

An Bord Pleanála



Inspector's Report

PL 29S.246580

Development

Demolish existing 3-storey mews office building and construct a 3-storey over basement mews building for office and cultural use.

70 Fitzwilliam Lane, rear of 70 Merrion Square, Dublin 2

Planning Application

Planning Authority:	Dublin City Council
Planning Authority Ref.:	2337/16
Applicant:	Michael Maughan
Type of Application:	Planning permission
Planning Authority Decision:	Refuse permission

Planning Appeal

Appellant(s):	Michael Maughan
Type of Appeal:	First v Refusal
Observers:	One
Date of Site Inspection:	20 th July 2016

Inspector: Karla Mc Bride.

1.0 INTRODUCTION

1.1 Site and location

The appeal site is located to the rear of Merrion Square on the south side of Dublin City Centre. The surrounding area is characterised by a mix of residential, office and cultural uses. The site is located along Fitzwilliam Lane which is a mews laneway to the rear of Merrion Square South and there are a variety of building types in the vicinity. The site is also located to the rear of an existing 4-storey over basement mid terrace Georgian house at no.70 Merrion Square which is a Protected Structure. The site comprises an existing (but not original) 3-storey mews building which is in office use and the site is bound on either side by 2 and 3 storey mews buildings which are in a mix of office and residential use.

The attached photographs and maps describe the site in some detail.

1.2 Proposed Development

Permission is being sought to:

- Demolish the existing 3-storey structure
- Construct a 3-storey over basement building
- The 439.sq.m. building would occupy a c.383sq.m. site
- The building would be c.8.5m wide, 15.m deep & 9.5m high
- The c.130sq.m basement would be c.7m wide, 26m deep & 3m high
- Provide 5 car parking spaces
- Associated site works including a sunken garden

Accompanying documents:

- Architects Design Report
- Drainage and Watermain Planning Report
- Conservation Impact Assessment Report
- Letter from the Arts Council

1.3 Planning Authority's Decision

The PA decided to refuse planning permission for 2 reasons related to:

- Located in a CA to the rear of a PS; intensification of a non-conforming use which would *materially contravene* the Z1 zoning objective which seeks to protect residential amenities; adverse impact on residential amenities; and undesirable precedent.

- Non-compliance with s.17.10.7 of the Plan in relation to reducing off-street car parking in the curtilage of PSs, detract from visual amenities, negative impact on the character and setting of the PS.

This decision reflects the report of the City Planning Officer.

Interdepartmental reports:

Transportation Department had no objection subject to conditions.

Drainage Department had no objection subject to conditions.

City Conservation Officer recommended that permission be refused.

Submissions:

Two letters received which raised concerns in relation to:- the excavation works; material contravention of Z1 objective; breach of building line; impact on character and setting of PS; overshadowing, overbearance & overlooking; excessive scale & height; and adverse impact on trees, boundaries and private amenity space.

1.4 Planning history

Reg. Ref. 1000/83: Permission granted for a change of use of the second and third floor of the main building at 70 Merrion Square from residential to offices, and for the construction of a residential mews to the rear at 70 Fitzwilliam Lane.

PAC0656/15 - A pre-planning consultation took place and concerns were raised in relation to the conservation challenges, quantum of development and car parking.

2.0 ARCHITECTURAL HERITAGE GUIDELINES FOR PAs, 2004

These Guidelines provide a practical guide in relation to Part IV of the 2000 Planning Act which deals with the protection of architectural heritage in respect of the Record of Protected Structure, Architectural Conservation Areas, Declarations and Places of Worship as well as development control advice and detailed guidance notes on conservation principles.

3.0 DUBLIN CITY DEVELOPMENT PLAN 2011-2017

Zoning objectives:

- The appeal site is located within an area zoned “Z1” which seeks “To protect, provide and improve residential amenities.”
 - Permissible uses include cultural buildings & uses
 - Offices are open for consideration
- The main building at no.70 Merrion Square South is located within a Georgian Conservation Areas – Zone Z8 which seeks “To protect the existing architectural and civic design character, to allow only for limited expansion consistent with the conservation objective.”
 - Permissible uses include cultural buildings & uses and offices (maximum 40% of unit).

Non-conforming uses (section 15.8)

Throughout the Dublin City Council area there are uses which do not conform to the zoning objective for the area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Act in respect of the continuing use. When extensions to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

Heritage:

- The site is located within a Georgian Conservation Area
- No.70 Merrion Square South and the adjoining buildings are Protected Structures.

Section 17.9.4: Mews Development standards

(a) Existing stone/brick coach houses located on mews laneways are of national and international importance.

(b) Development will be confined to single-family units, 2-storey high.

(d) New buildings should complement the character of the lane and main building with regard to scale, massing, height, depth, roof treatment and materials.

Section 17.10.1: Works to Protected Structures

In determining applications which relate to protected structures or their setting the authority will take into account:

- The importance of the building, its intrinsic special architectural and/or historic interest and rarity.
- Particular physical features of the building, external and internal.
- The extent and impact of interventions and alterations proposed and already taken place, excluding any unauthorised development.
- Setting and contribution to streetscape.
- Extent to which the proposed works would bring substantial benefits to the community.

Section 17.10.2: Development within the Curtilage of a Protected Structure

In considering applications for development within the curtilage of a PS, the planning authority shall have regard to the following:

- The protected status of the structure and the need to protect its special character.
- The various elements of the structure which give the protected structure its special character and how these would be impacted on by the proposed development.
- Proximity of any new development to the main protected structure and any other buildings of heritage value.
- The design of the new development, which should relate to and complement the special character of the protected structure.

Section 17.10.7: Non-Residential and Commuter Off-street Parking in the Curtilage of Protected Structures and in Conservation Areas

In parts of the city centre, the large scale provision of commercial and commuter off-street car parking in the curtilage of protected structures and conservation areas significantly detracts from the special interest and visual character of protected structures and sensitive areas. In many cases, planning permission has not been granted for such off-street parking or the associated hard surfacing of the former rear garden area. In assessing development schemes where off-street

parking is proposed, or where such parking exists and is proposed to be retained as part of the overall scheme, its impact on the integrity, setting, character and amenities of the protected structure and/or conservation area will be critically assessed. In all cases, the objective to eliminate unauthorised and excessive off-street car parking will be sought. This objective is consistent with the policies of Dublin City Council to protect the special interest and character of protected structures and conservation areas.

Section 17.10.8.1: Development in Conservation Areas

All new buildings should complement and enhance the character and setting of conservation areas. In considering proposals for development in conservation areas, it is policy to have particular regard to:

- The effect of the proposed development on buildings and the surrounding environment, both natural and manmade.
- The impact of development on the immediate streetscape in terms of compatibility of design, scale, height, plot width, roof treatment, materials, landscaping, mix and intensity of use proposed.

Development within conservation areas should be so designed so as not to constitute a visually obtrusive or dominant form of development. New alterations and extensions should complement existing buildings/structures in terms of design, external finishes, colour, texture, windows/ doors/roof/ chimney/design and other details.

4.0 APPEAL

4.1 First Party appeal

Future Analytics Consulting Ltd. submitted a First Party appeal on behalf of the applicant Michael Maughan.

- Proposal is in accordance with s.15.8 of the Plan, the extension to this established non-conforming use will not adversely affect the amenities of the area, it will not create a precedent and it does not constitute material contravention.
- There will be a reduction in on-site car parking in line with s.17.10.7 of the Plan (subject to a minor amendment).

- Permission was granted in 1983 for a change of use of the second and third floor at 70 Merrion Square from residential to offices and for the construction of a residential mews to the rear; a second floor level with mansard roof was constructed in the intervening years and by 1999 the entire mews building was leased as office space; the Arts Council has occupied the building since 2009.
- No.69 to the SE is occupied by a 3-storey mews building in office use with car parking in the front set back and a side passage which leads to additional car parking; permission was granted under Reg. Ref. 1170/00 for an office and 2-bed apartment over.
- No.71 to the NW is occupied by an original 2-storey mews house which is accessed off the Lane via a recently constructed archway and views of this mews are obstructed by a 4.5m high front wall.
- The Lane comprises a range of buildings in varying designs and uses, it is covered by more than 1 zoning objective and although it is mainly covered by the Z1 objective there are very few residential units in the area which is mixed use in character.
- The proposed building will contain an exhibition space and offices with 5 car parking spaces, the design compliments the streetscape and the front setback matches the neighbouring setback at no.69.
- The Arts Council has a long established presence in Merrion Square, the building seeks to provide much needed exhibition space and the proposal represents a continuation of a long established office/cultural use in the building.
- This is similar to the recent extension of the Goethe-Institut at 37 Merrion Square which also straddled the Z8 and Z1 zones and was considered a continuation of an acceptable Z8 use and a consolidation of an institutional uses by the PA.
- The non-conforming use has been in existence for over 7 years with no adverse impacts on the amenities of the area.
- Section 37(2)(a) of the P&D Act allows the Board to overturn MC decisions in certain circumstances including projects of national significance having regard to the pattern of recent permissions.
- The Arts Council is a government agency and its work is of national importance, permissions have been granted for similar developments in the area including at no.66 (Reg. Ref. 2891/09) for

the demolition of a mews and construction of a 3-storey office block, ABP considered that the lane was ideally suited to a more intensive use of zoned and serviced land and having regard to the small number of residential uses along the Lane.

- Willing to provide a dual exhibition/office space (c.127sq.m.) in the basement with amended drawings on file.
- A similar MC cases exists at Denzille Lane (PL29S.215755)
- The height, design and scale of the building would not detract from the area and is sensitive to its heritage setting, there are very few views from the public realm and it is only slightly higher than the existing mews but with a second floor set back.
- Minor design changes suggested deal with the overlooking concerns at rear garden to no.71 with amended drawings on file.
- The proposal would result in a reduction of car parking spaces from 8 to 5 within the curtilage of the PS with no adverse impacts on the character and setting of no.70 Merrion Square.
- Minor design changes suggested to further reduce the spaces from 5 to 1 space on the appeal site with amended drawings on file.

4.2 Observers

One letter of observation received from McGill Planning on behalf of Dermot Desmond of no.71 Merrion Square.

General:

- Neither the existing building (as built) nor the use (office) has an established permission therefore the proposal is not a continuation of an established permission.
- Permission was granted under Reg. Ref. 1000/83 for a 2-storey mews house but a 3-storey building with mansard roof was built.
- The entire building has been used as offices since 1999 without permission and occupied by the Arts Council since 2009.
- S.35 of the P&D Act entitled the PA to refuse permission due to obvious failures to comply with the established planning permission.

Contrary to Z1 residential objective:

- Non-residential uses must demonstrate compatibility with the zoning objective and the office use is incompatible.
- The mews site adjoins the residential properties at no.71 (house and mews) and both are served by a garden that will be overlooked despite all the proposed screening mechanisms.

Non-conforming office use:

- The permitted Z1 uses do not include offices, which are open for consideration subject to their compatibility with the zoning objective.
- The proposal would have a direct negative impact on existing residential amenities of no.71.
- S.15.8 of the Plan which states that extensions to or improvement of an existing premises which is a non-conforming use should not adversely affect the amenities of premises in the vicinity.
- Proposed demolition and construction does not represent an extension to or an improvement of an existing premises.

Character and setting of mews at no.71:

- Design and layout of the existing 20th century mews at no.70 accords with the Z1 objective and residential function of the area.
- Proposed modern office design does not respect the neighbouring restored historic mews house at no.71, but it reflects the newer building line at no.69, which should not be used as a precedent.
- No. 71, 72 & 73 comprise a continuous row of 3 surviving early coach houses and this should be respected by new developments and the existing mews at no.70 is built within the original footprint.
- Inappropriate height and scale, visually prominent and over bearing, adverse impact on character and setting of historic mews houses.
- No details provided of existing boundary gutter with no.71 and alignment to new building, chimney stack omitted from drawings.

Dual use proposal:

- Proposed dual use of the basement for exhibitions and office space does not address the fact that the principle use for offices materially contravenes the zoning objective for the site, and cultural use of the courtyard could adversely affect neighbouring amenities.

Material contravention:

- The Arts Council (the occupants) has not confirmed that the space is urgently required or that the works are of national importance and the MC exception under S.37 (2) (a) is not relevant.

Precedent:

- None of the previous cases referred to by the applicant are relevant and cannot be used to support MC exceptions.
- The extension to the Goethe Institute was for educational use which is acceptable in principle in Z1 areas.
- The Board had regard to the established office use at 66 Fitzwilliam Lane which had the benefit of planning permission.
- The alteration and extension to the 3rd floor of 19-21 Denzille Lane to provide an architect's studio was within an established mixed use mews and residential was retained on the 1st and 2nd floors in accordance with the Z1 objective.

Reason no.2:

- No objection to the replacement of 4 car parking spaces with a landscaped garden however its use for cultural activities could adversely affect residential amenity.

4.3 First Party response

Existing unauthorised development:

- The PA stated in relation to the Goethe Institut "that these uses are a continuation of the existing uses on the site and are permissible uses in the Z8 zone. This aspect of the proposal is therefore considered acceptable."

- Office (max 40%) and cultural uses are listed as permissible uses within Z8 areas and the proposal constitutes a consolidation of the uses on the entire site and the continuation of the existing permissible uses within this zone.
- The existing mews has an established office use since 1999 and should not be considered an MC of the Plan, as per s.15.8.

Z1 residential zoning objective:

- Overlooking concerns addressed by screening mechanisms at first and second floor level on the N façade which consist of:
 - Obscure glazing to the stairwell at 1st and 2nd floor levels.
 - Obscure glazed fins which extend from the façade at either side of the windows at 1st floor level.
 - The windows at 2nd floor level will be glazed to a height of 1.7m above FFL.
- An alternative measure would be to splay the windows of the stairwell and offices as per Fig. 1 & 2 (attached on file).
- The rear of the existing building overlooks the garden at no.71 and the proposal will result in an overall improvement in amenity.

Office as Non-Conforming Use:

- Disagree with Observer's interpretation of s.15.8.
- Under Reg. Ref. 2491/09 at 44-53 Townsend Street & 36-42 Moss Street, the PA permitted an 8-storey commercial redevelopment on the site of a non-conforming car service centre, this use was to be retained despite not being permissible or open for consideration in Z1 as it was seen as a continuation of an established use.
- Under Reg. Ref. 2891/09 at 66 Fitzwilliam Lane, ABP permitted a 3-storey office development on the site of a non-conforming office use as it was considered to be an established use.
- The proposed office and exhibition space can be considered given the established use on the site, the proposal would not injure amenity or interfere with the character and setting of the PS.

Impact on no.71:

- The set back is in line with no.69 to preserve the rhythm of the streetscape and the 2nd floor setback minimises the visual impact with no adverse impact on the streetscape.
- This section of the laneway contains c.4m high walls which form part of the curtilage of the PS along Merrion Square and the coach houses are obscured from public view.
- Drawings comply with S.23 (1) (d) of the P&D Regulations.

Dual use proposal, MC & precedent:

- Proposed to use the basement space for offices and exhibitions.
- The work of the Arts Council is of national importance and does constitute a MC exception under S.37 (2) (a) of the P&D Act.
- Several other examples of permission being granted for works to established non-conforming uses.

Refusal No.2:

- The time at which the rear garden could be used for cultural events could be controlled by way of planning condition.

4.4 Planning Authority response

The Planning Authority response raised no new issues.

4.5 Prescribed Bodies

The appeal was circulated to An Chomhairle Ealaíon (The Arts Council) and Fáilte Ireland for comment and there has been no response.

4.6 Further correspondence

Further correspondence from the PA raised no new issues.

The Observer raised the following concerns in relation to the proposed modifications which (they submit) demonstrate that the development is inappropriate for this location:

- Dual use of basement as office /exhibition space could impact residential amenities and the Arts Council are not known to host exhibitions.
- The screening mechanisms in rear facing windows will be visually obtrusive, and the perception of being overlooked will remain.
- Proposal remains incompatible with the Z1 zoning objective.
- The previous cases cited by the applicant relate to established and permitted uses/structures which would have no adverse impacts on neighbouring residential amenity because of their location.
- In the current case the office use and converted third floor were never legally established and are unauthorised, and are also located adjacent to residential uses.
- Although the Arts Council supports the proposed development it does not specify a need for additional office or exhibition space, and the proposal does not constitute an MC exemption as it is not of strategic or national importance.

5.0 REVIEW OF ISSUES AND ASSESSMENT

The main issues arising in this case are:

1. Material contravention
2. Principle of development
3. Built heritage and visual impact
4. Residential amenity
5. Other issues

5.1 Material contravention

The planning authority decided to refuse planning permission for the proposed development for 2 reasons, the first of which stated:

The proposed development is located within a designated Conservation Area and to the rear of a Protected Structure, No. 70 Merrion Square. The proposed development would result in an intensification of a non-conforming use which would materially contravene the Z1 zoning objective of the site which aims to protect, provide and improve residential amenities. The scale and character of the development would impact negatively on adjoining properties and would fail to comply with Section 15.8 of the Dublin City Development Plan 2011-2017 whereby extensions to or improvements of a non-conforming use may be granted where the use would not adversely affect the amenities of premises in the vicinity. The proposed development would create a precedent for inappropriate development on Fitzwilliam Lane and would therefore be contrary to the proper planning and sustainable development of the area.

Section 37 (2) (a) and (2) (b) of the Planning and Development Act, 2000 (as amended) set out the circumstances under which the Board can overturn the decision of a planning authority when material contravention forms part of the reason for refusal.

Notwithstanding the national status of the Arts Council and the previous cases cited by the applicant in relation to non-conforming uses, the proposed development in itself is not of national or regional importance, the Development Plan incorporates all relevant national planning policy and regional guidance, the policies and objectives are clearly stated in the Plan, and the pattern of planning permissions since the making of the last Development Plan reflect current planning policy for the area.

I am therefore satisfied that the current case does not represent an exemption under Section 37 (2) (b) however the merits of the proposed development will be assessed in the following sections.

5.2 Principle of development

The proposed office development would be located within an area zoned “Z1” which seeks “To protect provide and improve residential amenities.” Office use is open for consideration but are not permissible in principle, although cultural buildings and uses are.

The main building at no.70 Merrion Square South is located within an area zoned Z8 which seeks “To protect the existing architectural and civic design character, to allow only for limited expansion consistent with the conservation objective”. Permissible uses include cultural buildings and uses and offices (up to maximum of 40% of the unit).

Planning permission was previously granted in c.1983 under Reg. Ref. 1000/83 for a change of use of the second and third floor of the main building at 70 Merrion Square South from residential to office use, and to construct a 2-storey residential mews to the rear at no.70 Fitzwilliam Lane. A second floor level with mansard roof was also constructed and the permitted use was changed from residential to offices although there are no records of planning permission ever being granted for either of these developments. The changes are therefore unauthorised and the offices constitute a non-conforming use.

Section 15.8 of the Development Plan states that throughout the Dublin City Council area there are uses which do not conform to the zoning objective for the area. All such uses, where legally established (the appointed day being 1 October 1964) or where in existence longer than 7 years, shall not be subject to proceedings under the Act in respect of the continuing use. When extensions to or improvements of premises accommodating such uses are proposed, each shall be considered on their merits, and permission may be granted where the proposed development does not adversely affect the amenities of premises in the vicinity and does not prejudice the proper planning and sustainable development of the area.

The second floor mansard level of the existing building and the office use are unauthorised, and the office use is also a non-conforming use as offices are not listed as permissible within the Z1 zone, although they are open for consideration. Whilst it is accepted that the office use has been in existence for more than 7 years, it is also noted that the proposed development would not constitute an extension of

improvement to the premises, given that the existing c.228q.m. building would be demolished and replaced by a new c.439sq.m structure. Having regard to the scale of the proposed building relative to the scale of the existing building, the proposed development would result in an intensification of a non-conforming use the Z1 zone.

The proposed office building, which would have extensive glazing at three levels in the rear elevation, would either overlook the neighbouring residential site at no.71 Fitzwilliam Lane or it would result in a strong perception of being overlooked, which would seriously injure the residential amenities of neighbouring properties (refer to section 5.4 below for more details). The proposed development would therefore “adversely affect the amenities of premises in the vicinity” as per Section 15.8 with respect of non-conforming uses.

The proposed building would have an adverse impact on the character and setting of neighbouring original mews houses which are located within the curtilage of protected structures, the Georgian Conservation Area and the mews laneway (refer to section 5.4 below for more details). The proposed development would therefore “prejudice the proper planning and sustainable development of the area” as per Section 15.8 with respect of non-conforming uses.

Having regard to all of the above, the proposed development would fail to comply with Section 15.8 of the Development Plan whereby extensions to or improvements of a non-conforming use may be granted where the use would not adversely affect the amenities of premises in the vicinity, which would in turn materially contravene the Z1 zoning objective of the site which seeks “to protect, provide and improve residential amenities”.

The proposed dual use of part of the proposed basement for exhibition space is noted, however the scale of the dual use is insufficient to render the overall proposal compatible with the Z1 zoning objective.

The previous planning cases cited by the applicant are noted however they are not considered to set a precedent for the type of development proposed, having regard to the particular circumstances of this case and the character of the surrounding area.

5.3 Built heritage and visual impact

The proposed development would be located within a Conservation Area and to the rear of no.70 Merrion Square which is a designated protected structure. The rear garden boundary walls of no.70 lie within the curtilage of this protected structure as does the limestone wall with arched entrance off Fitzwilliam Lane. The proposed building would be located adjacent to an existing original 2-storey mews house at no.71 Fitzwilliam Lane which lies within the curtilage of no.71 Merrion Square South, which is also a designated protected structure. No.71 Fitzwilliam Lane forms part of a small terrace with two other original mews dwellings which also lie within the curtilage of the protected structures at nos. 72 and 73 Merrion Square South.

Section 17.10.1 of the Development Plan requires that new developments should have a high standard of layout and design in order to ensure that the character and setting of the protected structure is protected. Section 17.10.2 requires that consideration be given to the impact of new development within the curtilage of a protected structure, on the special character of the structure and any other buildings of heritage value, and that the design of the new development should relate to and complement the special character of the structure.

Section 17.10.8.1 of the Development Plan requires that all new buildings in Conservation Areas should complement and enhance the character and setting of conservation areas... with respect to the effect on of any new development on buildings and the surrounding environment, and on the immediate streetscape in terms of compatibility of design, scale, height, plot width, roof treatment, materials, landscaping, mix and intensity of use proposed. Furthermore section 17.9.4 (d) states that new buildings along mews laneways should complement the character of the lane and main building with regard to scale, massing, height, depth, roof treatment and materials.

The proposed development would comprise the demolition of the existing 3-storey late 20th Century building and its replacement with a new 3-storey over basement building in a contemporary design with first and second floor setbacks. The following table compares the main (approximate) dimensions of the existing building, the proposed building and the neighbouring original mews dwelling at no.71.

	Existing	Proposed	No.71
Height	9.0m	9.5m	7.5m
Depth	12.5m	15m	12m
Width	8.5m	8.5m	8.5m
Set back - lane	10.0m	8.0m	10.5m
Set back - PS	50.0m	48.0m	50.0m
Floors	3 levels	3 + basement	2 levels

The height and depth of the proposed building would be significantly greater than the depth of the existing building and the height and depth of the neighbouring original mews building at no.71. The set back from the boundary with Fitzwilliam Lane would be significantly reduced. The proposed building would project forward of the building line established by the three original mews structures at no.71, 72 and 73 by approximately c.2m, although it would be similar to the neighbouring modern building at no.69. The proposed building would have a contemporary design with first and second floor setbacks and extensive glazing on the front and rear elevations.

Having regard to the built heritage character of the area and to Council policy for new developments within Conservation Areas, mews laneways and within the curtilage of protected structures, the proposed development, by reason of its height, scale, design and set back from the laneway boundary, would have an adverse effect on the character and setting of the adjacent original news buildings and the streetscape.

The Council's Conservation Officer also raised concerns in relation to the potential impact of the proposed works on the original boundary wall which lies within the curtilage of the protected structure at no.70 Merion Square. This issue would require further consideration by the applicant before the impact could be adequately assessed.

5.4 Residential amenity

The proposed 3-storey office building would be located adjacent to an existing 2-storey mews house at no.71 Fitzwilliam Lane and to the rear of an existing 4-storey over basement house at no.71 Merion Square South. The large glazed windows at first and second floor level in the proposed rear facing elevation would overlook the neighbouring garden. This would give rise to a loss of privacy which would in turn

have an adverse impact on the residential amenities of the neighbouring properties. Furthermore the significance of the impact would be exacerbated by the proposed use of the building for offices.

The applicant's proposed modifications to the rear facing windows are noted as an attempt to reduce overlooking, however the perception of being overlooked by the occupants of the office space would remain, and the proposed screening would be visually obtrusive.

5.5 Other issues

Car parking: The car parking arrangements as amended by FI, which would omit the four rear spaces and retain one disabled space in front of the building, are considered to be acceptable in terms of visual amenity and are compatible with the Council's vision for the area. The site is located in close proximity to several public transport options including Dublin Bus and the Luas. The proposed development would not give rise to overspill car parking along the laneway nor would it give result in a traffic hazard or endanger the safety of other road users.

Environmental services: The proposed arrangements are considered acceptable subject to compliance with the requirements of Irish Water and the planning authority.

Appropriate assessment: The proposed development would not have an adverse effect on the integrity of any European Sites.

Financial contribution: Standard conditions should be applied in accordance with the Council's Section 48 Scheme and any other Council Schemes.

6.0 RECOMMENDATION

Arising from my assessment of this appeal case I recommend that planning permission should be refused for the proposed development for the reasons and considerations set down below.

REASONS AND CONSIDERATIONS

1. The proposed development would result in an intensification of a non-conforming use which would materially contravene the Z1 zoning objective of the site which aims to protect, provide and improve residential amenities. The scale and character of the development would impact negatively on adjoining residential properties and would fail to comply with Section 15.8 of the Dublin City Development Plan 2011-2017 whereby extensions to or improvements of a non-conforming use may be granted where the use would not adversely affect the amenities of premises in the vicinity. The proposed development would create a precedent for inappropriate development on Fitzwilliam Lane and would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development would be located within a designated Conservation Area and to the rear of a Protected Structure, No. 70 Merrion Square, and it would also be located adjacent to the original mews dwelling No. 71 Fitzwilliam Lane which lies within the curtilage of a Protected Structure, No. 70 Merrion Square. Having regard to the height, scale, design and set back of the proposed building from Fitzwilliam Lane relative to the original mews dwelling on the adjacent site at no. 71 which lies within the curtilage of a Protected Structure, the proposed development would have an adverse impact on the character and setting of the protected structure and it would seriously injure the visual amenities of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area

Karla Mc Bride

Senior Inspector

10th August 2016