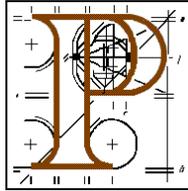


An Bord Pleanála



Inspector's Report

Development: Mixed development of residential and office accommodation, car parking, ancillary site works and services

Wilton Place/ Lad Lane/ Pembroke Row, Dublin 2

Planning Application

Planning Authority:	Dublin City Council
Planning Authority Reg. Ref.:	6101/04
Applicant:	Clondean Ltd
Type of Application:	Permission
Planning Authority Decision:	Grant

Planning Appeal

Appellant(s):	<ol style="list-style-type: none">1. Catherine Walsh2. Noelle Corish3. Clondean Ltd.4. Donald Whitaker5. Residents of Bagod Rath Apts.6. Tim Ryan7. IPUT Management Services Ltd.8. Homon Potterton9. Francis Ó Lorcain10. Sean Hogan11. John Gormley, T.D.12. Jasper Brett13. David Tomkin14. Stanley Christie15. Grandarm Management Ltd.16. Aoife Cormican17. Mary Columby
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Type of Appeal:	First Party V Condition Third Party V Grant
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Observers: 1. Price Waterhouse Coopers
2. Nicola McKenzie
3. Patricia Hodgins

Date of Site Inspection: 16/01/06

Inspector: Mary Mac Mahon

INTRODUCTION

This is a multiple appeal, including a First Party appeal against conditions, various individuals, management companies and a residents group appealing the grant of permission, supported by Observers. A model of the proposed development is available in the Board offices.

SITE

The site is an infill site, at the corner of Pembroke Row and Lad Lane, off Baggot Street. The site is square in shape and the southerly corner of the site is on Wilton Place. The site is within the visual envelope of the Grand Canal and roughly 700metres from St. Stephen's Green. It is approximately 100metres from the nearest Quality Bus Corridor, 500metres to the nearest LUAS station and c.1km to the nearest DART station and Pearse Street station. The site is to the rear of Fitzwilliam Square, part of the remaining Georgian core of the city. The area where the site was located was redeveloped during the latter half of the twentieth century, with tall office blocks and some apartment blocks. The Australian embassy on Cumberland Row, being 12 stories, is the tallest and most prominent of the buildings in the area. Lad Lane, where the site has frontage, is a mews lane, with residential and office use in the former rear gardens of Fitzwilliam. Lad Lane apartments, southwest of the site, is five storey with setback. The site wedged between Court Apartments and Gardner House, an office block containing PriceWaterhouse Coopers. Access to the site is from Pembroke Row. This is a narrow, backland street, with no parking permitted on it and a restricted footpath. Although the building on Pembroke Row opposite the site is in commercial use, a site notice in place seeks permission for 27 apartments on four stories, with a penthouse level. Lad Lane has parking on one side of the road, but one lane of traffic must wait to allow passing traffic. There are four mews dwellings opposite the site, one of which is three storey with large balconies and the others two storey. Court Apartments, while facing onto Wilton Place, have a large number of windows overlooking the site. Gardner House in contrast, while part of the building is close to the site, the bulk of the building steps back from it. Vehicular access to Court Apartments and Gardner House are close to the Wilton Place corner of the site. The site has a north-westerly aspect and the site area is stated as 3,913square metres. Appendix 2 contains photographs that support this description.

PROPOSAL

The proposed development is to construct 139 residential units, including 5 no. live/work units, a gymnasium for residents, two own door offices and a basement car park on two levels. The site is laid out in a hallow square, with central courtyard. The gross floor area is 19,900 square meters including basement levels. The plot ratio is 3.36 (excluding basement) and site coverage is 53%. The proposed development is a mix of four, five, six and rising to a height of eleven stories at the southern corner of the site. The basement car parking is 158 spaces, with a similar level of cycle spaces. Vehicular access is from Pembroke Row, with a separate pedestrian access and two

further pedestrian accesses on Lad Lane and Wilton Place. A footpath is proposed on Pembroke Row and the footpath on Lad Lane is to be widened.

The proposed development consists of:

- 37 no. one bedroom apartments;
- 88 no. two bedroom apartments;
- 3. no. two bedroom duplexes;
- 5 no. three bedroom apartments;
- 1 no. three bedroom duplex;
- 5 no. live work units;
- 2 own door offices (155square metres);
- Residents gymnasium (87square metres).

The height of the blocks range from 19.28metres metres on Pembroke Row, including setback storey (Blocks B, C, D and E); 18.98metres on Lad Lane, including setback storey (Block A); 33.855metres for the tower block to Court Apartments (Blocks H, I and J); 12.5metres (approximately) to part of Gardner House boundary (Block K) and 19.18metres including setback storey to the south-west (Blocks F and G).

Open space is provided in the central courtyard, roof terrace at fourth floor level adjoining Gardner House and at fifth floor level on Pembroke Row. Balconies are provided on 107 units.

Some revisions took place at Further Information, with some apartments being deleted. The number of apartments is reduced from 134 apartments to 128 and a wider gap created between the south-western block, Block K (part Gardner House frontage) and Block A fronting onto Lad Lane.

The planning application is accompanied by a planning report, a traffic report, a daylight / sunlight report, a shadow report, drainage report and landscape concept and specification. Some of these reports were amended at Further Information and Clarification of Further Information stages.

DEVELOPMENT PLAN

The *Dublin City Development Plan, 2005-2011*, applies. The site is zoned Z1, 'to protect, provide and improve residential amenities'. The plan states that 36,000 residential units are to be built within the plan period. High densities will be promoted throughout the city area and in particular within 500metres of a QBC route and 800metres of a rail terminal. Other surrounding lands are categorised Z6 for enterprise use, residential use and Z8, architecture and civic design.

The purpose of the residential zoning is to provide a measure of protection from unsuitable development or bad neighbour, unsuitable development, incompatible with the residential function. The plan states that the zoning does not rule out other uses. While recreational use is open to consideration, office use is not either permitted nor open to consideration.

Generally, plot ratio is limited to 3.0. However, this can be increased where the site adjoins a major public transport termini and corridors, where an appropriate mix of residential and commercial uses are proposed. While the site coverage for Z1 uses is not stated in the plan, the indicative site coverage for the Georgian core is 50%. In terms of building height, proposals must be sensitive to the historic core. The skyline of the inner city is to be protected. Standards applying to medium to high rise buildings include the need to create a positive urban design, linked into the urban grain, positive, urban spaces, outstanding architectural quality, contributing to the skyline, respecting important views, not having serious disadvantages to the surrounding area minimising overshadowing, overlooking and not creating poor micro-climates, with a well designed setting of lower buildings and or open space.

In relation to apartment development, ground floor apartments on city streets are not permitted to protect residential amenity. On minor streets, some may be allowed, but the internal ceiling heights should be 3.5metres to allow for conversion to non-residential use. The majority of apartments should be dual aspect. Where avoidable, these apartments should not be on the northern elevation, but if necessary, some compensation, in terms of high ceiling heights or views should be provided. In terms of open space, 5-8square metres of private open space should be provided per bedspace, with balconies being a minimum of 4square metres in area. Public open space of 10% of the site area will generally be required, but a financial contribution can be offered where this is not feasible or there is public open space in the vicinity.

The site is located in a conservation area. Development proposals should complement the character of the conservation area, in terms of design, materials and scale. It is noted in the chapter on General Development Standards, that development in conservation areas may have to have a lower plot ratio, to preserve the character of the area. The buildings on Fitzwilliam are protected structures.

Appendix 5 states that the traffic impact of substantial development on the local road network must be rigorously described. Substantial development, requiring a TIA is for 200 or more residential units, or 100 trips in the peak period or 100 or more off-street parking spaces with a single access onto the adjoining street network.

Appendix 18 states that the skyline and character of established residential areas will be protected. A High building is defined as one that is significantly higher than neighbourhood or surrounding development.

REGIONAL / NATIONAL POLICY

The *Regional Planning Guidelines for the Greater Dublin Area 2004-2016* seeks to promote a more efficient Greater Dublin Area, to consolidate development based on public transport and increase overall densities of development. The Regional Planning Guidelines require 40,000 housing units to be built in Dublin City between 2004-2010.

The 1999 *Residential Guidelines for Planning Authorities* promotes higher densities for residential development to achieve sustainable development by making more economic use of physical infrastructure, particularly on brownfield sites, close to public transport. Higher buildings can be permitted close to expanses of water or public parkland. Overshadowing, overlooking and disruption of scale must be taken into account. Where new schemes are proposed in existing residential areas, a separation distance of 35metres or greater or modified design should be considered in the case of balconies overlooking living rooms. The plot ratio proposed for brown field site locations is between 1 and 2.5. In terms of open space, city centre locations should have a minimum of 10 square metres per one bedroom apartment and 15-20 square metres for two or three bedroom.

The Guidelines also state that high residential density will not be appropriate in every circumstance – not at an unacceptable cost to surrounding dwellings and the residents of the proposed development. High quality design, layout and environment, including the availability of adequate shopping, social, transport and leisure infrastructure are essential.

The *Architectural Heritage Protection Guidelines*, 2004 apply. Section 13.0 in regard to new buildings in Architectural Conservation Areas states that it is generally preferable to minimise the visual impact of the building on its setting. The more uniform the setting, the presumption is in favour of a harmonious design. Where there is a mix of styles, then a high standard of contemporary design that respects the character of the area should be encouraged. The scale of new structures should be appropriate to the general scale of the area and not its biggest building.

Section 13.8.3 states that large buildings, sometimes at considerable distance, can alter views and affect character. Proposals should not have an adverse effect on the special interest of the protected structure or the character of an Architectural Conservation Area.

HISTORY

None recorded on site.

North of the site on the junction of Lad Lane and Pembroke Row, there is a site notice planning permission for 27 no. apartments, four stories with a setback penthouse level, which was found invalid. (4481/02)

DECISION

Permission granted, subject to 13 conditions. Of particular relevance, Condition 2(a) requires that the 11 storey building be reduced to 8 stories and 2(b) be reduced from 6 storey to 5 stories. 2(c) requires the balconies facing Court Apartments are to be set back flush with the main wall. Details of the boundary with the site and Court Apartments are to be submitted (2(f)). Office units are to be omitted on the ground

floor and the space used for live/work or residential units (2(g)). Parking is to be reduced to 150 parking spaces (3(g)). Recording of existing features and archaeological monitoring is to take place (7). Building operations are to be limited to 0700 hours to 1800 hours weekdays and 0800 hour to 1400 on Saturdays (11).

INTERNAL REPORTS

Planner's report – the overall density is 140 units per acre, which is comparatively high, given the sensitive location of the site. Office use is not permitted nor open to consideration. The DEGW report on building height in Dublin identifies the area as a Character Area C2, an area of strong character with intrinsic value. The daylight and Sunlight Analysis show that the courtyard facades have poor daylight and problem cases at the confrontation between Block A and Block D. A shadow survey is considered necessary. The photomontages are not considered to show the impact of the proposed development from Fitzwilliam Square, although the existing office blocks are visible. The boundary issue with Wilton Court Apartments need to be clarified. The number of single aspect apartments on the northern elevations are of concern. The relationship between the tower and the Court Apartments need to be reassessed, as does proximity to the office block. A reduction of the span of Block A would facilitate this. Further information sought.

Sufficient legal interest has been demonstrated. The cross sections show the proposed development will not have as great an impact on Fitzwilliam Square as the existing Australian Embassy. Private and public open space needs clarification. There are discrepancies between the model and drawings in relation to No. 2 and 1 Pembroke Row. The number of single aspect apartments have been reduced and a number of apartments omitted. Footpaths provide pedestrian safety. Further information brought in one additional representation, from the adjoining office block. Clarification of further information necessary.

Shadow drawings are submitted. The Bedspace number is 391. Pedestrian safety is dealt with.

Overall, the proposal accords with the zoning of the site and is in keeping with the objective to increase the residential population within the inner city. There are 6square metres per bedspace, which is within development plan standards of 5-8square metres. While 27 of the 133 apartments have no direct provision for open space, the proposed development is still considered acceptable. Balconies are a minimum of 4square metres. Two thirds of the apartments are dual aspect and only 19 of the single aspect are on a northerly frontage. Storage facilities need to be addressed. The height of the 11 storey block is considered excessive and would impact on Fitzwilliam Square, which has been compromised by the Australian Embassy on Cumberland Road. A 10 storey scheme on 43-49 Mespil road has been refused (**PL29S.201749**). Noting the Conservation Officer's report, a building of reduced height would be more appropriate. This would benefit the Court Apartments, be reducing overbearing. A reduction in height of the block facing onto Lad Lane would result in a more balanced streetscape and reduce overshadowing and overbearing. This would also accord with the transitional zone objective. Excluding

the office elements and gym, the proposal equates to 140 units per acre. Charlotte Quay has a density of 157 units per acre. The plot ratio at 3.36 is high. The reduction in floors would reduce the proposed development from 134 units to 96 units, which would be reasonable. The conservation report shows the existing buildings, including cottage are not of architectural or historical merit. In relation to the impact on Court Apartments, no apartment is dependent on sunlight from the northwest. The proposed development would impact in the late afternoon. The overbearing impact, plus loss of privacy are the main issues. Balconies should be set back to reduce overlooking. The reduction in height deals with overbearing. Some loss of privacy to apartments facing south. Grant recommended.

Traffic Planning Division – Mobility Management Plan to be put in place. Parking is to be reduced to 150 spaces.

Drainage – Grant subject to condition.

Conservation Officer –Reservation about impact on Fitzwilliam Square and vista from the Grand Canal. In a sensitive area, modern architecture should be of the highest quality to enhance the area.

Archaeologist - Existing structures to be recorded and archaeological monitoring.

Some 38 submissions were received in regard to the application, the grounds of which are covered in the Third Party appeals.

An Taisce – excessive height, overdevelopment and inadequate private open space, traffic and domination of two storey mews.

APPEAL

There are sixteen Third Parties and the First Party appealing the planning decision. It is intended to outline the First Party's appeal at the outset, then summarise the Third Party appeals, in the order in which they were received. There is a degree of reiteration in some of the appeals. Following the main points in the first Third Party appeal, only new points or where Third Parties consider themselves to be particularly affected are noted.

First Party:

- Appeal against condition 2(a) and 2(b) only;
- These conditions reduce the height of the tower from 11 stories to 8 stories and the 6 storey block to 5;
- The site is situated in an area of high buildings;
- Most of these buildings have a strong horizontal emphasis;
- The height and narrowness of the tower restores a vertical emphasis to the area and enhances the townscape, adding visual interest and a sense of dynamic. To leave the proposed development at the height of buildings in the vicinity would mean that the site does not contribute visually to the area;

- The reduction in height would not result in any material changes in the level of amenity of surrounding land use;
- The planning authority's purpose in reducing the 6 storey block to 5 stories is to bring the roof profile down a level, to contribute to the streetscape. Modified drawings are enclosed to show how the same effect can be created without the need to reduce the number of stories;
- The height of this block is comparable to the height of Lad Lane apartments and below the height of the IDA buildings;
- The same approach applies to Pembroke Row, where the punctuation of the roof profile is more effective in breaking up mass than simply slicing off a storey;
- Full shadowing on Lad Lane occurs in the morning and at noon already;
- The reason for the reduction in height of the proposed development are aesthetic and design driven. For these same reasons, the modifications should be considered.

Drawings are enclosed.

Third Parties

1. Catherine Walsh:

- The reduction in height from 11 stories to 8 is unlikely to materially reduce overbearing;
- The maximum roof height of the proposed development should not exceed Wilton Park House;
- Opposing windows at 6metres distance is not acceptable, given that 22metres is the norm;
- The disputed wall is finished in the same brick as Court Apartments and is the property of Court Apartments;
- Security problems with the alteration of the wall and access from Wilton Place;
- The address of Wilton Place is misleading, as the OPW address was Pembroke Row;
- Inappropriate use of colour on the finishes;
- Overdevelopment will result in devaluation of property.

2. Donald Whitaker:

- The structural stability of Court Apartments is at risk from deep excavation and a sump. An environmental impact analysis is required;
- 35metres is the standard separation between new tall developments and existing properties;
- Loss of daylight and reduction in sunlight;
- A Georgian style would be appropriate in this Conservation Area, which is a tourist destination;
- Traffic hazard to pedestrians at the Wilton Place entrance lies between two car parks and one footpath only on Lad Lane, which is substandard.

3. Noelle Corish:

- A setback of 20metres from Court Apartments should be applied.

4. IPUT Management Services Ltd:

- Proximity of proposed windows and balconies to shared boundaries. These should be omitted or else the separation distance increased to 7metres;
- Inadequate separation between the proposed development and Gardener House;
- Omission of the 4 storey block west of the 11 storey block, which is now proposed to be 5.4metres from the boundary line. The balconies reduce this to 4metres. This omission would significantly increase the sunlight reaching the central courtyard and those apartments fronting on to Lad Lane at lower levels;
- Impact on potential redevelopment of Gardner House;
- With the footprint for the proposed development, any redevelopment of Gardner House for residential use would require that it would be forced to setback within its boundaries, with a consequent reduction in value of the site;
- Fire safety;
- Overlooking of Gardner House from roof gardens and the tower;

Enclosures include a number of observations sent to the planning authority and a drawing.

5. Tim Ryan:

- The tower block should be reduced to seven stories, to protect residential amenity;
- Increased on-street parking congestion;
- Measures mitigating construction impacts;
- Overdevelopment of the site exceeds the maximum allowable by 12%;
- Visually oppressive, dominant and insensitive;
- Scale, bulk and height is incompatible with the area;
- The daylight / sunlight reports are not sufficiently robust, but indicate that reductions will occur;
- Noise and light pollution.

Enclosures include two planning reports.

6. David Tomkin:

- Exclusion of Third Party comment on Conditions 2 (height), 3 (traffic) and 8 (external finishes);
- The Board should seek the information as part of the appeal process, to be circulated to all parties for comment;
- Impact on the houses on the east side of Fitzwilliam Square, Fitzwilliam Street Upper and Lad Lane which will dominate these buildings in the Georgian Core and cause overlooking;

- The heritage value of the Square is diminished because of the overall impact on townscape;
- The residential amenity of No. 21 Lad Lane and No. 1 Fitzwilliam Square (the same property) will be overlooked;
- Narrowness of Lad Lane, with on-street car parking.

7. Stanley Christie

- Similar grounds to above.

Sketch plan included showing boundaries.

8. Aoife Cormican

- Similar grounds to above.

9. Residents of Bagod Rath Apartments (Pembroke Row)

- Conservation policies in the current development plan require that proposals complement the character and setting of the Conservation Area, not to be visually obtrusive nor dominate. Compatibility of design, scale, height, plot width, roof treatment, materials, landscaping, mix and intensity of use is expected;
- The proposed development does not comply with these standards;
- Lack of setback from footpaths, overdevelopment and overbearing;
- Refusal of planning permission for 5 storey apartment block to No. 5, Lad Lane (**1285/03**) on grounds of height, scale, visual obtrusion and overbearing with the Conservation Area;
- Conservation of the cottage, which dates back to at least 1893 and the only building of its type left in the central area;
- Material contravention of sub-objective in the zoning to protect existing residential development;
- Excessive car parking as 122 is the maximum permitted in development plan standards, without taking into account the omission of floors conditioned by the planning authority and the extensive public transport in the area as well as proximity to the city centre;
- The number of peak hour travel movements do not correlate with the number of parking spaces provided;
- The apartment block adjacent to Heuston Station example is not comparable;
- Lad Lane is the more appropriate access for vehicles;
- The high number of single aspect apartments which have a northerly orientation is unacceptable as is the 27 apartments without direct private open space;
- The distribution of semi-private open space is not obvious.

10. Grandarm Management Ltd:

- Insufficient legal interest, because 3'6" of the site from the boundary with Court Apartments is in the ownership of that property;
- The wall has been built entirely within the demise of Court Apartments;

- This has been confirmed by two independent surveyors;
- No right to make the proposed changes to the wall;
- The area is a mix of low rise and mid-rise buildings and a high building is not appropriate in the Conservation Area;
- The standards in the development plan in regard to high rise, have not been adhered to – no serious disadvantages to the immediate surroundings and minimisation of overshadowing and overlooking, nor adverse micro-climates.

Enclosures includes a solicitors letter in regard to the ownership of the wall, and two survey reports.

11. John Gormley, TD

- Similar grounds to above.

12. Jason Brett:

- The 45 degree angle test will demonstrate the extent the proposed block would affect daylight into Court Apartments;
- Similar grounds to above.

13. Francis Ó Lorcaín:

- Access issues on public roads, not properly identified, with no legal interest nor described in the public notice;
- Similar grounds to above.

Enclosures – Mr. Ó Lorcan, an architect, prepared one of the two surveys in relation to the disputed boundary.

14. Homon Potterton:

- Similar grounds to above.

15. Sean Hogan:

- Wilton Park is not a neighbour amenity, but private property;
- Wind tunnelling effect;
- Similar grounds to above.

Enclosure includes solicitors letter in regard to the disputed boundaries.

16. Mary Columby:

- Similar to above.

OBSERVERS

The observations made by PricewaterhouseCoopers, Nicola McKenzie and Patricia Hodgins have been summarised in this section.

- Specific limits should be set on construction activity including vibrations, noise, dust and water run off;
- Site access should not be allowed at the junction of the site and the car park ramp of Wilton House;
- Impact on setting of Conservation Area and Protected Structures;
- Failure on the part of the planning authority to abide by its own policies in regard to the necessity of new development to complement existing development in Conservation Areas;
- Inadequate width on Lad Lane for two way traffic;
- Absence of detail on the daylight / sunlight impact on individual properties;
- Lad Lane not properly illustrated in the photomontages;
- Absence of play space for children;
- Overbearing of the mews on Lad Lane;
- Single aspect apartments face north-west;
- Ownership of boundary wall and open space by Court Apartments;
- Pedestrian access is a traffic hazard;
- Excavation issues;
- Traffic has not been adequately addressed;
- Fire services can only reach to seven stories;
- Overlooking of roof space;
- Colour;
- Windows too close.

Ms. McKenzie encloses an architectural drawing showing the impact on Lad Lane.

RESPONSE

Grandarm Management Ltd:

- The issue of visual break remains;
- Wilton Park House and Fitzwilliam House are not precedents, as their frontages relate to city streets, not Lad Lane. The buildings construction were prior to the designation of the area as a Conservation Area. They are removed from the site;
- The Court Apartments are on a corner site, with a setback of 15metres from Wilton Place with extensive planting. The Lower Ground floor is below street level, therefore reducing the relative height of the building. There are no balconies or terraces on the Lad Lane façade;
- The proposed development is an abrupt change between the Z8 zoning of Fitzwilliam Square East and the Z1 zoning. It is Dublin City policy to prevent such jarring changes between zones in transitional areas (14.8.0);

- In regard to the changes sought to Condition 2(b), these are not sufficient to prevent serious injury to residential and visual amenities. The changes amount to the restoration of the original proposal.

Jasper C. Brett:

- Loss of daylight, privacy and increased noise and wind tunnel effect;
- The units are deficient in private open space and daylight standards;
- Traffic hazard on Wilton Place;
- Serious overshadowing of property, in the region of 45%;
- Overly close to Court Apartments.

Aoife Cormican:

- The Residential Density Guidelines require 35 metres between overlooking windows and balconies;
- The Building Regulations require a vehicular access to 100% of the perimeter of the building;
- Safety in regard to the access has been ignored.

Donald Whitaker:

- The appropriate context is the canal vista, where heights are six and seven stories;
- The reduction in height is necessary to prevent overbearing;
- Regarding the boundary with Court Apartments, there is some contradiction between drawings that should be clarified by the Board;
- Traffic hazard to pedestrians due to the presence of three active car parks.

Stanley Christie:

- Outstanding information that could have been sought by the planning authority has not been and so Third Parties are not as informed as required by legislation;
- Given the absence of frontage on Wilton Place, it is misleading to claim the tower fronts onto to it;
- The openness of Wilton Place will be lost;
- The proposed development does not fit into the area and the blue colour compounds the offence;
- The area has a horizontal emphasis and the vertical emphasis detracts from this;
- A seven storey building would be appropriate.

First Party:

- ❖ The site is surrounded by a diversity of height, style and land uses, with a number of high buildings in the vicinity, including a twelve storey building;
- ❖ The high quality materials and the high degree of variation in the area will ensure the absorption the proposed development;

- ❖ There will be no detrimental impact on the Conservation Area and the Architectural Conservation Area designation is to protect the relationship of buildings to the canal, rather than the quality of the architecture;
- ❖ The narrow form with its vertical emphasis ensures that the proposed development will not be visually obtrusive;
- ❖ The height is appropriate given the openness of the parkland and waterbody on Wilton Place;
- ❖ The Caretakers Cottage is of little architectural merit, with much of it altered from its original state, as shown by the accompanying report;
- ❖ There has been no encroachment on land not under the control of the applicant and the boundary wall of Court Apartments belongs to the applicant;
- ❖ The planning officer identifies the wall and notes that a grant of permission does not entitle a person to carry out development;
- ❖ No material contravention of the zoning occurs and it is policy of Dublin City to encourage residential use into the historic areas of the city (Res 8);
- ❖ Housing mix is encouraged in the plan (Res 7), as is high density (Res 2) in infill site (Res 1);
- ❖ Public open space standards can be relaxed for infill sites and there is excellent public open space in the vicinity;
- ❖ There are 1,323 square metres of private terrace and balcony space and 1,065 square metres of communal open space. Of the 133 residential units, 106 have balconies and or terraces;
- ❖ The proposed development is an improvement on the previous depot / workshop / office use on the site and more in keeping with residential amenity;
- ❖ Traffic from the proposed development will not affect traffic flows in the area, as shown by the accompanying report. Pedestrian safety is ensured as pedestrians are alerted to vehicles and a new pedestrian footpath. A Mobility Management Plan is included. Parking is provided at 1.1 spaces per unit and it's not considered excessive;
- ❖ The proposed development will not be visible from Fitzwilliam Square;
- ❖ The plot ratio of the site is 3.36. The site is in close proximity to QBCs, DART, LUAS and suburban rail;
- ❖ There is a wide range of employment uses in the area, in walking distance of the city centre and is a brownfield site;
- ❖ Site coverage at 53% is relatively low;
- ❖ The proposed development is a high quality design, with generous proportions and good private open space;
- ❖ The impact of the proposed development in terms of daylight and sunlight has been analysed. There is already significant overshadowing of Lad Lane. The loss of one floor will have no discernable affect;
- ❖ Given the city centre location, some issues of overlooking cannot be avoided. However material overlooking has been, due to the use of height and setback and the redesign of one apartment;
- ❖ The montages show how the proposed development fits into the Conservation Area;
- ❖ The enclosure of Wilton Place park and the passive surveillance the proposed development will provide will enhance the amenity of the public park;
- ❖ The attenuation tanks are geared for the 100 year storm event;
- ❖ Excavation can be done without impacting on Third Parties;

- ❖ The proposed development does not seriously interfere with the development potential of Gardner House;
- ❖ The issues that have to be agreed by way of condition area not related to matters of principle;
- ❖ The increased numbers of residents in the area will enhance personal security;
- ❖ The proposed development of 134 residential units is substantially below the 500 unit threshold for residential development required for an EIS.

Residents of Bagod Rath Apartments:

- ❖ The issue of visual break remains;
- ❖ In regard to the changes sought to Condition 2(b), these are not sufficient to prevent serious injury to residential and visual amenities. The changes amount to the restoration of the original proposal;
- ❖ 15.9.19 of the development plan limits the height of development on Mews Lanes to three storey;
- ❖ Visually overbearing to Pembroke Row, due to height and proximity to boundaries;
- ❖ Diminish the development potential of the opposite side of the row;
- ❖ The removal of a floor will not materially reduce overshadowing;
- ❖ All built form is to be lost on site and a new street is completely at variance with the site's conservation and mews status;
- ❖ The model of the proposal does not show the surrounding two and three storey buildings, nor changes in terrain. The photomontage of Pembroke Row is misleading;
- ❖ Trees on the roof would add to overshadowing and there is inadequate space for landscaping setback at ground level, part of the pattern of development in the area;
- ❖ The glass staircase element is visually intrusive, ugly and overly close to existing buildings;
- ❖ The cottage is of merit and should be conserved and designed around;
- ❖ The main entrance for pedestrians is unsafe and should be relocated;
- ❖ Inclusion of live-work units is contrary to the Z1 zoning.

Dublin City Council:

- ❖ The progressive setting back of the top two floors of the six floors proposed would result in a forced urban design solution, with the top two floors appearing top heavy, modern ziggurat;
- ❖ The 11 storey element, city council policy requires that new proposals must have regard to the Historic City Centre, River Liffey and Quays, Trinity College and the Canals (15.6.0). These views are not currently compromised by insensitive building.

ASSESSMENT

While the First Party sought a Section 139 appeal against condition, the challenge of the decision by Third Parties requires the appeal to be treated *de nova*. Therefore the

assessment will consider whether the proposal is acceptable in planning terms in the first instance. The main planning issues in this appeal are:

1. Density and mix;
2. Height / design and proximity;
3. Conservation issues;
4. Impact on residential amenities;
5. Traffic;
6. Disputed boundary;
7. Need for an EIS;
8. Construction;
9. Matters to be agreed with the planning authority.

1. Density and mix

The size of the site is roughly an acre, square in shape. It's size and infill location implies that the proposed development should reflect the character of the surrounding area, having regard to the Residential Density Guidelines. I concur with the First Party, that the character of the area is mid-to-late twentieth century, rather than the Georgian core and mews lane it backs onto. Therefore, I am satisfied that a high building is appropriate for the site. The first issue to consider is whether density of the proposed development is acceptable. The site is in an inner city location, strategically located with the transportation system and in terms of local centres of education and employment. It is well served by public transport, a cycle network and is walking distance to the city centre. Much of the future population of the site would be able to walk to shops, schools, workplaces, colleges and recreational resources. Having regard to the National Spatial Strategy Asset Test Framework, the site is imminently suitable for a significant increase in population. The plot ratio of 3.36 is higher than the maximum permitted and while the site is strategically located, it is not on a public transport termini, opposite a LUAS / DART station nor directly onto a Quality Bus Corridor. I am of the view that unless the quality of the proposed development proves particularly high with minimal impacts on the surrounding area, the plot ratio may be excessive.

The proposed development is a mixed development, with live/work units, two offices and a gymnasium. The planning authority was not satisfied with this approach, given the residential zoning of the site and conditioned its decision that the office use and gymnasium be omitted. This had the added benefit of reducing plot density. However this approach conflicts with other policies in the development plan, which seek to prevent apartment development on the ground floor on city streets and on minor streets, apartments are to be high enough to permit future conversion to commercial use. Given that the Traffic Impact Assessment show flows of around 300 persons on Lad Lane, during the morning peak, I am not convinced that bedrooms on the ground floor are acceptable, given the minimal setback on the street. As the northern aspect of this part of the site would give rise to poor daylighting, I would be of the view that the gymnasium at least should be retained and relocated to Pembroke Row and the ground floor offices be retained. An alternate use may be for a crèche, as there is no childcare provision within the proposed development, in spite of being in excess of 75 units, the stated minimum in accordance with the Childcare Guidelines, 2000.

However I realise that this is a new issue and it is too late in the process to make this a material issue.

The proposed development is mostly residential in nature, in accordance with the residential zoning of the site. A conclusion on density is best arrived at following further analysis

2. Height, design, layout and proximity

The site is in a conservation area. It forms the end of a triangular urban form focused on Wilton Place and has frontage onto a mews lane. Having stated that a building of some height should be located on the site as it's architectural context is within modern and contemporary architecture, the issues to be considered are the overall height of the buildings in relation to the Georgian core, the Grand Canal, Lad Lane and Pembroke Road frontages and Court Apartments.

The visual assessment provided by the First Party indicates that for the most part, the proposed development does not impinge on Fitzwilliam Square. The top of the 11th storey apartment is just visible on View 11, which shows the view from Pembroke Street Lower Street Lower, through Fitzwilliam Street North. This is confirmed in section drawing submitted with further information I would concur with the planning authority that will the view is not obvious, that the integrity of the Georgian skyline, which is nearly intact, should not be further compromised. This would indicate that no proposed development should be permitted above 10 stories on the site.

The area is a designated conservation area, not only because of proximity to the Georgian core but also because of the nearby Grand Canal. View 15 and View 21 illustrate the impact of the proposed development on the canal setting. I would be of the opinion that the proposed high building balances the Australian Embassy on Cumberland Road and adds to the visual amenity of the area.

The relationship between the properties on Lad Lane and the proposed development are not fully illustrated in my opinion. The section showing the line of view from Fitzwilliam does not include the mews dwellings. Ms. McKenzie's observation which includes a section drawing is more useful. The Lad Lane mews are a mix of residences and businesses and vary in height from two storey to three storey. These mews buildings have a varied building line, but there is a separation distance of approximately 14metres to the existing buildings on site. The proposed building line is 18metres from main front walls. Lad Lane Apartments, which are 6 storey apartments, the last being setback, are 22metres back from the main front walls of the mews opposite them. I acknowledge that the 8 storey office blocks come nearer the mews buildings. However these buildings are narrow in span. Block A of the proposed development spans approximately 54metres. The elevation drawing submitted on appeal shows an additional gap at the 6th storey. This is insufficient to reduce the degree of visual overbearing on Lad Lane.

While the building opposite the site on Pembroke Row is commercial at present, there was previously an intention to alter this use to residential use. The distance between the buildings and the proposed development varies between approximately 8.5 to 12metres. This will give rise to overbearing on Pembroke Row. I consider this

acceptable. The visual relationship between No. 2 and No. 1 Pembroke Row, adjacent the easterly corner the easterly corner of the site, a pair of three storey dwellings, adjoining a taller three storey office block, is acceptable. I do not consider the change in height to be visually jarring, given the height of existing buildings, including a four storey apartment block on Pembroke Row.

The relationship with Court Apartments is perhaps the most difficult. Court Apartments is 17metres, above ground level. The tower of the proposed development, even with the omission of the final storey, is c.31 metres. The separation distance is approximately 5.8metres, to the proposed tower for a section of Court Apartments. I would be of the opinion that this is unacceptably close and would be overbearing. The tower element of the proposed development should be setback in line with the building line of the front main wall of the interconnecting block between the tower and Pembroke Row (Blocks F & G), which would increase separation distances to 18 metres. The benefit of this approach would be to keep the height of the tower, while increasing the separation with Court Apartments.

The proposed development is also built close to boundaries on the southeastern, Gardner House boundary. I have no difficulties with the block facing onto Lad Lane. However the 4 storey block is less than 4 metres to boundaries. Given the need to setback the proposed development on the Lad Lane and Court Apartment boundaries, and given the difficult internal lighting of the proposed courtyard space evident from the submitted reports, the omission of this block would be appropriate.

As a result of the above changes, the proposed development would consist of 103 residential units, including the live/work units.

3. Conservation issues

A number of conservation issues have been raised. The first is that the site is in a conservation area and the planning policy is that proposals should integrate and complement the character of the area. I am of the view that the proposed development relates visually to Wilton Place, which is dominated by modern architecture. Therefore, as the proposed development is in keeping with this style, it is also in accordance with development plan policy. The approach follows national guidance, which requires that where there is a mix of styles, high quality contemporary design that respects the character of the area is proposal. Also, as the proposed development is not the largest building in the conservation area and it is not overly dominating.

There is no necessity for the site to act as a transitional zone between the Georgian core (Z8) and other zonings, having regard to the pattern of development in the area.

The site has frontage onto Lad Lane. No.s 5,6 and 7 Fitzwilliam Square East, which are protected structures, extend to Lad Lane. I am satisfied that the setting of these properties, which are in use for ancillary car parking has not been adversely affected by the proposed development.

In regard to the existing buildings on site, for the most part these are attractive mid-twentieth century industrial buildings. However they do not have conservation value and their demolition to make way for a higher density development is in accordance

with national policy to increase densification in urban areas. The caretakers cottage is also an attractive, if degraded building and it would appear to be at least 100 years old. However I accept the Conservation Report submitted with the application that the cottage has been substantially revised, with little original features remaining. Its demolition is acceptable. The rubble walls to Lad Lane and a section of Pembroke Road appear to be original walls and there might be merit in recycling these as part of the current proposal. This can be achieved by condition.

4. Impact on residential amenities

The four main issues in this section relate to overlooking, overshadowing / loss of light to existing properties, adequate lighting for future residents and open space.

The proposed development is in close proximity to Court Apartments. Court Apartments were built with fenestration overlooking the site, which would not be permitted under current standards, to protect amenity and development potential. Setting back the tower, in line with the 11 metre setback to Blocks F & G, would reduce the serious overlooking of Court Apartments. For any future residential development on Pembroke Row, which is across a public street, a distance of 12 metres is acceptable, as the permitted apartments have a more reciprocal relationship. The Lad Lane mews houses, which are two storey and three storey across a public road are 18 metres distant from main wall to main wall. The omission of Block K to Gardner House deals protects development potential. It is acknowledged that there will be some degree of overlooking of surrounding properties, it is not of a scale to give rise to serious injury to residential amenity.

The site is on the northern corner of two perpendicular rows on Wilton Place. Development on this site will give rise to overshadowing and loss of light, particularly to Lad Lane, unless it is very limited in height. The proposed development will overshadow the mews houses on Lad Lane in the mornings and by afternoon, the mews houses will fall under their own shadow. Pembroke Row which may be redeveloped as apartments, will also be overshadowed in the afternoons, being north of the site.

Regarding day lighting, applying the BRE standard that there should be no obstruction of that blocks the angle of light at 25 degrees at 2 metres above ground level, the proposed development breaks this standard. To achieve this standard on the proposed buildings line, the maximum height could be three stories, with a setback fourth storey. The sunlight and daylight report confirms that loss of light will occur, but assumed that properties affected were not sensitive. This is not the case in Lad Lane, at least. The reduction in height of the blocks on Lad Lane and Pembroke Row will deal with this issue to permit development. Use of light finishes, rather than the heavy red brick proposed, would considerably help to reflect light.

I do not consider that there will be significant overshadowing of Court Apartments, beyond the existing levels of afternoon shadow that arises from Gardner House. In terms of loss of light, the setback increases should ensure that such losses of defuse light is significantly reduced.

The amenity experienced by future residents will relate to good sized units, rather than quality light in some instances. Given the aspect of the site, this is to some degree unavoidable. However, 44 single aspect apartments seem high. Of these, 19 are on the northern elevation. This seems an excessive number and a better redistribution of the apartments would seem necessary. The level of light reaching ground floor apartments and the internal courtyard seems problematical. The omission of Block K would significantly improve the situation.

Open space is provided for reasonably well, at a level of 6square metres per bedspace. Most apartments have direct access to open space. I also consider the resident's gymnasium to adequately cater for active recreation and the nearby park and canal can provide for passive recreation. With the omission of 36 units, including a block onto the internal courtyard, I do not consider the site overdeveloped.

5. Traffic

Both Pembroke Row and Lad Lane have narrow carriageways, due to the width of the road and the on-street parking on Lad Lane. The proposed development is for 134 apartments, with 158 car parking spaces. I would concur that the site is well served by public transport and that residents, while they may own cars, need not necessarily use them on a day-to-day basis. The Traffic Impact Assessment, which indicates that the proposed development will add circa 22 traffic movements in the AM peak and 12 trips to the PM peak. This estimate seems low but even if this was doubled, the low level of traffic movements in the area (23 vehicles in the AM peak and 37 in the PM peak to and from Pembroke Row) would indicate that there is sufficient capacity.

The sight lines from the vehicular access are shown to be 70metres to Lad Lane and 58metres to Pembroke Row at 2metres. These sight lines are adequate for the site's city centre location, low traffic volumes on the road and low traffic speeds, in my opinion.

The provision of a footpath on Pembroke Row and the widening of the footpath on Lad Lane will enhance traffic safety.

The location of the pedestrian access on Wilton Place between the car park access for Court Apartments and the surface car park at Gardner House, should not materially change the situation for drivers. There is already pedestrian flows coming from the office blocks on Wilton Place and drivers must have regard for pedestrians. The pedestrian access onto Wilton Place is acceptable in traffic safety terms.

The level of parking at 158 spaces derives from basement parking. I do not see a significant benefit in reducing this level of parking, particularly given that on-street parking is disc parking in the vicinity.

6. Disputed boundary

The dispute over the boundary between Court Apartments and the site is a civil matter rather than a planning matter. On the day I visited the site, the existing sheds appear to have been built up to this boundary. Therefore the applicant has, in my opinion, sufficient legal status to seek planning permission. A grant of planning permission

does not entitle one to commence development and the appellants can seek resolution through the courts, should they choose to.

7. Need for an EIS

The number of apartments is below the threshold required by the Planning and Development Regulations 2001, where normally a proposed development of 500 dwelling units would trigger an EIS. An EIS can be requested at sub-threshold level, where it is considered that the proposed development will have significant effects on the environment. While the site is in proximity to the Georgian core, it is not considered to have a significant impact on that historic landscape when viewed from within the core and is not out of character with the pattern of high buildings where the site is situated. Having regard to Schedule 7 of the Planning and Development Regulations, 2001 I am satisfied that an EIS is not required and there is sufficient information supplied in the planning application to come to an informed decision on the appeal and an EIS is not necessary.

8. Construction

The excavation of basements is commonplace in the city at present and it is up to the developer to ensure that no damage arises to adjoining properties. Again, this is a civil matter rather than a planning matter.

The planning authority limited the construction of the proposed development to set hours, which seem reasonable. No additional planning conditions are necessary in this regard.

9. Matters to be agreed with the planning authority

The planning application has been carefully scrutinised by all parties and I am not convinced that there are matters of principle that have been excluded from Third Party comment.

CONCLUSION

The proposed development is an infill proposal on a relatively restricted site, with a northerly aspect. The context of the proposal is the group of modern buildings around Wilton place within the canal vista. The height of these buildings set a precedent and the architectural approach reflects this. The height of the tower, with minimal reduction to preclude views from Fitzwilliam Square, bookends the site with the Australian Embassy on Cumberland Row. The slimness and use of glass in the tower enhances the visual amenity of the conservation area.

The layout and height of the proposed development is somewhat problematical, giving rise to poor internal day lighting for some lower level units and overshadowing and loss of light of properties to the north. It is considered that the reduction in height of the proposed development on Lad Lane / Pembroke Row protects existing and future residential amenities. The omission of Block K enhances the amount of

daylight and sunlight to the scheme. The relocation of the gymnasium to Pembroke Row and retention of offices deals overcomes poor day lighting that would be experienced at ground floor level.

The proposed development will not give rise to traffic hazard, nor significantly increase traffic into the area.

The density of the site has been reduced from roughly 143 units per acre to 106 units per acre. This is considered a more acceptable level of density and there is adequate open space provision and parking, so overdevelopment does not arise.

RECOMMENDATION

I recommend that permission be granted.

REASONS AND CONSIDERATIONS

Having regard to the pattern of development in the area, the zoning provisions relating to the site as set out in the current development plan for the area, the Residential Density Guidelines for Planning Authorities published by the Department of the Environment and Local Government in September, 1999 and the location of the site in proximity to the city centre and public transport network, it is considered that, subject to compliance with the conditions set out below, the proposed development would result in an appropriate form of development at this location, would not seriously injure the amenities of the conservation area nor of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The following revisions shall be made and submitted to the planning authority for its approval, prior to commencement of works on the site:
 - a. The height of the proposed development on Pembroke Row shall three storey, with a setback fourth floor;
 - b. The height of the proposed development on Lad Lane frontage shall be three storey, with a setback fourth floor for a distance of 30 metres from the junction with Pembroke Row and thereafter rising to an overall height of six stories, in accordance with the drawings submitted with the appeal;
 - c. The tower block shall be reduced to 10 stories only and setback in line with Blocks F & G, the interconnecting blocks with Pembroke Row;
 - d. Block K shall be omitted;
 - e. The proposed gymnasium shall be relocated to Pembroke Row;
 - f. All projecting balconies facing towards Court Apartments shall be set back flush with the main wall;
 - g. Internal storage space and balconies shall comply with development plan standards;
 - h. Floor to ceiling heights of the live/work units shall comply with development plan standards
 - i. Details of the boundary treatment between the proposed development and Court Apartments.

2. The requirements of the Traffic Planning Division of the planning authority shall be complied with.

Reason: To protect the amenities of adjoining property and the residential amenities of future occupants.

Reason: In the interest of traffic safety.

3. Prior to commencement of development, details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

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

Reason: In the interest of public health and to ensure a proper standard of development.

5. Prior to commencement of development, a management scheme providing adequate measures relating to the future maintenance of private open spaces, roads and communal areas in a satisfactory manner shall be submitted to the planning authority for agreement.

Reason: To ensure the adequate future maintenance of this private development in the interest of residential amenity.

6. A landscaping plan shall be submitted for the approval of the planning authority and in its hard landscaping element, shall include the re-use of the rubble wall on Lad Lane.

Reason: In the interest of visual amenity and to compensate for the loss of the original trees.

7. Each residential unit shall have an assigned car parking space at basement level.

Reason: In the interest of orderly development.

8. The developer shall facilitate the planning authority in preserving, recording or otherwise protecting archaeological materials or features that may exist within the site. In this regard, the developer shall –

- a. notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development;
- b. employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- c. provide satisfactory arrangements for the recording and removal of any archaeological material which may be considered appropriate to remove;

Reason: In order to preserve the archaeological heritage of the site and to secure the preservation of any remains which may exist within the site.

9. Prior to commencement of development the developer shall submit, and obtain the written agreement of the planning authority to, a plan containing details for the management of waste (and, in particular, recyclable materials) within the development, 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.

Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.

10. Construction work shall be limited to 0800 hours and 1800 hours Monday to Friday and 0800 hours to 1300 hours Saturday.

Reason: In the interest of residential amenity.

11. In accordance with the provisions of Section 96 of the Planning and Development Act, 2000, as amended, the applicant, or any other person with an interest in the land to which the application relates, as may be specified by the planning authority, shall enter into an agreement with the planning authority in relation to the provision of social and affordable housing, in accordance with the requirements of the planning authority's housing strategy, unless they shall have applied for and been granted an Exemption Certificate under section 97 of the Planning and Development Act, 2000, as amended. The agreement shall apply to any grant of permission consequent on the instant grant of outline permission and all relevant provisions of section 96, including section 96(8), shall have effect.

Reason: To comply with the requirements of Part V of the Planning and Development Act, 2000 (as amended).

12. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the satisfactory completion of the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

13. 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. 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.

MARY MAC MAHON
23/01/2006