



An
Bord
Pleanála

Inspector's Report

ABP-314450-22

Development	Sheltered outdoor dining area on the northern and eastern elevations; - The amendment of condition No. 21 of previous permission DCC Reg. Ref. 2074/12 to provide revised restaurant opening hours plus associated works.
Location	205, Llandaff Terrace, Merrion Road, Dublin 4, D04 E4H5
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4131/22
Applicant(s)	Elm Hospitality Ltd.
Type of Application	Permission
Planning Authority Decision	
Type of Appeal	First Party
Appellant(s)	Elm Hospitality Ltd.
Observer(s)	Jennifer Moloney
Date of Site Inspection	09 June 2023
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1.1. The subject site is located on the western side of Merrion Road, to the front (east) of a large residential and commercial development of up to nine-storeys known as Elm Park.
- 1.1.2. The subject site is an end of terrace structure, at the northern end of Llandaff Terrace. This terrace of almost all residential dwellings (with the exception of the subject building) fronts on to a shared parking area separated from the main road by landscaping. An area of parking for the café exists to the north of the café. On the date of my site visit, there was some outdoor seating under a fabric gazebo type structure separated by large planter boxes.

2.0 Proposed Development

- 2.1. On the 2nd June 2022, planning permission was sought for the erection of an awning, outdoor seating and the extension of opening hours of an existing café / restaurant.
- 2.2. The application was accompanied by a Noise Impact Assessment and a Management Plan.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 27th September 2022, the Planning Authority issued a notification of their intention to REFUSE permission for the following reasons:
 - 1 Having regard to the location of the premises in a Z2 zone wherein it is an objective of the Dublin City Development Plan 2016-2022 to protect and / or improve the amenities of residential conservation areas, it is considered that the proposed covered outdoor seating area and extended opening hours would, by reason of the likely noise and general disturbance impact arising from same, seriously injure the residential amenity and depreciate the value of the adjoining dwelling. The proposed development would, therefore be contrary to the Z2 zoning objective of the site and the proper planning and sustainable development of the area.
 - 2 It is considered that the proposed awning structure would by reason of its design and poorly considered relationship with the existing period

structure, seriously injure the architectural integrity and character of the building and thereby detract from the visual amenity of this residential conservation area. The proposed development would therefore be contrary to the Z2 zoning of the site and the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. **Drainage:** No objection

3.2.2. **Planning Report:** Proposed development is a notable intensification of existing use by way of additional seating and extended opening hours. Significant noise and general disturbance likely to arise. Proposed acoustic screen would not adequately mitigate, and cannot be reasonably be controlled. Proposed development would seriously injure the residential amenity of adjoining property at no. 207. Proposed dawning would seriously injure architectural character, would obscure elevation and have little regard for the building line. Recommend refusal of permission.

3.3. **Prescribed Bodies**

3.3.1. None on file.

3.4. **Third Party Observations**

3.4.1. Four submissions raising issues of noise, odour, litter, traffic, compliance with planning.

4.0 **Relevant Planning History**

4.1.1. **Planning Authority reg. ref. 2074/12:** Planning permission granted for A) Demolition of late addition single storey front porches to units 207,209,217,219,221, B) Demolition of late addition single storey rear extensions to units 207,213,215,217 and demolition of two storey extension to unit 221, to provide more private open amenity space, C) Demolition and re-instatement of rear single storey extension to unit 209, D) Removal of existing boundary hoarding to site, front wall and hedge removal at house 221. E) Revision to existing parking layout and provision of new soft landscaping and fence to front car park. F) Construction of new communal bin shed. G) Pedestrian access gate at current vehicular entrance to unit 221 at Merrion Road. H) Change of use application for unit 205, from residential to commercial

(neighbourhood restaurant) with external seating I) Reinstatement of blocked up window north ground floor elevation, unit 205, J) New door openings to existing ground floor central window north elevation unit 205, K) Reduced opening to existing garage door and the insertion of new window, east elevation unit 205, L) Construction of 9m² single storey side extension to south elevation if unit 205, M) Widening of existing vehicular entrance onto Elm Park.

Condition no. 21 restricted restaurant opening hours at no. 205 to 08.00 and 20.00 hours.

5.0 Policy Context

5.1. Dublin City Development Plan 2022 -2028

5.1.1. The application was assessed by the Planning Authority while the 2016-2022 city development plan was operative. The 2022-2022 City Development plan was adopted by Dublin City Council on the 2nd November 2022 and came into effect on the 14th December 2022.

5.1.2. In the 2022-2028 plan the subject site retains its **Z2 Residential Conservation** area zoning, which has the stated objective 'To protect and/or improve the amenities of residential conservation areas'. Section **14.7.2** of the development plan states that "Residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale"

5.2. Natural Heritage Designations

5.2.1. The Elm Park site is approx. 100m from the South Dublin Bay SAC (000210) and the South Dublin Bay and River Tolka Estuary SPA (004024).

5.3. EIA Screening

5.3.1. Having regard to nature and scale of the development and the built-up urban location of the site 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

- 6.1.1. An agent for the first party has submitted an appeal against the decision of the Planning Authority to refuse permission. The appeal states that the primary objective for the applicant is to achieve extended opening hours for the internal and external spaces. The appeal proposes amendments to the proposal, to address the key concerns of the residents and Dublin City Council, while retaining the extended opening hours.
- 6.1.2. The appeal states that a third-party observation to the Planning Authority noted that a portion of the site shown within the redline boundary was not in the control of the applicant and thus a revised red line boundary is submitted as part of the appeal. The revised site boundary reduces the extent of outdoor seating and omits seating proximate to the closest neighbouring property. Revised design for the awnings also submitted with the appeal.
- 6.1.3. The grounds of the appeal can be summarised as follows:
- The extent and location of seating has been scaled back. Semi-enclosed / covered seating is located only at the north side of no. 205 Llandaff Terrace with 2 no. umbrellas and seating to the east.
 - The proposed awning has been replaced with 2 no. umbrellas with tables and chairs. These umbrellas are easily removable, collapsed when not in use. The architectural integrity of the building and the terrace will not be impacted.
 - The distance of the proposed seating from no. 207 Llandaff Terrace has been increased, reducing the potential for noise disruption. An acoustic wall is proposed at this location. The noise from the northern terrace will not be audible at the closest façade of no. 207, as it will be located within the acoustic shadow of unit no. 205.
 - Should the Board be concerned about the extension of opening hours, the applicant is happy to accept a condition restricting the use of the eastern side seating to the current permitted operating hours.
 - Should the Board share the concerns of the Planning Authority regarding the proposed awning, the applicant is happy to omit the proposed awning from the

eastern elevation and replace it with the use of outdoor umbrellas. This will increase the visibility of the canted bay window.

- On the norther elevation, it is proposed to replace the awning with steel ornate eaves with supporting poles. Details provided. This is in keeping with the building and the wider area.
- The applicant is willing to accept a condition restricting the use of the outdoor area to 22.00, removing the potential for late evening noise. Outdoor seating on the eastern side would be restricted to 20.00.
- The proposed extended operating hours will ensure the viability of the business.
- Regarding matters raised by third parties, it is submitted that significant additional waste is not anticipated, that units within Elm Park are unsuitable for café / restaurant use.
- The board is requested to grant permission.

6.2. Planning Authority Response

6.2.1. None on file.

6.3. Observations

6.3.1. Jennifer Moloney, 207 Llandaff Terrace:

- Premises immediately to the south of the subject premises
- Proposed changes in the appeal do not alleviate her concerns
- Proposed development would have a serious negative impact on residential amenity, ability to work from home and would depreciate her property value.
- The proposed changes would generate significant traffic and noise, would exacerbate the existing bins immediately adjacent to the rear of her property and would create further nuisance.
- The reduction in noise will not be as significant as the applicant submits.
- The applicant has not complies with the terms of the original permission, have erected signage without permission, are using designated bicycle storage as a

bin store and have placed external seating on the eastern side of the building on an ongoing basis.

- Attaching conditions to a permission will create further unauthorised development.
- The proposed acoustic screen will appear incongruous and will detract from the architectural character of the area.
- The Board is requested to uphold the decision of the Planning Authority to refuse permission.
- Photos submitted.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development. There are three elements to the proposed development, assessed as follows:

- Extended Opening Hours
- Outdoor Seating
- Architectural Character

7.2. **Extended Opening Hours**

7.2.1. In terms of the operating hours, the subject premises operates a café / restaurant as per the conditions attached to Planning Authority reg. ref. 2074/12. Condition no. 21 stipulated the permitted hours of operation as 08.00 to 20.00 only. The applicant seeks permission to extend the hours to 08.00- 23.00 Monday to Thursday, 08.00 to 00.00 Friday and Saturday, and 10.00 to 22.00 on Sundays and bank holidays.

7.2.2. The applicant has not provided any details on the need for increased opening hours. Noting the location of the subject site in a residential conservation area, it is considered the existing opening hours sufficiently protect the more sensitive residential neighbours on the terrace. It is considered that the extension of operation to eleven pm, or midnight, is too onerous in a non-commercial area.

7.2.3. In their appeal to the Board, the applicant states that should the Board agree, they would accept 08.00 to 20.00 seven days a week outdoor dining on the eastern side. While this would remove the outdoor element immediately adjacent to the residential neighbours, it would not ameliorate the intensification in traffic, waste, odour and noise that would arise from indoor dining occurring until eleven pm or midnight.

7.3. **Outdoor Seating**

7.3.1. Regarding the proposed outdoor seating areas, permission was sought for outdoor seating to the north, east and part of the southern corner of the outdoor space – see drawing no. PL007 submitted to the Planning Authority on the 02 June 2023. In the appeal submission, the applicant acknowledges that the south-eastern corner of the site is not in their control and has revised the red line boundary and reduced the proposed outdoor seating to the northern and eastern elevations only – see drawing no. PL 007 submitted to the Board on the 23rd August 2022.

7.3.2. This increases the separation distance between outdoor eating areas and the noise sensitive residential dwelling to the immediate south (no. 207). Further, it is proposed to install an acoustic wall at the southern boundary of the site (drawing no. PL007). As noted by the Observer, the proposed acoustic wall is not particularly aesthetically pleasing, however some form of landscaping or screening would aid this visual impact and maybe also increase the acoustic protection.

7.3.3. The use of outdoor dining facilities has become a more common feature since Covid-19 public health requirements. Outdoor dining not only increases the viability of a premises but can enliven a streetscape during evening hours and create passive surveillance of an otherwise quiet residential area.

7.3.4. I am satisfied that the amended proposals achieve the appropriate balance between the protection of residential amenities and economic activities.

7.4. **Proposed Awning, Coverings.**

7.4.1. The applicant sought permission to erect an 'outdoor seating roof' as per drawing no. PL008 submitted to the Planning Authority. In their appeal to the Board, the applicant has amended the proposal (see drawing no. PL008 dated 23 August 2022) to provide outdoor umbrellas that can be collapsed and removed on the eastern elevation and a glazed outdoor canopy held up by 'steel ornate eaves' on the

northern elevation. The applicant states that this will allow the architectural integrity of the building to remain unchanged.

- 7.4.2. I consider the proposed amendments, namely removable umbrellas on the eastern elevation and a glazed canopy on the less architecturally sensitive northern elevation to be a satisfactory solution. The provision of outdoor dining requires some form of roof covering for a large part of the year. It is considered that the proposed amendments submitted to the Board provide an appropriate solution that responds to the residential conservation zoning of the subject site.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered that 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. I recommend permission is GRANTED for the following reasons and considerations and subject to the following conditions:

9.0 **Reasons and Considerations**

- 9.1.1. Having regard to the nature and scale of the development proposed, to the pattern of development in the vicinity, to the planning history of the subject and adjoining sites, and to the policies of the Dublin City Development Plan 2022 - 2028, it is considered that, subject to compliance with the conditions set out below, the development proposed would not seriously injure the amenities of the Residential Conservation area or of property in the vicinity, and would not detract from the character of the area. The development proposed would, therefore, 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 plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála on the 23rd day of August, 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.

Reason: In the interest of clarity.

2. The hours of operation of the premises shall remain as 08.00 to 20.00 Monday to Sunday, unless otherwise authorised by a further grant of permission.

Reason: In the interests of protecting the residential neighbours of the premises in this Residential Conservation zone.

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.

Gillian Kane
Senior Planning Inspector

12 June 2023