



An
Bord
Pleanála

Inspector's Report ABP 301351-18.

Development	Permission for Retention of alterations to layout of plant equipment, water tank and rooflights at extension to existing restaurant facilities in single storey extension, amended roof pitch and boundary treatment, and Permission for a rooflight and roof vents.
Location	No 126 Upper Leeson Street, Dublin 2. (Protected Structure).
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3686/17
Applicant	John and Sandy Wyer.
Type of Application	Permission for Retention and Permission.
Decision	Permission for Retention and Permission.
Type of Appeal	Third Party
Appellant	Kintbury Investments Ltd.
Date of Inspection	1 st August, 2018
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 126 Upper Leeson Street is within a terrace of two storey structures the front building line of which is directly at the edge of the public footpath on the east side of Upper Leeson Street. The main entrance to the house at No 126 is setback behind a front garden and cast-iron railings at the south side of the two-storey structure to the front. Townhouses set behind front gardens and cast-iron railings on granite plinths are located along Upper Leeson Street to the south.
- 1.2. The interior has been stripped out and the premises is in use as a restaurant. It has a modern shopfront and signage and there is a recently constructed, flat roofed single storey rear extension. The footprint infills the space to the rear up to the side boundary with the adjoining property and it replaced a smaller extension which was setback from the boundary. Plant and equipment servicing the restaurant use to include a cold-water tank, flue and extraction and air handling equipment are located on the roof. A calp limestone wall is located along the shared boundary with the adjoining premises at No 127.
- 1.3. The ground floor at No 127 is in use as a retail unit, (The Sofa Room) at ground floor level with direct access from the street via an entrance forming part of the shopfront. There is a small courtyard at the rear with direct access from the ground floor retail unit.
- 1.4. The first floor three room, self-contained apartment at No 127 was in office use at the time of inspection. It has rear elevation and rear side elevation windows. There is a separate entrance to this upper floor on the north east side of the shopfront. The adjoining properties to the north west side are two storey properties with frontage the footpath edge in retail or commercial use at ground floor level.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for Permission for Retention of alterations to layout of the existing plant equipment, water tank and rooflights on the roof of the single storey rear extension to existing restaurant facilities and an amended roof pitch and boundary treatment, and, Permission for a rooflight and roof vents.

- 2.2. The application is accompanied by a conservation report prepared by Andrew Stewart and by a statement on the Extract and Supply Air Fan Noise prepared by Noel Tynan (Decibel Noise Control), a letter of consent to the application from the owners of the property, photographs and copies of extracts of published restaurant reviews
- 2.3. According to the written submission accompanying the application some of the facilities approved in the grant of permission under P. A. Reg. Ref 2587/15 were constructed in a different manner resulting in enforcement action and the new application lodged under P. A. Reg. Ref. P.A. Reg. Ref. 2767/16: The planning officer recommended refusal of permission for the two air conditioning units and the water tank on the roof of the existing single storey extension to the rear. The development was constructed according to the grant of permission with the roof half pitched and half flat. The conservation officer indicated no objection. The current proposed location for this equipment is considered more sensitive to the site and the adjoining property.
- 2.4. It is stated that an optimum solution was then drawn up further to advice to the applicant from M and E consulting, the constraints of the site, limited options available and, the concerns of the neighbouring property owner and lodged with the planning authority under P. A. Reg. Ref 3808/16. As the applicant did not lodge further information in response to the request issued, the new application with the current proposal was drawn up instead and it contains the further information previously sought and it is submitted that the proposals are the optimum solution in layout and configuration.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. By order dated, 9th March, 2017 the planning authority decided to grant permission for the proposed development. Condition No 2 has the requirement for the works to be implemented under the direction of an architect with specialist expertise in building conservation in accordance with Section 28 Guidelines.

3.3. **Planning Authority Reports**

3.3.1. **Planning Reports**

The reports of the planning officer and conservation officer notes the planning history and background and welcomes the adjustments provided for in the current application as being effective in reducing visual impact from adjoining property. The necessity for the flanged cowl to extend above the eaves height is acknowledged.

3.3.2. **Third Party Observations**

The appellant party submitted an observation indicating objections over odours, noise, visual impact, boundary treatment and overall adverse impact on the amenities of the property at No 127 Upper Leeson Street which adjoins the north boundary of the application site. The submission also includes comments and observations on the planning and enforcement history relating to the development

4.0 **Planning History**

P.A. Reg. Ref. 2587/15: Permission was granted for demolition of the single storey WC at the rear of the ground floor restaurant and for construction of a single storey extension for dining facilities, WCs and external bin storage along with replacement of the shopfront and new signage.

P.A. Reg. Ref. 2767/16: A split decision was issued in which Permission was granted for works to the façade to include change of name (Forest and March) a grey colour to the timber surround, downlighter and an additional plaster quoin to both sides. Permission was refused for two air conditioning units and water tank on the roof of the existing single storey extension at the rear. On grounds of serious injury to character and amenity of the property and adjoining properties and on grounds that the flat roof extension was not in accordance with the grant of permission under P. A. Reg. Ref. 2587/15.

P. A. Reg. Ref. 3808/16: An additional information request was issued to the applicant in connection with an application for reconfiguration of the plant and equipment on the roof of the single storey extension in respect of which a response was not received by the planning authority.

The site also has prior planning history: (P. A. Reg. Refs 2079/91, 0268/93, 224/99, 3228/98, 3227/98 and 1216/01 refer.)

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site is within an area subject to the zoning objective Z2: *to protect and/or improve the amenities of residential conservation areas.*

“The exterior, front site, plinth wall and railings” to No 126 Upper Leeson Street only are included on the record of protected structures. The adjoining properties at No 125 and 127 and the historic properties on both sides of Upper Leeson Street are included on the record of protected structures.

Section 14.8.2 which provides for special care in dealing with development proposals to ensure the protection of protected and unprotected structures from unsuitable new development or works that have negative impact amenity on architectural quality, the guiding principle being to enhance the architectural quality of the streetscape and protect residential character.

Chapter 11 provides guidance, policies and objectives for built heritage and Development Management standards are set out in Chapter 16.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from BMA Planning on behalf of Kintbury Investments Ltd. of the adjoining property on the east side of the appeal site property, at No 127 Leeson Street Upper on 5th April, 2018.

- The existing unauthorised development has significant adverse visual, noise and odour impact on the amenity of No 127 Upper Leeson Street. Aimless planning applications have been made by the applicant which do not address

the unauthorised development issues. The current application is the third attempt to regularise the planning issues and the proposal does not provide a considered, integrated design solution that addresses the negative impacts.

- The proposed development is contrary to the ('Z2') zoning objective and the development plan having regard to section 14.8.2 regarding proposals for development in residential conservation areas, the current proposal does not alleviate existing visual clutter and haphazard services infrastructure but exacerbates the adverse impacts on the ground and first floor accommodation at No 127.
- The redesigned and reconfigured roof and plant does not address the reasoning for refusal of permission under P. A. Reg. Ref. 2767/16 and comprises additional visual clutter with adverse visual impact and negative impact on amenity and architectural quality in the area. Figures 1 and 2 in the appeal submission show a comparison between the existing and proposed developments.
- The acoustic screen on the full length of the rear courtyard boundary is a key consideration. The further information submission demonstrates that the 1.2-metre-high screen will significantly adversely affect the visual amenity of No 127 Upper Leeson Street. It creates a solid boundary which is 3.95 m long on the southern boundary affecting the amenity and utility of the ground floor courtyard and diminish daylight penetration into the ground and first floor accommodation within No 127. (Drawings A1_01, A1_02 and A1_03 which are reproduced in the appendix C refer.)
- The inclusion of the acoustic screen demonstrates failure to provide for a considered and integrated design solution for the extension and associated plant equipment. The noise from the plant and air handling equipment has had detrimental impact on the property at No 127 since 2016. The Decibal Noise Control report included in the application confirms noise generation from the fan at 54 dB(A) which 8 dB(A) above the recommended 46 d (B) (A) demonstrating non-compatibility without a screen in place. Details of the mitigation solution recommended in the report which was for a 1.2 m high barrier mounted 500 mm from the side of the supply duct with the screen

running from the rear façade of the building along the full length of the adjoining courtyard at No 127 were not provided with the application. Suitable mitigation measures have not been devised.

- Observations submitted in connection with the application lodged under P. A. Reg. Ref. 3808/16 about odour and nuisance persist and arise in the afternoon and evening periods in particular because of which the appellant keeps windows closed at No 127. The applicant did not provide the details of the proposed extraction system sought by way of additional information under P. A. Reg. Ref. 3808/16. The proposed acoustic screen would further inhibit air circulation in the courtyard of No 127 and, without intervention the worst effects of unauthorised development will continue to affect the amenities of No 127. This is contrary to Condition No 13 attached to the grant of permission under P. A. Reg. Ref. 2587/15.
- The existing boundary wall between Nos 126 and 127 is significant in visual interest and quality and is a valuable historic feature which is not acknowledged in the conservation report of design and layout for the rear extension. The existing and proposed roof structures have overbearing impact on the wall. The structure is not constructed wholly within the site but over sails the boundary wall and rainwater runoff and collection are not adequately addressed. This is in contravention of Condition No 7 of the grant of permission under P. A. Reg. Ref. 2587/15 in relation to the wall and is contrary to best conservation practice.

6.2. Applicant Response

6.2.1. A submission was received from Brady Shipman Martin on 8th May, 2018 and it is accompanied by a report on Fan Noise Reduction prepared by Douglas Carroll Consulting Engineers and by a statement by Cathal Crimmins (Grade 1 Conservation Architect). It is stated in the submission which includes an outline of the planning history and current application that:

- The current application seeks to address issues relating to layout of the plant equipment, roof pitch, boundary details, roof pitch, boundary details roof lights

etc. The layout is reconfigured and the air intake and extract services are redesigned.

- The proposed the acoustic screen in the response to the additional information request as an attempt to address issues about noise levels which was acknowledged by the planning officer.

6.2.2. In response to the appeal it is submitted that:

- The applicant has sought to improve the existing arrangements since 2015 by revising the layouts and design of the services;
- With regard to the “Z2” zoning objective, the terrace at Nos 126-133 Upper Leeson Street are retail and restaurant businesses providing for local amenities. The properties to the north west of the are subject to the zoning objective *Z3: to improve and provide for neighbourhood facilities*”. Locating services at the rear of older buildings is the best solution for the interests of the streetscape the protected structure and residential amenity. The architectural quality and value exists in the streetscape and the facades of the buildings at the front as reflected in the record of protected structure and the statement included with the appeal by Cathal Crimmins. The operation of the restaurant use is a compatible use in the terrace which attracts activity and life into the area but, it also necessitates the use of the proposed essential services.
- With regard to visual impact, the applicant has made considerable effort to address the concerns of the appellant. The redesign locates the services away from the boundary. There is improved design with the smaller scale and profile and the vertical riser improving the roofscape as viewed from the ground floor at No 127. The acoustic screen is rendered with low maintenance plaster often used in residential contexts. It improves the visual quality of rear roofscape. It is not accepted that this element gives rise to additional or unnecessary clutter, as asserted in the appeal. The issue is that of visual amenity from the first-floor apartment at No 127 only. It is in the urban core where mixed uses are encouraged to be located side by side. It visual amenities from the apartment are arguably solely related to the confines to the curtilage of the property itself.

- With regard to noise impact, D.C Engineering was engaged by the applicant to prepare an assessment report so that further mitigation improvements could be considered. The recommendations include:
 - provision for a new speed-controlled box fan with inlet and out let attenuators. This will reduce break out noise levels. The noise will be reduced to 46 dB at a distance of three metres.
 - a flanged cowl, 400 m in diameter on the final discharge section at roof level to minimise nuisance odours. This involves modification of the existing extract duct removing the final duct bend and installing the flanged cowl.
 - a reduced active canopy area to cover griddle and hob cooking areas only.

The acoustic screen, relocation of fans, alterations to the specifications for the fan, acoustic isolation from existing fabric and structure, attenuation of noise via an acoustic baffle etc, completely mitigate any adverse impact on adjoining properties from kitchen extraction fans.

- With regard to odour and nuisance, vertical discharge is facilitated by the redesign and relocation of the vertical riser, dispersal from extraction has minimal impact on adjoining properties due to the design. The specifications for the speed-controlled box fan, flanged cowl and active canopy area will assist in mitigating potential odours. Odour from restaurants are part and parcel of mixed use areas although the applicant has gone to every effort mitigate the impact on adjoining properties. No other complaints have been received from neighbouring property owners.
- With regard to conservation, the status of the building is recognised and the applicant endeavouring in the application to correct previous errors. There will be improvements to the rear and no impact whatsoever on the conservation status of Leeson Street. The opinion is expressed in the statement by Cathal Crimmins included with the appeal, that no heritage issues of negative impact on historic or architectural character of the street or elements of the structure that are protected arise. Reference is made to the features of the structure that are protected according to the record of protected structure which are confined to the front elevation and front garden

and railings for the residential unit. Reference is made to the conservation officer report of the planning authority and the report included with the application by Andrew Stewart and the Statement by Cathal Crimmins extracts from which are included in the submission.

- With regard to the contentions in the appeal as to the stone boundary wall being a “valuable historic feature” and overbearing impact from the proposed development it is submitted, with reference to the statement by Cathal Crimmins that the importance is overstated although there may be some historic interest. Interventions to it were positive in that underpinning, and treatment for weed growth protects this historic interest of the wall.

6.2.3. It is requested that the planning authority decision be upheld.

6.3. **Planning Authority Response**

There is no submission from the planning authority on file.

6.4. **Further Responses**

6.4.1. A further submission was received from BMA Planning on behalf of the appellant, (Kintbury Investments Ltd.) on 27th June, 2018 in which the appellant’s request that permission be refused is reiterated. According to the submission:

- Contrary to the applicant’s contentions, the applicant has failed to coherently consider and to improve the operation of business at the premises and residential amenity of the adjoining property. Unauthorised development was carried out, inappropriate development has not been permitted and, further information submissions were not lodged on response to the planning authority in respect of two applications. (P. A. Reg. Refs 2587/15, 2767/16, 3808/16 and 3686/16 refer)
- The planning system should not be used over prolonged periods to facilitate erosion of amenity and value of adjoining properties and such erosion, such as noise and odour from restaurants is not acceptable within the ‘Z2’ zoned lands. The appellant has no confidence in the applicant as regard any undertaking to install equipment that addresses noise and odour, given past planning history. Reconfiguration of the roof plant and insertion of an acoustic

will have detrimental impact on visual amenity and amenity of the appellant's courtyard.

- The requirements of Condition No. 7 of the grant of permission under P. A. Reg. Ref 2587/15 regarding the historic boundary walls' treatment and protection was ignored as unauthorised works contrary to good conservation practice were carried out with the boundary wall being absorbed into the development.
- A series of piecemeal applications have been lodged with the planning authority in the intervening years since the unauthorised works were carried out and this is being continued with the current application. The acoustic screen is at odds with the historical character of the Upper Leeson Street buildings and the amenity of the appellant property.

7.0 **Assessment**

- 7.1. The application and appeal relate solely to plant and equipment located on and proposed for the roof, the roof pitch of the single storey extension at the rear of No 126 Upper Leeson Street and boundary treatment. The objections in the appeal are based on grounds of serious injury to the amenities of the property at No 127 Upper Leeson Street, the adjoining property on the north side of No 126 by reason of visual impact, noise and odour and on ground relating to boundary treatment.
- 7.2. The property at No 127 is a two-storey building and on first floor level there is a three-room apartment which it was noted during the course of the inspection is converted to and is in office use with access from the ground floor level by an independent entrance from the street. The ground floor which opens at the rear onto a small courtyard is occupied by a furniture show room. This courtyard is enclosed to the southern side by the single storey extension to No 126, the party boundary wall which is in calp limestone and has been repaired and capped/ The plant and equipment servicing the restaurant at No 126 is laid out and fitted to the roof of the extension.
- 7.3. The following issues raised in the appeal are considered below under the following subheadings:

- Planning and enforcement.
- Nature of Land Uses

Impact on the Amenities of the Adjoining Property. (Visual Impact and Noise and Odour.)

- Party Boundary Wall
- Appropriate Assessment.

Planning and enforcement.

7.4. It is agreed that the determination of planning applications and regularisation of status of development at the rear of the adjoining property has been drawn out over a period of some years and has not been straightforward. Nevertheless, the applicant is endeavouring to regularise matters in the current application. It is considered reasonable that further measures of an enforcement nature have been withheld by the planning authority pending the determination of a decision on the appeal.

Nature of Land Uses and Zoning.

7.5. Although the applicant's and the appellant's properties come within the area subject to the zoning objective Z2: *to protect and/or improve the amenities of residential conservation areas*" within the CDP the nature of the existing uses of the two properties are more characteristic of the land uses of the immediately adjacent area which is subject to the zoning objective Z3: *to improve and provide for neighbourhood facilities*". Irrespective of the planning status for the apartment at first floor level at No 127 which is unconfirmed and as to whether it is in residential or commercial use, any expectation as to a level of attainable residential amenity similar to areas entirely in residential use in a long established historic location such as that of the proposed development would be unreasonable. Given the mix of land uses, established site coverages and intensity of development potential for achievement of high standards of residential amenity in and immediately adjacent to the site location is compromised. This scenario is borne in mind in consideration of the impact of the proposed development on the amenities of the adjoining property at No 127.

Impact on Amenities of Adjoining Properties.

- 7.6. It is agreed with the planning officer that the proposed configuration of the layout of the equipment is optimal in terms of amelioration of adverse impact on adjoining properties but the amount of equipment on confined space of the roof does amount to visual clutter. However, there is no impact on views from the public realm from which there are no views towards the development and the roof of the rear extension subject of the application. The impact is primarily confined to the views from the upper floor apartment and courtyard at No 127, the adjoining property.
- 7.7. The proposals within the application and appeal are significant and primarily provide for a configuration and layout in which the equipment is located as far from the party boundary as is feasible. The proposed screen is quite considerable in views towards it from vantage points a short distance from it. With the modified design and increased setback for most of the equipment from the boundary, it is somewhat unwarranted although it provides for orderliness on the roof. It can be authorised if permission is granted.
- 7.8. In addition, the design specifications are modified, and additions are included that also significantly ameliorate potential noise and odours from the operation of the restaurant. No 127. The flanged cowl is positioned at a height and in configuration that ensures that emissions exit at a height above and away from habitable accommodation. The assessment reports provided with the appeal are clear and persuasive and considered reliable with regard to the specifications and control of odour and noise emissions. No additional modifications and additions would be warranted.
- 7.9. It is considered reasonable that the existing restaurant use, which is authorised should in so far as is possible should not be rendered incapable of operation over the issues raised in the appeal relating to plant and equipment given the lack of alternative options for provision of essential services equipment. It has also been noted that the restaurant operates primarily on limited hours on a limited number of day time and evening hours on three or four days during the seven-day week. When considered in the context of the observations set out in paras 7.5 above regarding land-uses at the application site and appeal site properties and, to the zoning objectives, it is considered that the proposed development is fully satisfactory. In

this instance it is demonstrated in the current proposal the mitigation of adverse impact on surrounding development has been maximised.

Party Boundary Wall

- 7.10. While the party boundary could not be fully inspected during the inspection it did appear to be intact and stable. It is noted that it does not come within the description of features and elements subject to statutory protection accompanying the entry on the record of protected structures, and even though the location is within a residential conservation area, it is not regarded as being of significant special interest. The comment made in the statement accompanying the Appeal by Cathal Crimmins, Architect to this end is supported. It is considered that the party wall gives rise to no material issues relevant to the determination of a decision.

Appropriate Assessment.

- 7.11. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. 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. In view of the foregoing, it is recommended that the appeal be rejected and that the planning authority decision to grant permission be upheld.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the proposed development on the roof of the rear, single storey flat roofed extension to the rear of No 126 Upper Leeson Street, which is in use as a restaurant, to the established pattern and layout and nature of use of existing development in the immediate vicinity, to the proposed configuration and layout and the submitted design specifications for the modifications and additions which ameliorate adverse visual, odour and noise impacts, it is considered that the proposed development would not be adversely affect the integrity of the elements of the structure at No 126 Upper Leeson Street which are included on the record of protected structures, would not seriously injure the amenities of the area, would not

be contrary to the zoning objective Z2:” *to protect and/or improve the amenities of residential conservation area*” provided for in the Dublin City Development Plan, 2016-2022 and, would be in accordance with the proper planning and sustainable development of the area

10.0 Conditions

1. The development shall be and 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 received by An Bord Pleanála on 8th May, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Drainage arrangements shall be in accordance with the requirements of the planning authority.

Reason: In the interest of clarity.

Jane Dennehy
Senior Planning Inspector
2nd August, 2018.