



An
Bord
Pleanála

Inspector's Report ABP305814-19

Development	Retention of retractable demountable rectangular Parasol at lower ground level at No. 170 Rathmines Road Lower, Dublin 6. (Protected Structure).
Location	170 Rathmines Road Lower, Dublin 6.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3696/19.
Applicant	Farmer Browns Eatery Limited.
Type of Application	Retention of Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party -v- Decision.
Appellant	Farmer Browns Eatery Limited.
Observers	(i) Rathmines Town Centre Residents. (ii) Rathmines Initiative.
Date of Site Inspection	18 th December, 2019.
Inspector	Paul Caprani.

Contents

1.0 Introduction	3
2.0 Site Location and Description	3
3.0 Proposed Development	3
4.0 Planning Authority's Decision	4
4.1. Documentation Submitted with Planning Application	4
4.2. Observations	5
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Appeal Responses.....	7
8.0 Observations.....	8
9.0 Development Plan Provisions.....	9
10.0 Planning Assessment.....	10
11.0 EIA Screening Determination.....	13
12.0 Appropriate Assessment	13
13.0 Conclusions and Recommendation.....	13
14.0 Reasons and Considerations	14

1.0 Introduction

ABP305814-19 relates to a first party appeal against the decision of Dublin City Council to issue notification to refuse planning permission for the retention of a retractable demountable rectangular parasol to the front of a premises at No. 170 Rathmines Road Lower, Dublin 6. Planning permission was refused for two reasons relating to the adverse impact the retention of the parasol would have on the character of the protected structure at No. 170 Rathmines Road Lower and the second reason stated that the late-night noise and activity would seriously injure the amenities of residential properties in the vicinity.

2.0 Site Location and Description

2.1. No. 170 Rathmines Road Lower comprises of a three-storey over basement with a brick finish which has been painted. It forms part of a terrace of late Georgian dwellings dating from the early to mid-19th century. The terrace of dwellings are similar but not identical in style and incorporate a variety of parapet heights and roof profiles. The buildings accommodate a mixture of commercial and residential use. No. 170 accommodates a restaurant use at lower floor/basement level with office and residential use above. The courtyard to the front of the building incorporates a retractable and demountable rectangular parasol which is located contiguous to the recessed area associated with the front elevation of the building and adjacent to the external steps which provides access to the main entrance at the upper floor level of the building. The parasol is 5.4 metres in length and 3.3 metres in width covering an area of just less than 18 square metres. It extends from a central pole and incorporates a cream coloured canvas material with retractable plastic side sheets.

3.0 Proposed Development

3.1. Planning permission is sought for the retention of the retractable parasol at lower ground floor level to the front of Farmer Browns Restaurant/Café.

4.0 Planning Authority's Decision

Dublin City Council issued notification to refuse planning permission for two reasons. These are set out in full below.

1. The proposed development which consists of a retractable demountable rectangular parasol fronting and protected structure, is considered excessive in both width and volume and seriously injures the legibility and special architectural character of the protected structure and its setting along the historic street. Having regard to Section 11.15.1 and CHC2(b) and (d) of the Dublin City Council Development Plan 2016 – 2022: the retention of the enclosure would seriously injure the special architectural character of the protected structure and adjoining protected structures and would set an undesirable precedent.
2. The structure by virtue of its siting in close proximity to residential properties, and by virtue of the late-night noise and activity it would generate, would seriously injure the amenities of residential property in the area, thus being contrary to the provisions of the Dublin City Development Plan and the proper planning and sustainable development of the area. The decision was dated 13th September, 2019.

4.1. Documentation Submitted with Planning Application

- 4.1.1. In addition to the drawings, public notices, application form and statutory fee etc. a report on the proposed work at 170 Rathmines Road Lower prepared by James Briscoe Architect was also submitted. In terms of the assessment of the impact of works, the report states that the replacement of the previous parasol with a demountable parasol was to enhance the quality of the environment for patrons sitting outside. The works do not involve any interference to the existing façade or site boundary structures. The parasol has been positioned so as to provide protection from the rain. It notes that the parasol operates on a crank spindle lift system supporting by aluminium rods. It is noted that the parasol is not connected to the front wall of the premises nor the adjacent entrance, granite steps or railings.

4.1.2. Also submitted was a planning report from Simon Clear and Associates. It sets out details of the site location and context and the planning history associated with the site. The report notes that the subject premises has been occupied by a restaurant/café with outdoor seating since c.1989. As a retention permission has been sought there are no changes in the restaurant use or no intensification of the use of the premises. The report goes on to note some of the policies and provisions contained in the development plan as they relate to the application. It concluded that the retractable parasol to the front of the premises provides an enclosed seating area which is suitable for dining all year round. The proposal is set back from the front boundary and sits comfortably in the streetscape at lower ground floor level. For these reasons it is recommended that retention of planning permission be granted.

4.2. **Observations**

- 4.2.1. Two observations were submitted from the owners/occupiers of No. 172 Rathmines Road Lower and No. 166 Rathmines Road Lower. These objections raise a number of concerns in relation to the visual impact arising from the parasol and the fact that the covered outdoor seating area gives rise to significant noise and amenity issues particularly at night.
- 4.2.2. A report from the Engineering Department Drainage Division stated that there is no objection subject to standard conditions.
- 4.2.3. A conservation report expresses concerns that the proposal has a significant impact on the legibility and architectural character of the protected structure. The conservation officer also notes that over the past 10 years the front of the protected structure has been altered a number of times to the detriment of the architectural character of the building. It is suggested that all new interventions that affect the architectural character of protected structures should be of high quality and subservient in design to the architectural character of the said structure. All such interventions should also be reversible and ideally should be capable of being dismantled each evening when not in use. Based on the above it is recommended that permission be refused.
- 4.2.4. The planner's report notes that while the retractable parasol is compatible with the use of the existing premises and is not attached to the building, it is considered that it

does have a negative impact on the character of the protected structure having regard to the scale and design and would therefore set an undesirable precedent for similar such structures. In addition, the canopy structure by virtue of its seating in close proximity to residential properties, and by virtue of the late-night noise and activity it would generate, would seriously injure the amenities of residential property in the area. Therefore, Dublin City Council issued notification to refuse planning permission.

5.0 Planning History

- 5.1. Reference is made in both the planning report submitted with the application and the planner's report to Reg. Ref. 2196/88 where planning permission was granted in 1988 for the conversion of the lower ground floor to a sandwich bar.

6.0 Grounds of Appeal

- 6.1. The decision of Dublin City Council to issue notification to refuse planning permission was appealed on behalf of Farmer Browns Eatery by Simon Clear and Associates, Planning and Development Consultants. The grounds of appeal are outlined below.

It notes that the subject site has traded as a restaurant/café at lower ground floor level since 1989 and the current occupiers have been trading from this premises since 2016. The front outdoor space is used as permitted additional seating for the restaurant. It is noted that under Ref. 2196/88 planning permission was granted for the conversion of a lower ground floor level to a sandwich bar and an extract of a drawing purported to be from the 1988 application is attached which indicates a seating area to the front of the main building. The reports of both the Dublin City Council Planning Officer and the Dublin City Council Conservation Officer are noted.

- 6.2. The grounds of appeal go on to argue that the original permission which established a restaurant type use on the site 30 years ago allows the use of the front area as an outdoor seating area where parasols and umbrellas were both envisaged and permitted. The replacement of the parasol does not in itself intensify or generate late night noise activity that would seriously injure the amenities of property in the area. The opening hours of the restaurant are 10 a.m. to 9 p.m. Sunday to Wednesday

and 10 a.m. to 10 p.m. Thursday to Saturday in an area that has traditionally been vibrant and busy.

- 6.3. With regard to the conservation officer's concerns it is suggested that there are other alterations along this section of the Rathmines Road which have a greater impact on the architectural legibility of the area _____ the parasol proposed for the subject site. It is noted that some of the plots to the south of the site have developed the front gardens. It is suggested of all the front area along this stretch the parasol has the least effect on the legibility and historic integrity of the area and has no effect on the main architectural features of the building.
- 6.4. It is noted that the subject site is governed by the zoning objective Z4 to provide for and improve mixed services facilities and that a restaurant use is permissible under this zoning objective. There are a wide variety of commercial uses along this section of the lower Rathmines Road. The parasol for which retention of permission is being sought is not attached to the protected structure, is retractable and can be dismantled. As such the proposal does not have any adverse impact on the integrity of the structure.
- 6.5. In terms of residential amenity, it is reiterated that the retention of permission sought in this application will not result in any intensification of use of the premises. There has been an awning type structure to the front of this premises since 2010 and this has been updated and replaced on numerous occasions. The subject site is located in a busy commercial area which is eminently suitable for a restaurant and the outdoor area with covered seating has been long established and permitted. For the above reasons it is recommended that the decision of Dublin City Council be overturned and planning permission be granted for the proposed development.

7.0 Appeal Responses

Dublin City Council have not submitted a formal response to the grounds of appeal.

8.0 Observations

8.1. Observation from Rathmines Town Centre Terrace Residents

- 8.1.1. This observation was submitted on behalf of a number of neighbours living adjacent to the subject site. The observation objects to the proposed development on the following grounds.

The observers were of the opinion that the proposal has a significant impact on the legibility and architectural character of the protected structure. The parasol structure is of such a height and volume that it seriously detracts from views of the terrace _____ to the clock tower of Rathmines Town Hall. Furthermore, there are a series of additional or authorised structure including an unauthorised sign to the front of the building. These elements are causing serious injury to the architectural character of the protected structure and the terrace. Other unauthorised elements include large lights attached to the walls of the property and permanent fixed seating attached to the walls of the property together with built in planters etc. Other alleged unauthorised elements are currently being investigated.

The observers state that they were also having issues with noises and smells both at night and during the day especially during the morning breakfast/brunch service. The observers have issues with the volume of customers in the restaurant and this has been exacerbated by the unauthorised seating and lighting to the front. It is stated that in the rear garden the odours coming from the current extraction structure is a great cause of concern.

- 8.1.2. Also attached are the original observations submitted to Dublin City Council. These observations highlight other issues including inconsistencies in the drawings submitted and other alleged unauthorised elements associated with the restaurant.

8.2. Observation from Rathmines Initiative

- 8.2.1. This observation requested An Bord Pleanála uphold the Planning Authority's decision on the basis that the proposal results in an excessive disturbance of residential amenity caused by noise. The Garda have been called on occasion in order to address the issue of noise. The umbrella facilitates the use of the front area as an external extension to the premises and this negatively impacts on the

residential amenity of the area. For this reason, it is recommended that the decision of Dublin City Council be upheld in this instance.

9.0 Development Plan Provisions

- 9.1. The site is governed by the policies and provisions contained in the Dublin City Development Plan 2016 – 2022. The subject site is governed by the land use zoning objective Z4 “to provide for and improve mixed service facilities”. The subject site is also designated as a protected structure in the development plan.
- 9.2. Policy CHC1 seeks the preservation of the built environment of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.
- 9.3. Policy CHC2 seeks to ensure the special interest of the protected structure is protected. Development will conserve and enhance protected structures and their curtilage and will:
 - (a) Protect or where appropriate, restore form, features and fabric which contribute to the special interest.
 - (b) Incorporate high standards of craftsmanship and relate sensitivity to the scale, proportions, design, period and architectural detail of the original building using traditional materials in most circumstances.
 - (c) Be highly sensitive to the historic fabric and special interest of the interior, including its planned form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.
 - (d) Not cause harm to the curtilage of the structure, therefore the design, form, scale, height, proportions, siting and materials of new development should relate to and compliment the special character of the protected structure.
 - (e) Protect architectural items of interest from damage or theft while buildings are empty or during course of works.
 - (f) Have regard to the ecological considerations for example protection of species such as bats.

9.4. **Dublin City Council Shopfront Design Guide**

Section 5 of this design guideline relates to canopies. It states that if the shopfront requires protection from the sun, a traditional style, open ended blind should be incorporated into the design of the shopfront with the blind box recessed.

Perambulator style closed end canopies seriously disrupt the streetscape reducing the view of adjacent shopfronts and are unacceptable. Shop names or advertising on the blinds are not permitted.

10.0 **Planning Assessment**

I have read the entire contents of the file, visited the subject site and its surroundings and have had particular regard to the Planning Authority's reasons for refusal and the rebuttal arguments set out in the grounds of appeal. I consider the pertinent issues in determining the current application and appeal before the Board are the two issues raised in Dublin City Council's reasons for refusal namely:

- The Impact of the Outdoor Seating Area on the Residential Amenities of the Area
- The Impact of the Proposed Parasol on the Architectural Integrity of the Protected Structure

10.1. **Impact on Adjoining Residential Amenities**

10.1.1. Concerns are expressed in the planner's report that due to the close proximity of adjacent and adjoining residential dwellings the late-night noise generated by the development would seriously injure the residential amenities of the area. The grounds of appeal argue that (a) a restaurant use has been long established on the site and that the original planning permission for a change of use of the lower ground floor to a sandwich bar incorporated outdoor seating. As such it is argued that the restaurant use and outdoor seating has clearly been established on the site for the previous three decades. The grounds of appeal also argue that the opening times are not excessive with the restaurant closing between 9.00 and 10.00 depending on the day of the week and lastly it is argued that the proposed development fully accords with the land use zoning objectives for the site.

- 10.1.2. I fully accept that the restaurant use is a permissible use under the provisions of the Z4 land use zoning objective and that there are similar type restaurant uses in the wider area. While restaurant and similar type uses under the Z4 and other city centre commercial type land use zoning objectives are acceptable and in many instances are to be encouraged, a reasonable balance must be struck between the provision of such commercial uses and the equally important objective of attracting and maintaining residential uses between the canal. This requires an appropriate balancing act whereby restaurant and other such uses are actively encouraged but not to the detriment of surrounding residential amenity which would discourage further residential use between the canals.
- 10.1.3. The applicant argues that the use has clearly been established on site through the parent permission Reg. Ref. 2196/88 where planning permission was granted at the lower ground floor of the building for a sandwich bar. Furthermore, excerpts of drawings purported to incorporate part of the original application clearly indicates an outdoor seating area as part of the sandwich bar. It is on this basis that it is argued that the use has deemed to be acceptable.
- 10.1.4. I would argue that over the 30-year period since the parent grant of permission that a creeping intensification of the use has occurred on site whereby a sandwich bar has morphed or gradually changed into a larger restaurant where hot food and beverages is prepared and consumed on site. Furthermore, it is not clear whether the outdoor seating area associated with the sandwich bar was specifically included in the site notices associated with the application and whether or not the modest seating area to the front of the building as depicted in the 1988 planning application drawing referred to an informal seating area or whether it was part of a formal sit-down area which formed an intrinsic part of the overall application. It is however clear that over the decades the seating area has been expanded and extended to incorporate the entire front forecourt of the building which in my view has resulted in a significant intensification of use on site.
- 10.1.5. Thirdly, in relation to this matter no details are provided in respect of Reg. Ref. 2196/88 to suggest that the sandwich bar incorporated the same opening times as that associated with the restaurant i.e. between 9 and 10 at night.

10.1.6. On this basis I do not accept the main contention set out in the grounds of appeal that the existing use on site is both established, accepted and permitted by reason of the parent application and therefore the Board in this instance are for all intents and purposes precluded from coming to the conclusion that the application for the retention of the parasol will not generate or intensify late night activity associated with the site. There has in my view been a gradual change in both the nature of the activity on site and the intensification of the activity which in my view is a material consideration in determining the application. The retention of the parasol in this instance facilitates the intensification of use, particularly the outdoor uses which could give rise to significant and material impacts in terms of amenity.

10.1.7. It is clear from my site inspection that contiguous buildings on both sides of the subject are extensively in residential use and that there is further residential use in the upper floors of the buildings along the terrace. The retention of the parasol including the associated lighting and heating facilitates a permanent outdoor eating area which has the potential to significantly impact on adjoining residential amenity. While the grounds of appeal argue that the restaurant hours are quite modest (between 9 and 10 p.m. depending on the day) and it is likely that these opening hours relating to final orders and therefore patrons could sit in the outdoor eating area beyond these times. On the above basis I think the Planning Authority's second reason for refusal is justified and appropriate.

10.2. **Impact on the Architectural Character of the Protected Structure**

10.2.1. While I accept that the proposed parasol is retractable and demountable it is in my considered opinion along with other signage including the signage at the entrance to the restaurant the sandwich board and the menu board appended to the front gate etc. results in a significant visual clutter that in my view considerably detracts from the protected structure. Some of the observations submitted suggest that the signage at the front entrance is also unauthorised. There is no reference to any unauthorised development in the planner's report. As such I cannot comment as to whether or not other elements of the proposed development are unauthorised or not. I would generally agree with the sentiments expressed in the conservation officer's report that the installation of the parasol in question including the plastic sheeting along the sides of the parasol is both unsympathetic and highly inappropriate and contributes significantly to the overall visual clutter to the front of the building. I would

therefore fully agree with the Planning Authority that the proposed development does not represent an intervention which is subservient in design to the architectural character of the protected structure and undoubtedly in my view detracts from the architectural integrity and the visual amenities associated with the building.

10.2.2. While I fully accept that the parasol in question is easily demountable and is not attached and therefore in no way damages the fabric of the protected structure the imposition of the parasol in the front courtyard area detracts from the visual amenities of the structure and in no way contributes positively to the architectural quality or identity of the building in question. The adverse visual impact is particularly apparent when one views the terrace of dwellings as a whole. Of the row of five terraced dwellings to the immediate south of Parker Hill, Farmer Browns Eatery is the only building that incorporates significant alterations to the front forecourt area thereby, in my considered opinion detracting from the terrace of protected structures along this section of roadway.

11.0 EIA Screening Determination

The application before the Board does not constitute a class of development for which EIAR is required.

12.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

13.0 Conclusions and Recommendation

Arising from my assessment above I consider that the decision of the Planning Authority in this instance should be upheld and planning permission should be refused for the development based on the reasons and considerations set out below.

14.0 Reasons and Considerations

1. It is considered that the retention of the existing parasol by reason of its overall scale and location would seriously injure the architectural integrity and character of No. 170 Rathmines Road Lower which is listed on the Record of Protected Structures in the Dublin City Development Plan 2016 – 2022. It is considered that the retention would therefore materially contravene CHC2 and in particular Sections (b) and (d) of the said Policy. The retention of the parasol would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The structure sought to be retained facilitates permanent outdoor seating associated with the restaurant which would give rise to noise generation which would seriously injure the residential amenities of the area.

Paul Caprani,
Senior Planning Inspector.

XX January, 2020.