



An
Bord
Pleanála

Inspector's Report

ABP-304033-19

Development	Demolition of house and outbuildings and sheds to rear and construction of a three-storey mixed use building
Location	201/203, Rathmines Road Lower, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4694/18
Applicant(s)	Frontier Property Investment
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal
Appellant(s)	Frontier Property Investment.
Observer(s)	None.
Date of Site Inspection	30 th May 2019.
Inspector	Brid Maxwell

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 215sq.m, is rectangular in shape and located on the western side of Rathmines Road Lower close to its junction with Castlewood Avenue. The site includes 201 and 203 Rathmines Road Lower and comprises a mid terrace two-bay, two-storey over part basement building with a pitched roof set behind parapet level with outbuildings located at ground level to the rear.
- 1.2. The original front facade includes redbrick at first floor level with a large glazed timber frames shopfront at street level. No 201 Rathmines Road Lower previously operated as a restaurant (now vacant) while No 203 Rathmines Road Lower was last used as a therapeutic massage facility. The site is intensively developed and a large percentage 85% of the site is covered by building and hardstanding. Currently the ground floor is at a split level with the centre portion lower than the front and rear. The local area is a vibrant mixed-use area including residential, commercial and retail facilities. The landmark *Stella Theatre* occupies 207-209 Rathmines Road Lower.

2.0 Proposed Development

- 2.1. The application as set out involves
 - (i) the demolition of Nos 201 and 203 Rathmines Road Lower (excluding front south facing façade) including single storey outbuildings and sheds to the rear of the site,
 - (ii) Construction of a three storey over entrance floor level mixed use building consisting of (a) proposed café/restaurant at ground floor level with associated ancillary facilities and service area at lower ground floor level and upper ground floor level (b) 1 no short stay residential studio with rear balcony (4.4 sq.m) and 1 no two bedroom short stay residential apartment served by private courtyard space (9.1 sq.m) at 1st floor level and (c) 1 no three bedroom short stay residential apartment with rear balcony (9 sq.m at 2nd floor level
 - (iii) new signage and
 - (iv) all ancillary works including SUDS drainage and landscaping necessary to facilitate the development.
- 2.2 The entrance floor will consist of a restaurant with accessible w.c. The customer WCs and staff WC will be located down a single flight of stairs at lower ground floor

level. The rear of the site will include a private amenity area and bin storage. The kitchen servicing the restaurant will be located up a flight of stairs from the lower ground floor level and will be accessible via the restaurant. The first floor will comprise of 1 no studio short stay apartment and a two-bed short stay apartment served by courtyard/garden which will be in line with the adjacent light well located at 205 Rathmines Road Lower. The second floor will comprise of 1 no three-bedroom short stay apartment including a rear balcony, open kitchen, dining room and living room, bathroom and lightwell serving two bedrooms.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 20th February 2019 Dublin City Council issued notification of the decision to refuse permission for the following reasons:

“The proposed development, by itself and by the precedent for which a grant of permission for it would set, would be contrary to the stated provisions of the Core Strategy of the City Development Plan 2016-2022 which recognises residential uses as a scarce resource and which need to be managed in a sustainable manner so that the housing needs of the city are met. The proposed development, resulting in the provision of 3 residential units for short-term use, would also be contrary to the core principles of the Dublin Housing Strategy 2016-2022 which requires that the planning and building of housing and residential space in the city contributes to sustainable and balanced development. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

The Planning Authority is not satisfied that the applicant has provided reasonable justification for the demolition of the existing mixed use building on the site. It is considered that the proposed demolition of the existing building in a Z5 area may set an undesirable precedent and therefore would seriously injure the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.1.1 Planner's report asserts that the proposed café/restaurant is considered appropriate and desirable in this location in the heart of the commercial hub of Rathmines Key District Centre. There are serious concerns regarding the proposal to provide 3 short term letting apartments. The need to balance demands of the city is acknowledged including need to provide additional tourism accommodation as part of the promotion of tourism however the proposal would result in residential stock being lost to the residential housing system meaning less long-term and secure accommodation will be available to the growing number of families and people who need it. The proposal would result in the loss of 3 no apartments in the city which is concern having regard to the existing housing shortage. The area is a rent pressure zone where there is a high demand for long term residential properties and it is considered that the proposal is contrary to the core strategy of the Dublin City Development Plan 2016-2022.

3.2.2. Other Technical Reports

3.2.2.1 Engineering Department - Drainage Division Report indicates no objection subject to compliance with Greater Dublin Regional Code of Practice for Drainage Works Version 6.0. Separate foul and surface water systems and incorporation of SUDS, no discharge of trade effluent to DCC sewers. Flood Risk Assessment to be carried out. All private drainage within the site boundary.

3.3. **Prescribed Bodies**

No submissions.

3.4. **Third Party Observations**

No third-party submissions.

4.0 **Planning History**

4196/05 Application for change of use to ground floor and mezzanine level from retail to café and new signage to existing shopfront and ventilation equipment and ductwork to rear.

3751/11 Permission granted in 2012 for change of use of ground floor a mezzanine level from retail to café and new signage to existing shop front and ventilation equipment and ductwork to rear.

5.0 Policy Context

5.1. Development Plan

5.1.1 The Dublin City Development Plan 2011-2017 refers.

- The site is zoned Z4 “To provide for and improve mixed services facilities”.
- The site falls within the Key District Centre No 7 within Rathmines.
- Appendix 16 Guidance on Aparthotels.
- Policy CEE 12(i) “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.”
- CEE 13 (i)
“To work with Fáilte Ireland and other stakeholders, to deliver on the ambitious targets set out in ‘Destination Dublin – A collective strategy for growth to 2020’
CEE13(iii) To promote and support the development of additional tourism accommodation at appropriate locations throughout the city.”
- The site is within Parking Zone 1.
- Sustainable Urban Housing Design Standards for New Apartments – Guidelines for Planning Authorities.
- Circular Letter PL 10/2017 Department of Housing Planning and Local Government. Guidance on Planning Applications for Short Term Lettings.

The Strategy for the Rental Sector recognises the issue of potentially significant numbers of properties being withdrawn from the long-term rental market for use for short term lettings and the negative impact this would have for the supply and availability of residential rental accommodation.

In considering planning applications for short term lettings, the nature and character of the location, whether a city or town centre or primarily a residential area, should

be considered. In respect of the former, the need to balance the competing demands of the city or town centre should be acknowledged, including the need to provide additional tourism accommodation as part of the promotion of tourism, a key economic driver. Consideration should also be given to the quality of residential amenity provided by the existing accommodation, particularly as provided by older apartment schemes, and whether it is better suited for short term lettings.

5.2. Natural Heritage Designations

The site is not within a designated area. The nearest Natura 2000 sites are:

South Dublin Bay and River Tolka Estuary SPA.

South Dublin Bay SAC.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development on zoned and serviced land, and to the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal grounds are summarised as follows:

- The proposal is a modest development which has taken a cognitive approach to both increasing the provision of short state commercial accommodation within the city and providing an active use at street level for the benefit of Rathmines Village.
- The proposal directly aligns with Development Plan objectives and policy provisions with regard to development within Z4 zones.

- Multiple precedents for similar development which have been approved by both Dublin City Council and An Bord Pleanála.
- Clear rationale provided for demolition works.
- The existing site is defined by commercial use and there are no residential uses present therefore no loss of residential use.
- The repair and refurbishment of the front façade together with the provision of a new commercial restaurant at street level will drastically improve the visual amenity of the application site.
- The construction of short stay residential units at this location will add to the vibrancy of the immediate streetscape, is appropriate given proximity to the City Centre and supports the continued use of older buildings subject to necessary works to ensure the efficient use of valuable urban lands.
- Arguably the proposal would likely serve to reduce rent pressure in the immediate area through the provision of short stay units.
- Restaurant is a permissible use within Z4 zoning. Whilst 'short stay accommodation' use is not specifically included it is considered that the permissibility of bed and breakfast, guest house, hostel and hotel uses appropriately represent the use.
- Numerous precedents for short stay accommodation within Dublin City Centre. 2518/18 74 Dame Street, Dublin 2. 3903/17 12 Aungier Street and corner of Longford Street Little Dublin 2. 301945-18 4512/178 Herbert Street and 8 Herbert Lane Dublin 2.
- In none of these precedent cases did either An Bord Pleanála or Dublin City Council attempt to enforce a preference for residential development over another use which was permissible. Statement by Crean Salley Architects provides a rationale for the demolition of the existing properties (excluding the front façade). Issues outlined which limit the viability and effectiveness of remediation works with the existing structure.

6.2. Planning Authority Response

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

7.0 Assessment

7.1. I consider that the matters raised within the appeal can be assessed under the following grounds.

- Principle of Development - Zoning and Policy Context
- Design, Layout & Impact on Architectural Heritage and Residential Amenity
- Appropriate Assessment

7.2 Principle of Development – Zoning and Policy Context

7.2.1 The appeal site is located on lands zoned Z4 under the provision of the Dublin City Development Plan 2016-2022 and which has the stated objective “to provide for and improve mixed services facilities.” Restaurant is a permissible use within this zoning objective. As regards the proposed short stay residential accommodation, while it is not directly defined as a ‘permissible’ or ‘open for consideration’ use it is comparable and represented by bed and breakfast, guest house, hostel and hotel uses all of which are permissible uses. The principle of the proposed development is therefore acceptable at this location.

7.2.2 As regards the assertion of the Planning Authority regarding conflict with the core strategy of the Dublin City Development Plan, this derives from the contention that the proposal results in the loss of existing residential housing stock within a rent pressure zone where there is high demand for long term residential rental properties. As regards Circular Letter PL10/2017 I note the significant concerns with regard to the loss of residential properties to the residential housing system and its primary purpose is to address issues arising where applications are made for change of use for short term letting purposes and loss of supply arising. As noted within the grounds of appeal the site is currently entirely in commercial use and therefore there is no such loss of existing housing stock arising from the proposal. As outlined above the site is zoned Z4 - mixed services facilities and within the Key District Centre No 7 Rathmines. Numerous uses are permissible and open for consideration within this zoning objective to reflect the vibrant mixed nature of this district centre. I would concur that given the zoning of the site the proposal is permissible in principle and

does not conflict with the core strategy. I would concur with the first party that the rejection of the proposal on the basis of the merits of an alternative development option for the provision of permanent residential development on site is ultra vires.

7.3 Design Layout & Impact on Architectural Heritage and Residential Amenities.

7.3.1 As regards the second reason for refusal, it is based on the contention that no reasonable justification for the demolition of the existing building has been provided. I note that within the grounds of appeal the report of Crean Salley Architects sets out the rationale for demolition works. It is outlined that the current condition of the premises would mitigate against the provision of the proposed residential accommodation. The existing suspended timber floor is inadequate for contemporary residential loading and difficulties arise with regard to transfer of noise. Concrete floors are the default choice for multi-level developments and these cannot be supported on existing party walls. It is asserted that the current premises are deficient with regard to means of escape and apart from the ground floor is unusable for this reason. I note that the existing building is not a protected structure and, in my view, based on the details submitted. I consider that the proposed demolition has been justified. I note that the proposal ensures the efficient use of serviced urban lands on a centrally located site which is currently underutilised.

7.3.2 As regards architectural heritage the proposal provides for the retention, repair and refurbishment of the existing front façade. The most significant change proposed to the front of the building when viewed from Rathmines Road Lower will be the removal of the two chimneys and construction of a new roof section. I consider that the proposal is acceptable from an architectural heritage viewpoint.

7.3.3 As regards the design and layout I note that there is no statutory guidance and code of standards for short stay tourist accommodation. I note Appendix 16 which sets out the relevant assessment criteria in respect of Aparthotels including the following:
“The proposed development will include, as a minimum, a fully serviced reception desk and administration facilities, concierge, security and housekeeping facilities and may contain entertainment and uses considered to be associated with the management of the aparthotel. The provision of food and refreshment facilities is

also desirable but regard will be had to the level of amenities accessible within the immediate area.”

The design and layout of the aparthotel units should be such to enable the amalgamation of individual units to cater for the needs of visitors, especially families.

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.

If it is intended to convert the aparthotel units into residential units in the future, the standards for residential developments as set out in the development plan must be adhered to, including car parking standards and all private and public open space requirements. The planning authority will resist applications for change of use in cases where these standards are not reached, or in cases where the proposed development is contrary to the zoning objectives of the area.

Permissions for aparthotels will normally have a condition attached requiring planning permission from change of use from commercial short-term accommodation to residential.

Permissions for aparthotels will normally have a condition attached stating that the maximum occupancy period for the proposed development shall be two months. Aparthotel units shall not be used for the purposes of providing student accommodation.

7.3.4 I note that the proposal is not described as an aparthotel rather as “short stay residential apartments.” The proposal does not include a reception desk, administrative facilities, concierge, security or housekeeping facilities. While on site management facilities would generally be desirable, I consider that given the limited nature, scale and intensity of the proposed units it is not essential in this case. A condition with regard to prior specification and agreement of management arrangements is recommended in this regard.

7.3.5 On the matter of residential amenity provided within the proposed holiday units, I note that the internal floor areas and layout provide for a reasonable standard of residential amenity. I note that in the context of The Department of Housing Planning and Local Government, Design Standards for New Apartment, 2018, the proposed layout largely exceeds or meets the relevant standards with marginal deficiencies noted as follows: Studio Apartment storage is 1.6m where the requirement is 3 sq.m. Overall internal gross floor area is 36.6sq.m where the requirement is 37 sq.m. Apartment 1 (2 bed) storage is 4.6 sq.m where guidelines recommend 5sq.m. Apartment 2(3 bed 5 person) Kitchen living dining is 30 sq.m where guidelines require 34 sq.m.) On balance I consider that the proposal is acceptable and provides

for a reasonable standard of residential amenity and could be converted to permanent residential use in the future subject to certain modifications.

7.3.6 As regards the impact on established residential amenity I note that the proposal will give rise to an increased level of overlooking of adjacent properties to the north and north west however I consider that having regard to the orientation and separation distance and subject to mitigation this is acceptable in in this context and does not give rise to undue negative impact. As regards amenity and nuisance issues, I consider that having regard to the scale of the proposal there should be no significant disruptive effect arising from the transient nature of short term letting.

7.3.7 As regards communal open space and car parking, having regard to the nature and context of the proposal it is appropriate that these would not be provided for on the site. I consider that the proposal introduces uses on the site which is consistent with the zoning objectives pertaining and in general is appropriate in terms of design and layout.

7.4 Appropriate Assessment

7.4.1 On the matter of appropriate assessment, having regard to nature and scale of the proposed development the fully serviced nature of the site and proximity to the nearest European site, 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 Reasons and Considerations

Having regard to the location of the site within the area zoned Z4 “To provide for and improve mixed services facilities” and within Key District No 7 Rathmines, within the Dublin City Development Plan 2016-2022, to the existing pattern of development in the area, it is considered that, subject to the conditions set out below, the proposed development would support the provision of tourism facilities at this location, would not seriously injure the residential and other amenities 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 carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The ground floor of the premises shall be used as a café / restaurant. The restaurant shall only operate between 08:00 and 12:00am Mondays to Sundays inclusive.

Reason: In the interest of residential amenity.

3. All proposed works to the existing building shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

Reason: To ensure the authentic preservation of the facade and to ensure that works are carried out with best conservation practice.

4. The operators of the café / restaurant premises shall control odour emissions for the café / restaurant in accordance with details and measures to be submitted and agreed in writing with the Planning Authority prior to the commencement of development.

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

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

Reason: In the interest of public health

6. The serviced short stay tourist accommodation suites and studios shall be used as commercial short-term accommodation with a maximum letting period of two months and shall not be used as residential units for permanent occupation without a prior grant of permission for change of use.

Reason: In the interest of clarity.

7. No signage, advertising structures/advertisements, security shutters or other projecting elements, including flagpoles, shall be erected within the site unless authorised by a further grant of planning permission.

Reason: To protect the visual amenities of the area.

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

Reason: In the interest of visual amenity.

9. Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. 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 the residential amenities of the area.

10. 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, "*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.

Reason: In the interests of sustainable waste management.

11. A plan containing details for the management of within the development, including the provision of facilities for the storage, separation and collection of the waste and recyclable materials and for the ongoing operation of these facilities for each suite and studio 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 which shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage

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.

Bríd Maxwell
Planning Inspector

25th June 2019