7.1 On the matter of the alterations to the restaurant comprising, new garden railings and planting and internal alterations to seating and serverly, I consider that these proposals are appropriate and do not give rise to any significant impact on residential amenity or other amenities of the area. I concur with the view of the Local Authority Planner that the retractable canopy is visually obtrusive and would be detrimental to the architectural integrity of the terrace of which the site forms part. This element should therefore be refused. I note that the first party suggested to omit this element of the proposed development within the grounds of appeal.

7.2 I consider that the main issue to be addressed by the Board relates to the matters raised within the grounds of appeal in relation to the proposed hours of operation. The current permitted hours of operation are 8am-6pm. The grounds of appeal seek an increase in opening hours on four evenings Wednesday Thursday Friday and Saturday to 9.30/10pm. The initial application sought a closing timeframe of 11:00/11:30pm. I note that the decision of the local authority to refuse permission for an extension of the opening hours was made on the basis that such intensification of use would threaten the predominant residential use. This determination was made in the light of the zoning of the site Z2 the objective being "to protect and/or improve the amenities of residential conservation areas".

- 7.3 I note the concerns expressed by a number of residents in their submissions to the local authority with regard to the potential for noise, odour, traffic and general disturbance arising from an intensified use as a daytime and night-time restaurant. This would clearly be most pronounced with regard to the immediately adjacent family home, no 12 Grand Canal Street Upper. To mitigate such impacts the applicant now proposes to increase the stone wall between the two front gardens to 3m in height and provide an additional internal acoustic absorption on the party wall. In my view the boundary wall proposal would be undesirable from a residential amenity perspective in terms of light and amenity impacts.
- 7.4 Having considered the detail of the application I conclude that the proposed increase in the hours of operation on the site would give rise to significant negative impacts on established residential amenity contrary to the zoning objectives pertaining to site and contrary to the proper planning and sustainable development of the area. On this basis I recommend that the decision of the Planning Authority to refuse permission for the amendments to opening hours be upheld for the following reason.
- 7.5 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not 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. Arising from my assessment of the appeal case de novo as set out above I recommend a split decision as follows:

Recommendation 1. Grant

Having regard to the planning history and established use on the site and the pattern of development in the area, it is considered that, subject to compliance with the conditions

set out below, the proposed development comprising new garden railings and planting, internal alterations to the seating and servery, would not seriously injure the amenities of the area or of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be 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 and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The hours of operation shall be restricted to the operating hours as per condition 2 of 1402/07 and shall not be used between the hours of 6.00pm and 8.00 am on a daily basis.

Reason: In the interest of the residential amenities of property in the vicinity.

3. No advertisements or advertisement structure (other than those shown on the drawings submitted with the application) shall be erected or displayed on the building (or within the curtilage of the site) in such a manner as to be visible from outside the building unless authorised by a further grant of planning permission.

Reason: In the interest of visual amenity.

Recommendation 2: Refuse

Refuse permission for the increase in opening hours and new retractable canopy for the following reason

1. Having regard to the location of the premises in an area zoned Z2, where the core objective is “to protect and/or improve the amenities of residential conservation areas” the Board considers that the proposed extension of opening hours would be seriously injurious to the residential amenities of the area and of properties in the vicinity, would materially contravene the objectives of the development plan and would not be in accordance with the proper planning and sustainable development of the area.
2. The proposed retractable canopy would have a significant negative visual impact on the existing residential terrace and on architectural integrity of the Z2 residential conservation area. The proposed development would be contrary to the zoning for the site would materially contravene the objectives of the development plan and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector