



An
Bord
Pleanála

Inspector's Report

ABP-313575-22

Development	Single storey canopy structure for outdoor dining and drinks terrace. Retractable glazed roof and sliding glazed screen to side. Access for customers and new façade with raised roof and associated site works.
Location	208, Rathmines Road Lower, Rathmines, Dublin 6, D06 K466
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3424/21
Applicant(s)	Lucio Paduano.
Type of Application	Permission.
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Sawbridge Limited.
Observer(s)	None
Date of Site Inspection	12.05.2023
Inspector	Fiona Fair

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	5
3.3. Prescribed Bodies	7
3.4. Third Party Observations	7
4.0 Planning History.....	7
5.0 Policy Context.....	8
5.1. Development Plan.....	8
5.2. Natural Heritage Designations	8
5.3. EIA Screening	9
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Applicant Response	10
6.3. Planning Authority Response	10
6.4. Observations	11
6.5. Further Responses.....	11
7.0 Assessment	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions	15

1.0 Site Location and Description

The site of the proposed development is located on the east side of Rathmines Road Lower in close proximity to its junction with Leinster Road in the heart of Rathmines Village. It comprises an existing restaurant use at ground floor level and office/storage use at first floor level. There is a small external yard at ground floor level to the rear with access onto a laneway.

2.0 Proposed Development

Application description:

The development consists of the provision of a new single storey canopy structure to the rear of the property to create a new outdoor dining & drinks terrace area at existing first floor level roof.

- Retractable glazed roof and sliding glazed screen to sides to allow use in different weather conditions. New façade and raised roof to rear return extension. Open smoking area/terrace to rear with balustrade. Raised parapet to screen services. Materials: dark grey metal cladding, powder coated steel balustrade.
- Provision for improved access for customers from ground to first floor level including new lobby and toilets to first floor landing and improved access to terrace area.
- Upgrade of existing rear return extension at first floor level with new façade and raised roof with compliant fire escape strategy head height requirements.
- Removal of the existing fire escape roof platform and escape ladder and provision for a new compliant emergency stair with existing final exit onto shared laneway to the rear.
- Removal of redundant & relocation of some existing roof mechanical & electrical services. Fans and water tank relocated to roof
- Renovation & improvements of existing restrooms at ground floor level to provide compliant level access to a new wheelchair accessible WC.
- Removal of existing shed to external yard

- Provision for a new lobby for fire safety to stair landing.
- To include renovation, alterations to the existing building, including all associated site works.

Development details:

- Site area: 152.5sqm
- Existing floor area: 174.2sqm
- Demolition: 0 sqm
- Proposed floor area: 41sqm
- Plot ratio: 1.68
- Site coverage: 89%

3.0 Planning Authority Decision

3.1. Decision

Consequent to Further Information being requested Permission was Granted subject to 9 No. Conditions. I note the following conditions of particular relevance.

C3. Prior to first use of the new outdoor dining terrace hereby permitted, the extraction flues and associated equipment for the effective control of fumes and odours from the premises shall be installed and made fully operational.

C4. The new outdoor dining terrace hereby permitted shall be used only between the hours of 07:00 to 22:00 hours Sunday to Thursday and 07:00 to 23:00 Friday and Saturdays.

C5. Construction Noise levels

C6. Advertising signs restrictions

C7. The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise & Air Pollution Section

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was sought in relation to access, design and neighbouring amenity.

1. A submission received in respect of the application states that the laneway to the rear of the site is in private ownership, that access is only permitted for disposal of refuse and would not be permitted, or suitable, for use as an emergency exit. The applicant is requested to review the proposed development in terms of access arrangements.
2. Having regard to the proximity of the proposed terrace to neighbouring residential use and the proposed glazed sliding screen on the northern side, the Planning Authority is concerned that the proposed development may result in unacceptable impacts on neighbouring amenity in respect of privacy, noise and air pollution, including odours. The applicant is requested to demonstrate that the terrace dining area and associated roof plant, will not give rise to unacceptable impacts in this regard.
3. It is considered that the provision of large areas of glazing on the northern elevation of the proposed extension would place undue constraint on the development of the adjoining site to the north. The proposed terrace structure should be revised to exclude glazing on the northern side.

A response to the further information request was received by the PA on the 25th March 2022, comprising:

- covering letter
- letter from fire safety consultants
- letter from mechanical and electrical engineers
- Letter from applicant regarding right of way
- Updated drawings

3.2.2. With respect to point 1 of FI.

A letter dated 21st December 2021 signed by the owner of the application site states that he has a right of way since before the Swan Shopping Centre was constructed.

3.2.3. With respect to Point 2 of FI

The submitted letter from the Mechanical and Electrical Engineers for the project identifies that the proposed development will include new highly efficient mechanical and electrical design solutions. Existing roof plant will be rationalised and replaced. Two existing condenser units and 2no. supply extract cowls for ventilation will be removed. Other equipment will be relocated to the rear external wall. Existing extract cowls will be extended on the rear external wall to the roof. A new plant area will be provided on the roof, behind parapet walls built up to provide a screen. This area will contain new heat recovery AHU and a new condenser for dining aircon.

3.2.4. With respect to Point 3 of FI

The revised drawings submitted show the glazed vertical sliding panels omitted from the northern elevation and replaced by fixed solid composite cladding with high level glazing only. The glazing will be at least 1.8m above finished floor level.

3.2.5. The report of the PA considers that:

‘Having regard to Section 34(13) of the Planning and Development Act 2001 (as amended), a person is not entitled solely by reason of a permission under this section to carry out any development. Therefore, the issue raised regarding the extent of the applicant’s rights is considered a legal and civil issue and is not considered further’.

It is considered that albeit the response does not directly address issues of noise and air pollution, the proposed new plant is expected to deliver an improvement on the existing, particularly given the increased extract unit heights and screening provided by the parapet wall. Subject to conditions relating to noise and hours of use, it is considered that the proposal is acceptable with regard to neighbouring amenity.

The response to item 3 of the FI is considered acceptable.

Overall, it was considered that the information submitted has addressed the further information request and that the proposed development is acceptable and, subject to conditions, can be accommodated on the site appropriately and will not detract from

the residential or visual amenities of the area. Consequently, it is considered that the development accords with both the City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3.3. Other Technical Reports

Drainage Division: no objection subject to conditions.

3.4. Prescribed Bodies

None on file.

3.5. Third Party Observations

1 no. objection received, it is summarised as follows:

- The existing door shown to the rear of the property opens onto a service road which is part of the Swan Shopping Centre, and is privately owned. It is used by the applicants under license to access a rubbish storage area. There is no general right of way to this door from the public street. The service road is locked at night and is not suitable for use as a fire escape. Its use for anything other than bin disposal will not be permitted by the owner.

4.0 Planning History

Application site 208 Rathmines Road Lower:

Reg. Ref. 2411/17: Planning permission granted for the change of use of premises from a restaurant to a restaurant with take away service.

Reg. Ref. 2079/10: Retention permission granted to retain the restaurant (Manifesto) signage, facade and security shutter

206 Rathmines Road Lower:

Reg. Ref 2023/16 (PL29S.246383): Planning permission granted for the demolition of existing two storey building and construction of new 5 storey building with 1no. retail unit and 7no. apartments.

5.0 Policy Context

5.1. Development Plan

The subject site is zoned “Z4” under of the Dublin City Development Plan 2022 – 2028.

Section 14.7.4 Key Urban Villages and Urban Villages (land-use zoning, chapter 14) sets out the Land-Use Zoning Objective for Z4: To provide for and improve mixed-services facilities.

Key Urban Villages and Urban Villages (formerly District Centres) function to serve the needs of the surrounding catchment providing a range of retail, commercial, cultural, social and community functions that are easily accessible by foot, bicycle or public transport; in line with the concept of the 15-minute city.

Key Urban Villages form the top tier of centre outside the city centre. They typically have retail outlets of a greater size selling convenience and comparison goods or provide services of a higher order. The catchment area generally extends spatially to a greater extent than that of Urban Villages and Neighbourhood Centres (see Chapter 7: The City Centre, Urban Villages and Retail, and Appendix 2: Retail Strategy for further detail). Urban Villages zoned Z4 are typically smaller in scale and provide a more localised role for the daily shopping needs and local services of a residential community.

5.2. Natural Heritage Designations

Having regard to the nature and scale of the proposed development and 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.

5.3. EIA Screening

Having regard to the nature of development comprising of alterations and provision of an outdoor dining & drinks terrace area to the rear of an existing restaurant in an urban area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

Third party appeal by Magahy Broderick Associates on behalf of the Sawbridge Ltd., owners of the Swan Shopping Centre. It is summarised as follows:

- We confirmed to Dublin City Council that the existing door shown to the rear of the property opens onto our client's property, which is privately owned. It is currently used by the applicants (under license) only to access a rubbish storage area, which is then disposed of by our clients. There is no general right of way to this door from the public street (Rathmines Road).
- The area referred to by the applicants' architects as "Swan Shopping Centre Service Street" is part of the Shopping Centre and is locked at night when the centre and the cinema have ceased trading.
- Third party will not allow its use for anything other than bin disposal.
- By way of response, the owner of the building, Anthony Nardone, confirmed to Dublin City Council that he "has the Right of Way before the recent years redevelopment of the Shopping Centre. As "proof of agreement" he refers to a Fire Safety Certificate application made on his behalf in 1996.
- Firstly, our clients would have no knowledge of, and are not party to, any Fire Safety Certificate applications made by other parties. Secondly the text of the documents does not refer to any right of way but merely to the fact that staff (only) can escape as far as the rear of the applicant's premises. The site plan submitted shows a rear door access to a "lane" to the rear of the premises, but

makes no reference as to its ownership, or to there being a right of way. The area is in fact my client's private property, over which the applicants have no right of way.

6.2. Applicant Response

- The applicant has no intention of changing the premise of use of the existing rear door.
- Since the building has operated as a restaurant the rear door has only been used by staff members to access the rubbish storage area.
- As per current granted fire certificate in case of fire emergency, this door would be used as a second means of escape for any person at first floor level and kitchen area.
- As mentioned in the report submitted in the FI request to DCC and prepared by Warrington Fire Engineers: As the escape strategy remains unchanged, no fewer or greater contravention arises as a result of the proposed material alterations / extension at ground and first floor level to the previously approved fire safety certificate (Ref. No. F191/96)
- In summary:
 - Restaurant Fire Certificate in 1996 (Ref. No. F191/96) Established Use.
 - Swan Shopping Centre Refurbishment and Extension Works in 2012
 - Application Reference 2717/12
 - Commencement Notice CN1590/13 16/08/2013
- Enclosed:
 - Report from Warrington Fire Consultant Engineers
 - Confirmation of Right of Way from the owner of the building.
 - Planning Application Design Statement

6.3. Planning Authority Response

- None on file

6.4. Observations

- None

6.5. Further Responses

A response to the applicant's response has been submitted by Magahy Broderick Associates on behalf of Sawbridge Ltd. Owners of the Swan Shopping Centre (third party). It is summarised as follows:

- None of the documents submitted show where the alleged right of way is, nor do they either offer any proof of its existence. They merely say that they have attested to its existence previously, in a Fire Safety Certificate application in which the appellant has no part, nor would even be aware of.
- The 1996 application simply said that the rear escape door opens into a service yard and made no mention of any right of way.
- As stated previously the area referred to by the applicants' architects as 'Swan Shopping Centre Service Street' is part of the Shopping Centre and is locked at night when the shopping centre and the cinema have ceased trading.
- Appellant will not allow its use for anything other than bin disposal, and that only subject to future agreement.

7.0 Assessment

7.1. Having inspected the site and examined the associated documentation, I consider the principle of the proposed development comprising of the provision of a new single storey canopy structure to the rear of the property to create a new outdoor dining and drinks terrace area at existing first floor level roof, is acceptable in principle. This is an established restaurant in an established urban area, within a designated a key urban village and zoned 'Z4' with the land use zoning objective 'to provide for and improve mixed-services facilities'.

7.1.1. The third party do not object to the outdoor terrace dining area / smoking area structure or use, alterations or amendments proposed, but only, to the 'emergency

exit' to the rear, which leads to a laneway (referred to by the applicants' architects as "Swan Shopping Centre Service Street") via an existing gateway and steps for means of escape purposes.

7.2. I therefore consider the relevant pertinent issue in this appeal is as follows:

- **Right of Way / Exit to the rear of the property for means of escape purposes.**

7.3. As set out in detail in section 6.1 of this report, the third party are concerned with respect to the use of the rear access as an emergency exit. It is their submission that this rear access is currently used by the applicants (under license) only to access a rubbish storage area, which is then disposed of by the third party. There is no general right of way to this door from the public street (Rathmines Road). They submit that the existing door shown to the rear of the property opens onto property, which is privately owned and access to this area is locked at night when the Swan Shopping Centre and the cinema have ceased trading.

7.4. Dublin City Council requested further information relating to this concern raised by the third party in their objection to Planning Application Reg. Ref. 3424/21. As set out in section 3.2.1 of this report above, point 1 of the further information refers, It states:

'A submission received in respect of the application states that the laneway to the rear of the site is in private ownership, that access is only permitted for disposal of refuse and would not be permitted, or suitable, for use as an emergency exit. The applicant is requested to review the proposed development in terms of access arrangements'.

7.5. By way of response, the owner of the building, Anthony Nardone, confirmed to Dublin City Council that he "has the Right of Way before the recent years redevelopment of the Shopping Centre. As "proof of agreement" he refers to a Fire Safety Certificate application made on his behalf in 1996. The Planning Authority subsequently on foot of further information considered that the issue raised regarding the extent of the applicants rights is a legal and civil issue and granted planning permission.

7.6. The first party response to the appeal sets out the following:

- The floor plans forming part of the approved fire safety certificate (Ref. No. F191/96) indicates that the escape route for members of the public in the restaurant at ground level will be through the main entrance at the front of the property. The escape route for kitchen staff at ground floor level was through the gate to the rear of the property. The means of escape from first floor level has been approved as being through the gate at the rear of the property via an external stairs.
- The layout of the ground floor plan will be very similar to the previously approved fire safety certificate (Ref No. F191/96) whereby a dining area shall be provided to the front of the property with a kitchen and storage areas to the rear of the property.
- The means of escape in the approved fire safety certificate shall remain unaltered. Therefore, no newer or greater contravention arises as a result of the proposed material alterations at ground floor level to the previously approved fire safety certificate.
- The proposed first floor plan shall incorporate an extension of floor area in the form of a new single storey canopy structure to the rear of the property to create a new outdoor dining and drinks terrace area. The strategy for means of escape from the first floor level i.e. to the rear of the property via and escape stairs to the service yard, shall also be in line with the previously approved fire safety certificate (Ref. No. F191/96)
- The previously approved spiral stairs forming part of the escape route from first floor level shall be replaced with a new external escape stairs. As the escape strategy remains unchanged, no newer or greater contravention arises as a result of the proposed material alterations / extension at first floor level.
- Confirm that whilst the proposed material alterations and extension of Manifesto Restaurant at 208 Rathmines Road Lower, will be subject to the requirements of a new Fire Safety Certificate Application, the means of escape strategy for the proposed works will remain unchanged from that previously approved in the Fire Safer Certificate Ref. No. F191/96 27th May 1996.

7.7. The third party response sets out that they have no knowledge of, and are not party to, any Fire Safety Certificate applications made by other parties. Secondly the text of the documents does not refer to any right of way but merely to the fact that staff

(only) can escape as far as the rear of the applicant's premises. The site plan submitted shows a rear door access to a "lane" to the rear of the premises, but makes no reference as to its ownership, or to there being a right of way. The area is in private property, over which the applicants have no right of way.

7.8. The gate to the rear of the property is in-situ and is used by the first party, this is not disputed, no physical alterations or amendments are proposed to this exit. The matter of its use as a Right of Way for emergency exit purposes is a civil and legal matter, outside of the remit of this planning appeal.

7.9. I note the response of the third party appellant that they will not allow its use for anything other than bin disposal, and that only subject to future agreement.

7.10. The extent of the development applied for is apparent in the description of the development and the plans and drawings submitted. The use of the exit to the rear of the property for means of escape purposes is a civil and legal matter. I consider that the applicant has demonstrated sufficient proof of ownership over the lands, subject to this application, for the purposes of seeking and obtaining planning permission. Having regard to section 34(13) of the Planning and Development Act 2000 (as amended) a person is not entitled solely by reason of a permission under this section to carry out any development. Any grant of planning permission does not relieve the developer of the responsibility of complying with any requirements under other codes of legislation affecting the proposal or the site.

7.11. Overall, I see no reason to refuse permission on grounds of lack of proof of Right of Way / Exit to the rear of the property.

7.12. I recommend that permission should be forthcoming subject to the conditions attached by the planning authority (which I consider substantive).

7.13. **Appropriate Assessment**

7.13.1. The appeal site is not within or adjoining any Natura 2000 site. Having regard to the nature and scale of the proposed development, comprising of the provision of a new single storey canopy structure to the rear of the property to create a new outdoor dining and drinks terrace area at existing first floor level, the location of the site in a serviced urban area and the separation distance 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.

8.0 Recommendation

- 8.1. Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1.1. Having regard to the 'Z4' zoning objective pertaining to the site it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area or of property in the vicinity, would be acceptable from a visual amenity perspective and would generally be acceptable in terms of compliance with the Dublin City Development Plan 2022 - 2028. The proposed development will therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received by the planning authority on the 22nd March 2022, 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.</p> <p>Reason: In the interest of clarity.</p>
----	--

2.	<p>Prior to first use of the new outdoor dining terrace hereby permitted, the extraction flues and associated equipment for the effective control of fumes and odours from the premises shall be installed and made fully operational.</p> <p>Reason: In the interests of residential amenity.</p>
3.	<p>The new outdoor dining terrace hereby permitted shall be used only between the hours of 07:00 to 22:00 hours Sunday to Thursday and 07:00 to 23:00 Friday and Saturdays.</p> <p>Reason: In the interest of neighbouring amenity.</p>
4.	<p>Notwithstanding the provisions of the Planning & Development Regulations 2001 (as amended), no advertisement signs (including any signs installed to be visible through the windows); advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the curtilage, or attached to the glazing without the prior grant of planning permission.</p> <p>Reason: In the interests of visual amenity</p>
5.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of all intended construction practice for the development, including measures for protection of existing development and boundary walls, construction traffic routing and management, construction parking, materials storage, site compound, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
6.	<p>Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional</p>

	<p>circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
8.	<p>The developer shall prevent any mud, dirt, debris or building material being carried onto or placed on the public road or adjoining properties as a result of the site works and repair any damage to the public road arising from carrying out the works.</p> <p>Reason: In the interests of orderly development.</p>
9.	<p>The developer shall comply with the requirements set out in the Codes of Practice from the Drainage Division, the Transportation Planning Division and the Noise & Air Pollution Section.</p> <p>Reason: To ensure a satisfactory standard of development.</p>
10.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
11.	<p>The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.</p> <p>Reason: In the interest of public health.</p>
12.	<p>A plan containing details for the management of waste, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the</p>

	<p>planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management of waste, especially recyclable materials, in the interest of protecting the environment.</p>
13.	<p>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.</p> <p>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.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Fiona Fair
Planning Inspector

17/05/2023