



An
Bord
Pleanála

Inspector's Report ABP 308681-20.

Development

Change of use (for a three-year period) of part of No 36 Rathmines Road rear courtyard to outdoor dining accessible from Uppercross Hotel, installation of six picnic benches turf ground treatment fencing and associated site works.

Location

Uppercross Hotel, 26-30 and 36 (Protected structure) Rathmines Road Upper, Dublin 6.

Planning Authority

Dublin City Council.

P. A. Reg. Ref.

3249/20

Applicant

Grange House Ltd.

Type of Application

Permission

Decision

Grant Permission.

Type of Appeal

Third Party

Appellant

Niall and Moira Fitzmaurice.

Date of Inspection

13th April, 2021.

Inspector

Jane Dennehy.

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1.0 Site Location and Description

The site of the existing Uppercross Hotel development at Nos 26-32 Upper Rathmines Road and No 36 Upper Rathmines Road are on the east side of Upper Rathmines Road. There have been various alterations and additions to the original houses, is a vehicular access to the rear off the public road which is built over at first floor level to the rear in use as a parking area and some plant and ancillary equipment and storage. The eastern boundary, along which there is a two metres high wall, adjoins the rear gardens of residential development, primarily two storey semi-detached houses on Church Gardens.

No 36, Upper Rathmines Road is a semi-detached Victorian house, paired with No 38, also in the applicant's ownership which is in multiple occupancy. At the time of inspection, No 36 was unoccupied but was formally adapted for and used as a Health Centre. The rear private open space is enclosed by walling along the part boundary with the property at No 38 to the south and fencing with the surface covered in gravel.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for change of use of part of the rear courtyard comprising a stated area of eighty-four square metres at No 36 to use as an outdoor dining area with access from the hotel. The proposal includes installation of six picnic benches parasols, astro-turf and two metres high fencing. It is the applicant's intention to operate the dining area between the hours of 12.00 pm and 9.30 pm daily.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 19th October, 2021, the planning authority decided to grant permission subject to conditions to include:

- Restriction to a period of three years under Condition No 3.
- Installation of the fencing prior to the operation – Condition No 4
- A compliance submission for the southern boundary fencing - Condition No 5.
- Limitation of hours of operation to 12.00 pm to 9.30 pm – Condition No 6
- Noise control standards - Condition No 10.

3.2. Planning Authority Reports

- 3.2.1. The planning officer in his report states that due to the modest scale and intensity of the proposal, and the separation distance from adjoining residential properties the proposal which could be reviewed after a three-year period, would subject to exclusion of music and entertainment would be acceptable.
- 3.2.2. The report of the conservation officer indicates acceptance of the proposed development subject to conservation conditions of a standard nature.

3.3. Third Party Observations

- 3.3.1. Submissions were lodged by ten parties in which concerns are expressed as to potential for adverse impact on the residential amenities of the adjoining properties owing to noise and nuisance, on the structures included on the record of protected structures and the amenity and character of the built environment.

4.0 Planning History

- 4.1.1. **P. A. Reg. Ref. 3318/09 / PL234766:** The planning authority decision to refuse permission to extend the surface parking area serving the hotel to provide for an additional nineteen car spaces, (to the existing twenty-seven spaces) was upheld following appeal based on material contravention of the 'Z2' zoning objective, negative impact on the character and setting of protected structures and the residential amenities of the area.
- 4.1.2. Permission was previously granted for extensions to the hotel under P. A. Reg. Ref. 2600/98, for change of uses at No 30 under P. A. Reg. Ref. 2127/96 and for a two-storey extension under P. A. Reg. Ref. 3393/94.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site of No 36 Upper Rathmines Road comes within an area subject to the zoning objective *Z2: to protect and/or improve the amenities of residential conservation areas.*

The buildings at No 26-30 Rathmines Road Upper are within an area subject to the *Z4 (District Centres); to provide for and improve mixed services facilities.* zoning objective whereas the rear space is subject to the zoning objective *Z1 (sustainable Residential Neighbourhoods) to protect and or improve residential amenities.*

No 36 Upper Rathmines Road and the adjoining house at No 38 in the applicant's ownership are included on the record of protected structures.

Policy CHC2 provides for ensuring the protection of the special character and integrity of protected structures. Guidance and standards on works and additions, internally and externally, to protected structures are set out in section 11.1.5.3 which provides for minimal intervention to and maximisation of retention historic fabric and original planform, protection of proportions within buildings and relative to adjoining buildings.

Policy CHC4 provides for protection of the special interest and character of Dublin's Conservation Areas. Guidance is set out in section 11.1.5.4 according to which there is a request that development contribute positively to the character and distinctiveness of the conservation area and that development should take opportunities to protect and enhance the special and appearance of the area and its setting in so far as is possible.

Section 14.5 provide for encouragement of uses compatible with the character of protected structures and in certain circumstances it is not essential to stringently

apply zoning restrictions if it will ensure the long-term viability of a protected structure and will restore it to its highest standard.

The location comes within Area 2 for carparking standards having regard to Section 16.1 and table 16.1.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was lodged by Conor Sheehan on behalf of the appellant party, Moira and Niall Fitzmaurice who are the owner occupiers of No 30 Church Gardens, a semi-detached residential property to the east of the application site on 13th November, 2020 which includes several photographs. According to the appeal:

- Hotel use is neither 'permissible' or 'open for consideration' within areas subject to the "Z2" zoning objective for No 36 Upper Rathmines Road in the curtilage of which the proposed development is to be located.
- The proposed use does not come within consistency within the policies of section 14.5 of the CDP which encourages compatible uses for protected structures but which may allow flexibility if the proposed use contributes to the protection and restoration of a protected structure and is consistent with conservation policies. The use is not related or connected to the protected structure in that it is related to the adjoining hotel use, would be detrimental to the protected structure and its character and setting.
- Clarification and expansion as to the nature of the separate future application referred to in the application submission, in the application submission should have been specified so that the assessed could include that of potential cumulative impact on the protected structure and adjacent use. Additional information should be sought in this regard. or No 36 Upper Rathmines Road.
- The proposed development is contrary to the CHC 4 policy objective because it would not contribute in a positive way to the character function or appearance of the conservation area of protected structures or ensure long term viability of the protected structures.

- Any prospect of achieving a use consistent with the land use zoning objective is precluded so the proposed development is contrary to Policy CEE 16 of the CDP which seems engagement in active land management of vacant sites and properties in accordance with Policy Statement 2015 issued by the Government.
- The proposed development is contrary to section 14.7 of the CDP providing for need, in transitional zones to protect the amenity of the most sensitive zones and uses. The location for the outdoor dining space is in the most sensitive 'Z2' zoned area in the curtilage of the protected structure, for the three zoning objectives for the Upper Cross hotel site. The use should be satisfactory, having regard to the impacts of residential amenity and heritage.
- With regard to noise, an upper floor bedroom at the appellant property may not be blocked by the boundary wall or proposed fencing. The applicant is willing to accept a condition in which a noise report is required in established noise background and along noise monitoring on the rear boundary wall of the appellant property.
- The rationale for the proposed development, having regard to the pandemic is tenuous given the vaccination programme. A three-year period is excessive.
- The conditions attached to the decision are insufficient:

If permission is granted, the duration should be reduced to one year's duration

The fencing required under conditions 4 and 5 should have noise cancelling measures included the hours of operation should be confined to 12pm to 7.00pm including weekends. Piped music should be explicitly omitted.

There is potential for intensification of use of a vehicular access off Church Gardens. A condition should be attached to preclude use of the entrance for deliveries to the hotel.

Additional conditions should be attached if permission is granted to include a noise report inclusive of a record of readings from monitoring at the rear wall of the appellant property and a condition with a requirement for low level lighting with no spill over the boundaries and no lighting after 10pm.

6.2. Applicant Response

6.2.1. A submission was received from the applicant's agent, Hughes Planning on 16th December, 2020. It includes a summary of the background, context and the application.

- With regard to the zoning, the outdoor dining is associated with and ancillary to the restaurant at the hotel the use of which is open for consideration under the 'Z1' and 'Z4' zoning objectives. The proposal is also consistent with sections 14.5, 14.7 and Policy CEE 16 (v) of the CDP as it is temporary, is on a vacant site and associated with a long-established operation use and does not involve works to the protected structure at No 36 Rathmines Road which is in a transitional zone, is a small-scale proposal and will not affect residential amenities.
- The proposed development is consistent with Policy CEE 16 contrary to the assertion in the appeal that it would compromise future development at No 36 Upper Rathmines Road and no issue would arise if grant of permission for the development on a permanent basis.
- The proposed development is consistent with section 14.7 the small scale and nature of the outdoor dining area could not be regarded as abrupt transition in scale or use. Conditions can be attached to control noise and use.
- With regard to Policy CHC4, the proposal is an improvement as it is minor, small scale and not visible from the public realm. It will improve the rear garden at No 36, providing for active use and reducing the possibility of anti-social behaviour and the conservation officer recommended that permission be granted.
- Any increase in noise is limited by the small scale and nature of the proposed development which is ancillary to the existing restaurant at the hotel. It is unlikely that diners would cause excessive noise. There is a separation distance ranging from 36.24 m to 48.27 metres from the appellant party's dwelling, there is a thick wall on the boundary and to which a fence is to be added and soft lighting only will be used.

- With regard to the entrance off Church Gardens, no intensification of use will arise due to the outdoor dining proposal. No change to the parking layout is proposed.
- With regard to the references to the Covid pandemic, it is reasonable for the applicant to adapt his business operations to provide for adherence to the health guidelines.
- It is considered that the conditions attached to the planning authority decision and their purpose is protection of residential amenities and these conditions are considered adequate to address these requirements.

6.3. Planning Authority Response

6.3.1. There is no submission from the planning authority on file.

7.0 Assessment

The issues considered central to the determination of the decision are:

- Impact on residential amenities
- Architectural Heritage Protection
- Intensification of use of access of Church Gardens
- Environmental Impact Assessment Screening.
- Appropriate Assessment Screening.

7.1. Impact on Residential Amenities.

7.1.1. The properties to the east at Church Gardens, which include the appellant party's property at No 30 are semi detached houses with front and rear gardens. There is a single storey extension along the side of the dwelling and rear garden at No 30. The rear boundaries of these properties adjoin the eastern boundary of the application site of the Uppercross Hotel buildings and No 36 Upper Rathmines Road in the

courtyard of which the outdoor dining is to be located. The applicant is required to erect a fence above the existing solid boundary walling according to a condition attached to the planning authority decision. The proposed outdoor dining area is to be enclosed by screening from the carpark.

- 7.1.2. The separation distance from the proposed location of the outdoor dining from the boundary with the rear garden of the appellant property at No 30 Church Gardens to the north east is over thirty metres. This distance is considerably further than the standards for lower density 'back to back' suburban housing' which is not the case with the appellant property which is to the north east.
- 7.1.3. The proposed outdoor dining which to be within a contained and defined, enclosed space at the rear of No 36 Upper Rathmines Road is modest in intensity and quantum and is a small annexation of an additional dining space to an extant restaurant use in the hotel buildings to the north side. Taking the location and size into account in conjunction with the conditions attached to the planning authority decision provide for significant requirements which are acceptable to the applicant, with regard to control of potential noise, hours of operation, confined to 12.00 pm to 9.30 pm, noise control and additional screening at the boundary, potential for undue adverse impact on the residential amenities of the adjoining properties directly attributable to the proposal would be minimal, especially in the context of the current hotel use and associated surface carpark.
- 7.1.4. No adverse impacts having regard to transitional areas between zones as provided for under section 14.7 of the CDP. As such, reduction from a duration of three to one year, if permission is granted, an earlier closing time of 7 pm, a noise assessment report and monitoring and lighting control measures as sought in the appeal are all unwarranted given the scale, intensity, location and nature of the proposed development.
- 7.1.5. The adjoining property, at No 38 Upper Rathmines Road which is in the ownership of the applicant is in residential use in multiple occupancy. It is considered that the proposed development having regard to its nature and intensity and the measures required by condition with regard to screening on the south boundary, hours of operation, noise and lighting do not give rise to any concern as to potential adverse impacts on the amenities of that property.

7.2. Architectural Heritage Protection

- 7.2.1. No 36 Upper Rathmines Road is included on the record of protected structures and it is agreed that the proposed location for the outdoor dining area would come within the historic curtilage. Although the house at No 36 Upper Rathmines Road is not in use as part of the existing hotel development there is no objection to the proposed location for the outdoor dining space particularly given the limited period for which the permission is sought. Little or no intervention to historic fabric of severance is involved in providing for the proposed development and interference with views from the public realm would not be at issue. The protected structure would not be materially affected in any manner that would warrant rejection of the proposal due to conflict with the protection of architectural heritage.
- 7.2.2. Furthermore, in this regard there is no conflict, (as contended in the appeal) with the provisions of section 14.5 and to Policies CHC2 and CHC4 as the proposed development can be regarded as neutral in that, materially, it would not unduly affect the protected structure and the environs positively or negatively. Finally, it is not considered necessary for information on the nature of the possible future application for No 36 Upper Rathmines Road to be available for the purposes of consideration of the current proposal.

7.3. Intensification of use of access of Church Gardens

- 7.3.1. It is clear that there are no proposals for changes in vehicular access arrangements and in the parking layout at the overall site. Given the association with the proposed development of outdoor dining space, with the existing restaurant at the hotel via which it is to have access, no concern arises as regards potential intensification of use of the entrance via the route of Church Gardens.

7.4. Environmental Impact Assessment Screening.

- 7.4.1. Having regard to the nature of the proposed development and its location in a serviced inner suburban area in the city, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.5. Appropriate Assessment Screening.

- 7.5.1. Having regard to the site location and, to the nature of the proposed development in a serviced inner suburban area in the city, 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 planning authority decision be upheld and that permission be granted based on the following reasons and considerations and conditions.

9.0 Reasons and Considerations

Having regard to the existing restaurant use in the hotel at Nos 26-32 Upper Rathmines Road, the confined, enclosed and limited size and small scale nature of the proposed outdoor dining space at the rear of No 36 Upper Rathmines Road, and the separation distance from adjoining residential properties to the east beyond the east boundary wall, it is considered that subject to compliance with the conditions below, the proposed development, would not seriously injure the residential amenities of adjoining properties by reason of noise and nuisance, overlooking or overspill of outdoor lighting, would not adversely affect the integrity, character and setting of the existing building which is included on the record of protected structures, or the residential conservation area, result in intensification of use of the access route off Church Gardens to the hotel carpark, and, would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the application as amended by the further plans and particulars lodged with the planning authority except as may otherwise be required 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.

Reason: In the interest of clarity.

2. The duration of the grant of permission shall be for a three period from the date of the order prior to which all structures and fittings shall be removed and the outdoor dining space returned to its original state unless a prior grant of permission has been obtained.

Reason: In the interest of clarity and to allow for further planning view.

3. Prior to the operation of the development, temporary fencing shown on Drawing 20147/2/DWG002 lodged with the application shall be erected along the eastern boundary and retained in place throughout the duration of the grant of permission.

Reason: In the interest of clarity and the protection of the residential amenities of the adjoining properties.

4. Prior to the commencement of the development that applicant shall submit and agree in writing details of fencing to be erected on the southern boundary with the adjoining property at No 38 Upper Rathmines Road. It shall be erected prior to the operation of the outdoor dining and retained in place throughout the duration of the grant of permission.

Reason: In the interest of clarity and the protection of the residential amenities of the adjoining properties.

5. The hours of operation shall be confined to the hours of 12.00 pm to 9.30 pm Monday to Sunday inclusive. There shall be no amplified music, live music or

other form of outdoor entertainment including tv screens and broadcasting at the proposed outdoor dining space.

Reason: In the interest of clarity and the protection of the residential amenities of the adjoining properties.

6. 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. The contribution shall be paid prior to the 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 the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 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.

Jane Dennehy
Senior Planning Inspector
14th April, 2021.