



**Development (summary)** Demolition of no.46 Lower Rathmines Road and mews to rear of no.36; renovate nos.40, 42 & 44 (Protected Structures) to create building C to accommodate 24no. student residential units & associated facilities; and construct 2no. buildings of 4-storey (building A – 74no. student residential units & associated facilities) & 3-storeys (building 3 – 46no. student residential units & associated facilities); plus landscaping, 4no. car parking spaces and 42no. bicycle parking spaces.

**Location** Nos.40, 42, 44 & 46 Lower Rathmines Road, Dublin 6.

**Planning Authority** Dublin City Council

**Planning Authority Reg. Ref.** 3389/15

**Applicant(s)** Blackberry Fair Co-Ownership

**Type of Appeal(s)**

- i) First party against condition
- ii) Third party against decision

**Planning Authority Decision** **GRANT** with conditions

**Appellant(s)**

- 1. Blackberry Fair Co-Ownership
- 2. Rathmines Initiative
- 3. Coleman Connor
- 4. Gary Compton & John Campbell

**Observer(s)**

- 1. Martin Plant Motors.

2. Madeleine Moore and Oliver Comerford

**Date of Site Inspection**

30/09/16

**Inspector**

John Desmond

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## 1.0 Site Location and Description

- 1.1. The site subject of the appeal is located in south Dublin City, c.2km south of the O'Connell Street, c.1.8km south of and c.3.6km northeast of the centre of TCD and UCD, respectively. The site is situated on the northern side of Rathmines, c.140m from what may be regarded as the town centre area (i.e. it is zoned for mixed services facilities). The area has a high proportion of heritage properties, including numerous protected structures both within the site and within the immediate vicinity, comprising terraced period dwellings and standalone buildings, including Mary Immaculate Refuge of Sinners Church (within c.7m to the south), with its prominent dome a distinctive visual element in the skyline of this part of the city.
- 1.2. The application site has a stated area of 2585-sq.m. It is bounded by Lower Rathmines to the west (front) and has a limited frontage onto Fortescue Lane to the rear. To the south it abuts no.48 Lower Rathmines Road, a 4 storey (3 over pediment basement) flat-roofed building of apparently late 20<sup>th</sup> Century provenance, and no.50, a 1.5 storey flat-roofed building, also being of late 20<sup>th</sup> Century construction. Both appear to be associated with the adjacent church.
- 1.3. To the north the site abuts no.38 Lower Rathmines Road, a 4-storey over pediment basement historic building, which forms part of the same terrace of historic buildings extending northwards for another c.136m. The total length of the continuous terrace is c.177m. The site boundary runs along the rear of nos.36 and 38, incorporating what would originally constitute part of their rear gardens into the application site. The northernmost part of the site is adjacent to the site of a mews dwelling, separated from and to the rear of no.34, with its access to Fortescue Lane. To the southeast, the site abuts Bessborough Court, a development of three 3-storey (2<sup>nd</sup> floor at roof level) dwellings at the terminus of Bessborough Parade.
- 1.4. The site comprises the entirety of the original curtilages of nos.40, 42, 44 and 46, and approximately half the curtilages (rear, abutting Fortescue Lane) of nos.36 and 38. There are five separate buildings within the site, including 4no. terraced buildings fronting onto Lower Rathmines (nos.40, 42, 44 and 46) and what would appear to be an historic mews coach house fronting onto Fortescue Lane (to rear of no.36). Nos.40, 42 and 44 are historic buildings, but no.46 is of late 20<sup>th</sup> Century construction, incorporating some historic reference to the adjacent heritage

structures. Apart from the aforementioned buildings, the balance of the site has been cleared of all structures, buildings and boundary walls and is mostly covered by a fixed surface of concrete and, based on aerial photographs of the area, has been in use as a surface car park in recent years.

- 1.5. Nos.40, 42 and 44 (Protected Structures) are in bedsit accommodation, with significant interventions internally to accommodate same. Externally, those structures have had their front garden railings removed and front gardens resurfaced for parking, as has no.46 (not a Protected Structure).
- 1.6. In contrast to the wide thoroughfare of Lower Rathmines Road, Fortescue lane, to the rear of the site, is a relatively narrow mews lane, of poor horizontal alignment (particularly at the northern end where there is a c.90-degree bend) and severely restricted accessibility. It is a cul-de-sac with access at the northern end, only, onto Mount Pleasant Avenue Lower and no official turning area. It provides access to the rear of historic residential property and main access to more recent mews housing development and some commercial premises.

## 2.0 Proposed Development

- 2.1. The main elements of **initially proposed development** may be summarised as follows:

Total of 129no. bed-spaces indicated, within 16no. student 'house' units.

- Demolish no.46 Lower Rathmines Road
- Demolish mews to rear of no.36
- Renovate and refurbish nos.40, 42 & 44, being Protected Structures, to create Building C (1,215.6-sq.m), to accommodate 24no. student residential units with associated communal living room, kitchen and dining areas and laundry facilities 3no. student 'house' units);
- Erect 4-storey building (2,547.6-sq.m), referred to as Building A, to accommodate 74no. student residential units over single basement levels comprising common room, storage spaces, gym and laundry facilities (12no. student 'house' units);

- Erect 3-storey building (478.5-sq.m), referred to as Building B, (entailing the demolition of no.46) to accommodate 8no. student residential with associated communal living room, kitchen and dining areas and laundry facilities, with caretaker accommodation at lower ground floor level (1no. student 'house' unit);
- Provide landscaped open space at basement level to Building A and at third floor level to Building B.
- Works to no.40 (Protected Structure) include removal of bedsit accommodation and reinstatement of original room layout on all levels, with sanitary facilities in new rear return (new extension of 50.4-sq.m GFA) accessed off stair landings;
- Works to nos.42 and 44 (Protected Structures) include removal of bedsit accommodation and reinstatement of original room layout on all levels, with sanitary facilities in existing rear return accessed off stair landings;
- Reinstatement of the original boundary walls and gardens (including provision of double gates, repair and refurbishment of existing entrance steps, railings and balustrades) to front of nos.40, 42 and 44 (Protected Structures), with a single parking space per unit garden.
- Provide total of 4no. car parking spaces and 42no. bicycle parking spaces; bicycle parking, residential refuse storage (at eastern boundary), associated plantrooms at basement level;
- Pedestrian access to be via existing archway from Lower Rathmines Road and secondary pedestrian entrance to Fortescue Lane.

## 2.2. **Supporting documentation (in addition to architectural drawings):**

- Comprehensive cover letter prepared by Noonan Moran Architecture.
- Architectural Heritage Impact Assessment prepared by Blackwood Associates Architects and Building Conservation Consultants.
- Photographic Record

## 2.3. **Amended scheme by further information (30/03/16):**

Total of 135no. indicated bed-spaces (excluding management suite) in 18no. student 'houses' accommodated through the following revisions:

- Revised Building A –
  - Redesigned with stepped arrangement and revised façade treatment incorporating traditional brown/yellow brick primarily for ground and first floor levels and greys zinc roof profile at second and third floor levels to read as a 2-storey building with setbacks above.
  - Positioned further from rear boundary with Bessborough Court, with a separation distance of 6.8m for the central (majority) section.
  - GFA stated as 2252.1-sq.m (reduced from 2,547.6-sq.m).
  - 76no. rooms (increase from 74no. in initial application) with 78no. bed-spaces in 11no. apartments.
- Revised Building C to accommodate 11no. indicated bed-spaces in one student ‘house’ each at nos.40, 42 and 44 (no change to floor area indicated).
- Revised Building B (no.46) with 19no. indicated bed-spaces in 4no. student ‘houses’ (one per level) (increase in floor area to 525.7-sq.m from 478.5-sq.m).
- Revised landscaping including provision of stepped arrangement for the basement level courtyard. Total open space, including central area, the four front gardens onto Lower Rathmines Road, the loop path around the student housing building and upgraded pedestrian entrance from Rathmines Road Lower is stated as 650-sq.m, or 4.95-sq.m per bed-space.

#### 2.4. Supporting documentation (in addition to architectural drawings):

- Cover letter and detailed FI response prepared by Noonan Moran Architecture.
- Photographic Record
- Modelling images
- Sectional Perspective
- Supplementary Architectural Heritage Impact Assessment (March, 2016), prepared by Blackwood Associates Architects and Building Conservation Consultants.
- Design Rationale – Landscape Architecture, prepared by Studio AULA.

- Shadow Analysis

### 3.0 Planning Authority Decision

#### 3.1. Decision

Subsequent to receipt of response to the request for further information, the planning authority decided to **GRANT** permission subject to 16no. conditions. Non-standard conditions related as follows:

No.3 – Omit second floor level Building A, with sedum roof extended to cover entire roof of proposed first floor.

No.6 – Use of residential accommodation restricted to student accommodation and shall be operated and managed in accordance with Student Management Plan submitted with application.

No.9 – (i) Fortescue Lane access not to be used for vehicular access, deliveries or bin collections.

#### 3.2. Planning Authority Reports

##### 3.2.1. Area Planner

The **first report (dated 30/09/15)** recommended that further information be sought in respect of five areas of concern:

No.1 – Conservation issues – Scope of conservation to the protected structures; impact of student accommodation on proposed use of historical plan form; modulation of monolithic student block to reference mews lane grain and scale, considering original building plots; 3-D images of scheme within historic context.

No.2 – Issue of potential impact on neighbouring residential amenities – Address concerns regarding height of Building A. In the body of her report, making reference to the provisions of section 17.10.8.1 of the development plan, she states '*there is serious concern regarding the bulk, scale and massing of this block [Building A] and its overall relationship to the adjoining residential properties on Bessborough Court and Fortescue Lane.*'<sup>1</sup> She raised similar concerns regarding the potential impact on

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<sup>1</sup> P.10 'Scale of Development'.

those properties from overshadowing, overlooking, perceived overlooking and overbearing.

No.3 – Design – Address monotonous façade treatment of Block A, having regard to original plot widths, and proposed use of finishes having regard to setting of the Protected Structures (terrace and church buildings).

No.4 – Amenity space quantity and quality issues – Detail how open space compliance (11.4-sq.m per bed-space) calculations were arrived at, and provide sunlight analysis for sunken open space.

No.5 – Roads and traffic issues – servicing of site for deliveries, bin collections, etc., including accommodating students moving in/out; demonstrate through swept path analysis how fire tender access can be accommodated via Fortescue Lane; shown provision of 45no. secure, sheltered, well-lit and conveniently located parking spaces required under CDP standards.

The **second report (25/04/16)** recommended that permission be GRANTED subject to 16no. conditions, which is consistent with the decision of the Planning Authority and the conditions attaching thereto.

In particular, I note that area planner raised serious concern regarding the proposed second floor level and elevational treatment of Building A, referring, in particular, to the visually incongruous roof evident in proposed site sections (drawing no.PL33). She also considered the aspect of (noted Velux roof lights) and quality of accommodation offered within the units at second floor level to be a cause of concern.

In her conclusion she states '*The removal of the proposed second floor<sup>2</sup> level [to Building A] will reduce the impact of this rear block even further which will benefit not only the site but also the neighbouring properties surrounding it.*' She recommended the attachment of condition no.2, omitting the proposed second floor level '*In the interest of the visual amenity of the area.*'

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<sup>2</sup> For clarity, it should be noted that the roof level units are referred to on the '*proposed second floor plan*' (drawing no.PL.13 submitted 30/03/16).



### 3.3. Other Technical Reports

#### 3.3.1. Conservation Officer

**First report (15/09/15)** – recommended that further information be sought, the details of which were included in the further information request as item no.1.

**Second and final report (25/04/16)** – The response to further information request was considered to have successfully addressed the concerns of the CO. It is the expressed opinion that the amended proposal has managed to mitigate the scale and girth of the proposed infill in this sensitive site by carefully considering the roof form, internal spaces and junctions, but that the combination of brick and metal cladding requires further consideration through provision of site exemplars and suggesting that traditional finishes, such as render might be more suitable to compliment the historic terrace character. Condition no.3 attaching to the decision is as per the conditions recommended by the CO.

#### 3.3.2. Roads & Traffic Planning Division

**First report (14/09/15)** - recommended that further information be sought, the details of which were included in the further information request as item no.5.

**Second and final report (20/04/16)** – No issue was raised concerning the response to further information request. Condition no.9 attaching to the decisions is generally as per the conditions recommended the Executive Engineer, except that it does not include reference to requirement to comply with the Code of Practice.

#### 3.3.3. Statutory referrals

**An Taisce (10/09/15)** – Proposed new façade to no.46 should be revised to tie in better with historic terrace; section 17.10.2 of the development should guide proposed development to the rear concerning retention of traditional proportionate relationship.

#### 3.3.4. Third Party Observations

14no letters of observation were received from the following - Rathgar Residents Association c/o Philip O'Reilly (08/09/15), Oliver Comerford and Madeleine Moore of no.44 Mountpleasant Avenue Lower (08/09/15), Conor Chakravarty of no.14 Bessborough Parade (09/09/15), Sinead Barber of no.3 Bessborough Court (09/09/15), Malachy Farrell of no.20 Lower Rathmines Road (09/09/16), Rathmines

Initiative c/o Brenda Butterly (10/09/15), Maura King and Ian Kingston of 11 Bessborough Parade (10/09/16), Emily Harold of no.48 Lower Mount Pleasant Avenue (10/09/16), Patrick Hoey of no.36 Lower Mount Pleasant Avenue (10/09/15), Coleman Connor of no.176 Lower Rathmines Road c/o O'Connor Shannon (05/09/15), Andrew Folan of no.45 Lower Mountpleasant Avenue (28/08/15), Martin Plant Motors of 46-47 Fortescue Lane (10/09/15), John and Jean Campbell of no.1 Bessborough Court and Gary Compton of no.2 Bessborough Court c/o McCutcheon Halley Walsh and Keenan Lynch Architects (10/09/15).

The main concerns are repeated in the grounds of appeal or in observations to the appeal. Additional points include:

- Inadequate parking will lead to parking congestion and added traffic congestion on surrounding streets and impede access, including to Fortescue Lane which is a private lane.
- Not compatible with CDP objective F37 to maintain and enhance character of Protected Structure.
- DCC normally attaches condition requiring prior grant of planning permission for change of use from student accommodation to other accommodation.
- Excessive density.
- No details of management of accommodation.
- Number of bed spaces exceeds the maximum bed spaces in Building C (based on Appendix 23 guidelines). Permission refused for at 55 Parnell Square under Reg.ref.2456/15 for non-compliance with Appendix 23 due to, inter alia, lack of open space, and for impact on architectural heritage.
- Replacement building at no.46 is inappropriate, including fenestration, or should tie in better, and development should comply with section 17.10.2 of the Development Plan regarding development within curtilage of protected structures.
- Draft Rathmines Local Action Plan suggests a population of 41-55 people on the Blackberry Fair site.

- Contrary to the aim of the CDP to encourage permanent residential use, rather than commercial transient residential use.

#### 4.0 Planning History

##### 4.1. On site

**PL29S.237621 / Reg.ref.2370/10:** Permission **GRANTED** by the Board on appeal (14/04/11), upholding the decision of Dublin City Council to grant permission for the demolition of no.46 Lower Rathmines Road and derelict mews building to rear of no.36 Lower Rathmines Road and for the construction of a mixed use scheme within two 3-storey buildings (A and B) over double basement, inter alia ancillary associated development. Building A (2,516-sq.m GFA) included restaurant, medical centre, five class 2 units, an office, a management caretaker unit, four 2-bed live-work units, with total parapet height of 28.67m. Building B (401-sq.m GFA) comprise offices, with ramped vehicular access from Lower Rathmines Road. Condition no.2 is a non-standard condition that required relatively minor amendments to the scheme. Note – The site included the full extent of properties nos.34 and 36 Lower Rathmines Road.

Condition no.2:

- (a) *The rear return of number 46 lower Rathmines Road shall be reduced in length by 2.7m to reflect the length of the existing rear return at ground, first and second floor levels.*
- (b) *The roof profile of 46 Lower Rathmines Road shall be amended so as to match the double A profile on the adjoining house in the terrace.*
- (c) *The proposed front façade of 46 Lower Rathmines Road, including fenestration and other finer details, shall be revised as follows: -*
  - (i) *The front bronze hand rail shall be omitted,*
  - (ii) *The width of the windows shall be reduced by the omission of the side tinted glazed panel.*
  - (iii) *The ground floor window shall be repositioned so that it is vertical with the first floor window above.*

(iv) *Openings may be introduced in the windows if desired.*

(v) *The glazed panel over main entrance door shall be omitted.*

*Revised plans and particulars showing compliance with the above requirements shall be submitted to and agreed in writing with the planning authority prior to commencement of development.*

*Reason: In the interest of visual amenity and orderly development.*

**Reg.ref.2370/10/X1.:** Permission **GRANTED** by Dublin City Council (02/08/16) for the extension of duration of permission.

#### 4.2. **Other relevant decisions**

**PL29N.245354 / Reg.Ref.2456/15:** Permission **GRANTED** by the Board (04/12/15) overturning the decision of Dublin City Council to refuse permission for the change of use from offices to student accommodation, repairs to the fabric of the property, sub-division of accommodation to create new bedrooms and seven number new bathrooms, installation of a common kitchen, provision of gas fired central heating, re-wiring, WIFI, at 55 Parnell Square, Dublin, a Protected Structure.

**PL29.208145 / Reg.ref.2810/04:** Permission **GRANT** by the Board (26/11/04), overturning Dublin City Council's decision to refused permission for the demolition of existing mews structure and construction of a residential 2-storey mews house with balcony to rear and parking space accessed from Fortescue Lane, at the rear of 34 Lower Rathmines Road, Dublin 6, a Protected Structure.

#### 5.0 **Policy Context**

5.1. **Dublin City Development Plan 2011-2017** - Note: The Council Members adopted the Dublin City Development Plan 2016 on 23/09/16 which will be effective from 21/10/16. The adopted plan is not available, on the Council's website or otherwise, until that date. I do note the draft documents available on the Council's website at <http://dublincitydevelopmentplan.ie/documents.php> (accessed 13/10/16).

Map H – land use zoning objective Z2 Residential Neighbourhoods (Conservation Areas), *'to provide for and/or improve the amenities of residential conservation*

areas'. Nos.36, 38, 40, 42 and 44 Lower Rathmines Road are Protected Structures. Rathmines is a key district centre (KDC 7).

Chapter 7 Fostering Dublin's Character and Culture – Section 7.2.5 Policies and Objectives (Policies FC26 and FC27); Section 7.2.5.2 Protected Structures and Built Heritage (Policy FC30); Section 7.2.5.3 Conservation Areas (Policies FC40 and FC41).

Chapter 9 Revitalising the City's Economy – Section 9.4.8 Tourism: Visitors, International Education, Conventions (Policy RE32).

Chapter 11 Providing Quality Homes in a Compact City – Section 11.4.13 Student accommodation (Policy QH30).

Appendix 3: The Dublin City Council Housing Strategy 2011 – 2017. Section 4 Special Considerations - B Third Level Student Accommodation; Section 5 Policy Objectives - Special Issues.

Appendix 10: Protected Structures and Buildings in Conservation Areas

Appendix 23: Guidelines for Student Accommodation.

Appendix 29 – Land-Use Definitions: Student Accommodation. Residential.

## 6.0 Natural Heritage Designations

South Dublin Bay and River Tolka SPA (site ref.004024) c.3.4km to east.

South Dublin Bay SAC (site ref.000210) c.3.4km to east.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

7.1.1. First Party, Blackberry Fair Co-Ownership, c/o Brock McClure Planning & Development Consultants (23/05/16) – **Appeal against condition no.3 omitting the second floor level of Building A.** The grounds of appeal can be summarised as follows:

- The proposed scheme, as revised by further information submission, positively addresses all the Planning Authority concerns. The facades have been amended and the floor plate stepped to resolve initial monolithic appearance.

- The imposition of condition no.3 is unwarranted as the design is appropriate (high quality and within a mixed streetscape context where 3-4-storey redbrick terraced buildings are dominant element) and will not have a negative impact (photomontages demonstrate that it will assimilate very successfully).
- It will not have a significant impact on adjacent properties in terms of overshadowing and the omitting of the second floor serves no purpose, is unreasonable and unnecessary. The existing mews are derelict – the proposed development will therefore enhance residential amenity of the surrounding and lessen the bleakness.
- Regarding overlooking, the separation distance between the church and existing terraced buildings is less than 2.5m. The setback and angled windows address overlooking.
- Regarding overbearing, proposed building A is lower in height than the existing terrace to Lower Rathmines Road. The 3<sup>rd</sup> and 4<sup>th</sup> floors are setback from the 2<sup>nd</sup> floor, which is lower than the height of Bessborough Court houses, and Building A reads as a predominantly two-storey building. The setback from Bessborough Court was increased to 6.8m in FI submission.
- Regarding overshadowing, the Planning Officer accepted the applicant's submission '*that the position of Block A to the east of Bessborough Court means that the development does not increase the shadow cast over the rear gardens of Bessborough Court during a significant proportion of the year*'.
- The proposal is appropriate to its context and has regard to the pattern of development in the area.
- Block A will lessen the bleakness of Fortescue Lane and greatly enhance the overall character of the area, with a design approach that respects the immediate scale of the streetscape.
- There is precedent for 4-storey plus buildings in the vicinity – e.g. Dartmouth House (reg.ref.5609/06), Grove Road (reg.ref.0738/00) and more distant in time at Canal Road (0931/72). There is no evidence of uniformity in building height or design in the area.

- There is a lack of purpose-built student accommodation in this area where there is a number of educational facilities. Omitting the second floor would seriously decrease the number of rooms available, contrary to the objectives of the CDP. Policy CEE19 recognises need for student accommodation; it is Council policy QH32 to support provision of same; and chapter 16 allows that '*...in certain limited circumstances, the planning authority may relax the normal planning standards in the interest of ensuring that vacant, derelict and under-utilised land in the inner and outer city is developed*'. The proposal is an opportunity to achieve CEE19 and QH32.
- The development accords with all relevant standards in the development plan (appendix 25 refers).
- The concerns of the Planning Officer regarding the visual impact, aspect and quality of accommodation of roof level units are unwarranted. Sloping roofs and roof-lights are established features of this area. The proposed units meet the standards under the CDP.
- The conclusions drawn by the Planning Authority are subjective and do not stand up to scrutiny and factual evidence.

**Additional supporting documentation** – A3 booklet containing: i) Planning drawings; ii) Model images; iii) Landscape design; iv) Shadow study.

7.1.2. Third Party, Rathmines Initiative c/o Ciaran Ferrie (23/05/16) – **Appeal against decision.** The grounds of appeal can be summarised as follows:

- Overdevelopment of the site and detrimental impact on the viability and continuing redevelopment of Rathmines. Population density of 491 people per hectare based on 100 bedrooms (127 bed-spaces) in 14 houses as revised by condition no.3, which is grossly in excess of the current density of 61-102 people per hectare.
- Detrimental impact on neighbouring amenities. This concern as reflected by the planning authority in the initial assessment and subsequent to receipt of further information and resulted in omission of a floor by condition. Amended scheme is still wholly inappropriate for a mews setting and will have detrimental impact. The need to splay the facades to deal with overlooking further demonstrates this.

- Reliance on narrow mews lane for servicing and fire tender access. A minimum clearance height of 3.7m is required for pump appliance. Also, Fortescue Lane is likely to be used by students moving in/out.
- Concern regarding compliance with Appendix 23 of the development plan (regarding Student Housing provision), particularly regarding open space provision that is fragmented and overshadowed and that includes peripheral areas, demonstrating overdevelopment.
- Inappropriate and poor quality design of new buildings, particularly in relation to historic structures. Inadequate detail for replacement no.46.
- Insufficient detail of external materials which should note have been left to agreement post decision without third party rights of observation.
- Original concerns set out in observations on application were not properly addressed by the Council.
- The impact of the basement development on the Swan River, which runs underground, almost certainly within the site, has not been assessed and no development should be permitted until it has been.

7.1.3. Third Party, Coleman Connor (23/05/16) – **Appeal against decision.** The grounds of appeal can be summarised as follows:

- Inappropriate and over development
  - in historic context of Protected Structures where only limited orderly development has been permitted, consisting of preservation of Georgian houses and provision of mews.
  - Will dwarf and overshadow existing housing.
  - Should accord with 2-storey mews development existing on Fortescue Lane for consistent development. Proposal contrasts with 'Lower Rathmines Road Conservation and Urban Regeneration Study' (2005) which addressed mews lane development under section 8.8. Note refusal for mews dwelling to rear of no.44 Lower Mountpleasant Avenue.
  - Demolition of one of the few remaining mews coach houses, which is a Protected Structure (to rear no.36 Lower Rathmines Road).



- Congestion on Fortescue Lane
  - Dublin City Council has not permitted further mews housing along the lane due to congestion of vehicular and pedestrian traffic and poor standard of lane.
  - How can the applicant prevent attraction of vehicular access when a wide access and turning facility are proposed?
  - The turning facility proposed to accommodate current Fortescue Lane users cannot be used if gate is closed.
- Waste Management
  - Concern that, in practice, waste bins will not be drawn across site from Fortescue Lane to Lower Rathmines Roads, as proposed.
  - Impact on residents of Fortescue Lane and Bessborough Court from smell and attraction of vermin to the waste.
  - No detail of how this will be managed on a daily, weekly and term end basis.
- Fire tender
  - Adequate fire safety provision has not been made and water pressure in the area is low, meaning water may not be possible to pump to higher level accommodation.

7.1.4. Third Party, Gary Compton of no.2 Bessborough Court, c/o Keenan Lynch Architects (23/05/16) – **Appeal against decision**. The grounds of appeal can be summarised as follows:

- Inconsistent and in breach with zoning objective Z2 and development plan provisions -
  - The proposed development is commercial in nature.
  - Student housing is neither permitted in principle nor open for consideration.
  - The Planning Authority failed to give due consideration to non-conforming use or material breach of the development plan.
- Injury to residential amenity

- Section 11.4.13, QH30 requires student accommodation to respect the residential amenity of the surrounding area, with an even higher standard required for a residential conservation area.
- Impinges directly on existing residential amenity due to bulk and scale and proximity, including use of oblique windows to mitigate overlooking.
- Student housing demand –
  - The applicant has not demonstrated that demand for student exists as required by Appendix 23 of the development plan.
  - There have been a number of applications for student housing within the city environs.
  - In the absence of a link to a college (note, Portobello College has closed and is advertised for sale / letting), this application is unsupported in relation to critical information to allow a decision to grant it.
- Impact of proposal
  - Unsuitability of use by reference to inadequate open space.
  - Impact on neighbouring residential amenities.
  - Conflicting proposals regarding Fortescue Lane in terms of access use.
  - Concern over late night usage associated with student lifestyle.
  - Bicycle parking should not be shown in this area and all access should be via Rathmines Road Lower.
  - Overlooking – the need for oblique windows to minimise overlooking confirms the manner in which the proposed development, inappropriate in bulk and scale and its relationship to neighbouring property, imposes on neighbouring residential amenity. In principle, if a courtyard scheme is proposed, the courtyard would be the primary means of light.
  - Bulk and scale – direct contrast to nature of mews laneway and residential property onto which it imposes, contrary to zoning objective. Not subsidiary to main Protected Structures and is therefore inappropriate.
- Decision

- Unclear whether condition no.3, requiring the omission of second floor to Building A, included also the removal of the third floor or whether the part third floor becomes the second floor. Concern that sedum roof would become used as an amenity space. Needs clarity.
- The corner windows to the end of the block results in overlooking of Bessborough Court result in overlooking and should be omitted.
- There is no reason why the original houses could not be restored to their original singular plots.

## 7.2. Planning Authority Response

None.

## 7.3. Other Party Responses

7.3.1. First Party, Blackberry Fair Co-Ownership, c/o Brock McClure Planning & Development Consultants (21/06/16) – The main points of the response to third party appeal can be summarised as follows:

- The proposed design, including replacement no.46, is fully aware of the historical context and was acceptable to the Council’s Conservation Officer and was addressed in the Architectural Heritage Impact Assessment reports.
- The proposal is fully compliant with Appendix 23 of the CDP for the nature of the proposed use. It does not provide specific requirements on open space quantity, but the design of the open space is addressed in Studio AULA report on landscape and Noonan Moran Architecture’s report of March 2016 and the shadow analysis confirmed that the central open space will be penetrated by sunlight.
- The main pedestrian and vehicular access is to Lower Rathmines Road, with no motor vehicle access to Fortescue Lane, thereby preventing noise impact from same on that area. Bicycle parking is distributed around the site. Noise disturbance and traffic congestion will not therefore be significant on the lane.
- Access to the lane will be controlled as stated in Management Policies (see Noonan Moran’s report) with electronic access control.

- Student parties or large group gathering will not be permitted under management rules and will be strictly monitored and controlled.
- As the bedsits will be fully equipped, students will only have to transport their belongings and will not require moving vans.
- The large gate to Fortescue Lane was provided in order to satisfy Dublin City Council's Roads Department's requirements pertaining to the approved mixed use development on site in reg.ref.2370/10, such as to accommodate fire tender. The gate will be locked and opening it will require contacting the management company.
- TGD B 'Fire Safety' (table 5.1) requires only pump appliance to serve the development given the size and height of the proposed development (<7000m<sup>3</sup> and under 10m height), to be located generally within 45m of the main entrance (actual distance is 32m) and the fire hydrant in the main courtyard will be within 30m of the hardstanding in accordance the said standard. Note: a fire safety certificate will be applied for and granted before the proposed development commences.
- The waste storage areas are not in the vicinity of Fortescue Lane, but at the north and south of the central courtyard and to the front of the terraced buildings. They will be fully enclosed within timber sheeting and roofed to avoid proliferation of vermin. The management company will arrange for all bins to be brought to Lower Rathmines Road on collection day at a decent frequency to avoid disturbances.
- The design team have taken overlooking issues into account by using setback and angled windows to prevent direct overlooking. Using ingenious architectural systems does not mean the development is inappropriate and detract from existing amenities of the surrounding area, but that the team has adapted the scheme to the local context to reduce or eliminate potential issues.
- Reiterates points previously made in first party appeal in addressing concerns regarding inappropriate design, height and scale in site context, and concerns about serious impact on residential amenities.

- Accepts that the projecting bay windows reduce the distance between Building A and the boundary wall to 6m, but this is an increase from 4.6m initially proposed. No overlooking will arise due to angled window design.
- The Lower Rathmines Road Conservation and Urban Regeneration Study 2005 is not a statutory document, and is more than 5 years old. The study was prepared by Blackwood Associates Architects who prepared the AHIA for the proposed development, making them the firm best placed to advise on appropriate redevelopment.
- The appellant's submission that student accommodation is not open for consideration on Z2 lands is misleading. Residential use is permitted in principle and DCC accepts that student accommodation is a form of residential accommodation, as was accepted in the Council Planner's report.
- Increased density consistent with Key District designation for Rathmines, being a powerful driver (and indicator under Appendix 28 of the development plan) to promote and achieve sustainable development and complies with objective SIO1 of the development plan to encourage intensification and mixed use along public transport corridors.
- The appellant is incorrect regarding the scale and nature of recently permitted development, which includes a large development permitted on this site under reg.ref.2370/10.
- The development has been designed to reduce flood risk as far as is reasonably practicable and there will be no increase in flood risk to adjacent or nearby property. An appropriate Flood Risk Assessment will be prepared in accordance with the request of the Council's Engineering Department's Drainage Division, upon receipt of permission.

7.3.2. Third Party, Gary Compton and John and Jean Campbell, c/o Future Analytics (21/06/16) – The main points of the response to first party appeal comprise, effectively, a repeat and / or elaboration of the third party grounds of appeal against the decision and reiterates the party's submission that permission should be refused. Points addressing the third party appeal can be summarised as follows:

- Unreasonable visual bulk impacts on nos.1 & 2 Bessborough Court, front and rear (both areas being used as residential amenity space) due to scale (as revised) and inadequate boundary setbacks (as little as 1.26m to north and 2.3m to east) to provide meaningful landscaping and planting to mitigate this impact. 3-D perspectives shown in figures 3 and 4 on page 9 of response are noted.
- Should permission be granted, a greater setback from the eastern boundary, in addition to comprehensive canopy planting along this sensitive interface is required, in addition to the reaffirming of condition no.3 attached to the Council's decision.
- At minimum angled louvered screening required to height of 1.7m above finished floor level to mitigate overlooking.
- Condition no.3 should be upheld to limit unreasonable overshadowing.
- Strongly refutes applicant's position that the proposed development will enhance the amenities of the surrounding area (Fortescue Lane), due to the potential for adverse amenity impacts on adjoining properties arising from scale and massing of proposed Building A contrary to Z2 zoning objective residential conservation areas.
- Scale and form of proposed Building A is contrary to CDP policies concerning heritage FC26, FC27 and FC41 and it is therefore critical that condition no.3 is upheld.
- Building A is contrary to section 11.4.13 of the CDP 2011-2017 and section 5.5.12 of draft CDP, which support the provision of student accommodation '*in a manner which respects the residential amenity of the surrounding area*', or Appendix 23 concerning consideration of potential impact on local residential amenity.
- At odds with Rathmines Local Action Plan 2009 concerning scale and the protection of amenity of adjoining dwellings.
- Noise – in addition to condition no.3, the use of the roof area should be limited to maintenance purposes only in order to protect residential amenities of Bessborough Court.

#### 7.4. Observations

2no. observation received from Martin Plant Motor (09/06/16) and from Madeleine Moore and Oliver Comerford of no.44 Mountpleasant Avenue Lower (17/06/16). The main issue of concern include:

- Use of Fortescue Lane by pedestrians, which would be dangerous due to the existing access by residential and business properties, would have security implications for the business (due to new through route), would not be able to accommodate emergency services, and would not be able to accommodate construction traffic.
- The FI amended access and bicycle parking proposals in lieu of the initially proposed turning area to Fortescue Lane were not re-advertised and there was no opportunity to comment before the Council's decision on 26/04/16.
- Discrepancies on drawings, including length of Fortescue Lane boundary – 17.5m on drawings PL01 and PL02, and 13m on PL16A.
- 5.5m width should be left to Fortescue Lane in accordance with CDP standards Section 16.10.16; full details of structure at or facing onto Fortescue Lane should be provided, with opportunity for third party comment; and lighting to be provided along Fortescue Lane.

#### 7.5. Further Responses

None.

#### 8.0 Assessment

8.1. Having regard to the details, documents and submission on file and the issues raised in the grounds of appeal, I consider the key issues in determining this appeal are as follows:

- Policies and objectives
- Impact on built heritage
- Impact on residential amenity
- Traffic and access issues

- Compliance with relevant standards
- Appropriate Assessment

## 8.2. Policies and objectives

- 8.2.1. At time of writing the operative development plan is the Dublin City Development Plan 2011-2017, however a new development plan was adopted on 23<sup>rd</sup> September and is to come into effect on 21<sup>st</sup> October. As the adopted plan will not be available to view (online or otherwise) until that date, I am unable to advise the Board on any policy changes from the current operative plan. However, I have reviewed the draft plan that was presented to the members (and the material alterations that were made to same) available on the Council's website<sup>3</sup>.
- 8.2.2. Under the current development plan (2011-2017), the site is zoned objective Z2 Residential Neighbourhoods (Conservation Areas), where it is the objective 'to provide for and/or improve the amenities of residential conservation areas'<sup>4</sup>. Student accommodation is a separately defined land use from 'residential' under the development plan (Appendix 29)<sup>5</sup>. Contrary to that stated in the Area Planner's report, 'Student Accommodation' is not included as a permissible use, nor is it included as open for consideration on Z2 lands. The only land use zone where student accommodation is referred to is Z15 Institutional and Community, where such use is open for consideration. There is no indication that the current development plan has been varied to specifically accommodate student accommodation within Z2 lands and I note that the draft development plan neither altered the zoning of the site (although the zone of archaeological potential was omitted) nor the provisions of the Z2 zoning objective as concerns student accommodation.
- 8.2.3. That student housing constitutes a non-conforming use and material breach of the development plan was raised as a grounds of appeal. The First Party submits that student accommodation is 'residential' use and is permitted in principle, as was

<sup>3</sup> <http://dublincitydevelopmentplan.ie/documents.php> (accessed 13/10/16).

<sup>4</sup> No change to site land use zoning under Map H of the draft plan.

<sup>5</sup> Appendix 3 'The Dublin City Council Housing Strategy 2011 – 2017' and Appendix 23 indicates that the definition of student accommodation is as per 'Guidelines on Residential Developments for Third Level Students' (Department of Education and Science). The document sets out basic layout and arrangement requirements for student accommodation, included in part under Appendix 23.



accepted by the Planning Authority and Area Planner's in her report. I note the decision of the Board (PL29S.2453542 / reg.ref.2456/15) to grant permission for change of use to student accommodation at no.55 Parnell Square, Dublin. In that instance the reporting Inspection dismissed the issue of non-compliance with the zoning objective on the basis that the proposed use was consistent with one of the main aims of the zoning category (Z8) to encourage residential activity in these areas at all times of the day. The City Council, in its decision to refuse permission on that application did not include material contravention of the zoning objective by reason on non-conforming land use.

- 8.2.4. Notwithstanding the provision of a separate definition for student accommodation from residential under the development plan, I would accept the position of the First Party that it also falls within the definition of residential use. In this regard I note that the development plan states that the definitions of various uses, which appear in the land-use zoning, are for guidance only.
- 8.2.5. The provision of purpose built student accommodation in appropriate locations close to campus and adjacent to high quality public transport corridors and cycle routes is supported under policy QH30 (a very similar policy, QH32, is included under the draft plan, in addition to other favourable policies CEE19 and CEE23), in order to support the knowledge economy, subject to respecting the residential amenity of the surrounding area, and is also supported under the Council Housing Strategy appended to the development plan. A mandatory cycle lane runs along Lower Rathmines Road, in addition to a dedicated bus lane (accommodating bus routes 14, 14C, 15, 15A, 15C, 65, 65B, 83, 83A, 140 and 142<sup>6</sup>) and the site is a short distance to Rathmines Key District Centre. I consider the proposed development to acceptable under policy QH30.
- 8.2.6. The proposed student housing is not associated with any particular third level institution or campus, however the applicant (p.4 Noonan Moran cover letter (07/08/15)) submits that there is high demand for student accommodation in Rathmines, with eight third level institutions indicated as within walking or short cycling distance. I consider this reasonable. There is no indication that there is an over-provision of student accommodation in the vicinity. On balance, I consider the

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<sup>6</sup> NTA data provided at <http://map.geohive.ie/mapviewer.html> (12/10/16).

proposed use to be acceptable in principle in this location and consistent with the provisions of the development plan.

### 8.3. Impact on built heritage

- 8.3.1. The proposed development encompasses the site of three Protected Structures, nos.40, 42 and 44 fronting onto Lower Rathmines Road, and also encompasses part of the rear of the former extent of the sites to no.36 and 38 Lower Rathmines Road, which are also Protected Structures.
- 8.3.2. It is proposed to demolish no.46 Lower Rathmines Road, which replaced the original terraced dwelling in the late 20<sup>th</sup> century and is not a Protected Structure. I consider the principle of replacing this non-original structure to be acceptable. The submission from An Taisce, statutory consultee, to the application advised that the replacement structure should be revised to tie in better with historic terrace. Although the subject structure is not a Protected Structure, as it forms part of an historic terrace, all being Protected Structures bar nos.46 and 48. The Architectural Heritage Protection Guidelines (2011) are therefore relevant. It advises that when it is proposed to erect a new building within an Architectural Conservation Area, the greater the degree of uniformity in the setting, the greater the presumption in favour of a harmonious design, but that replacement in replica should only be contemplated if necessary, for example, to restore the character of a unified terrace. A reasonable case can therefore be made for a replica building at no.46.
- 8.3.3. **Replacement no.46** - The replacement building is described by the applicant as contemporary, but it incorporates salient elements of the original Georgian terrace, including parapet line, elements of the fenestration pattern and brickwork to match that of the original terrace. The initial proposal (as submitted 07/08/15) provided a contemporary style entrance at upper ground floor level *'surrounded ... in a cream stone to provide a modern version of the Georgian entrance archways sound on the adjoining buildings'*<sup>7</sup>, accessed by a flight of steps. The design of the front elevation was similar to that proposed (and permitted with amendments) under PL29S.237621, amended to a degree to accord with the requirements of condition no.3 thereto.

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<sup>7</sup> P.12 of Noonan Moran cover letter 07/08/15.

- 8.3.4. The design was amended by way of further information submission (received 30/03/16) despite it not being an item of the further information request and not being raised as an issue in the Conservation Officer's report or by the Area Planner, with the main external alteration being the omission of the initially proposed upper ground floor entrance. I consider the proposed amendment to be significant in terms of the appearance of the proposed structure. In my opinion the omission of the entrance, which it can reasonably be said to be a key element of Georgian terraced dwellings in Dublin, greatly reduces the potentially for the replacement structure to tie in with the remaining historic terrace of Protected Structures. Neither the Conservation Officer, nor the Area Planner refer to the amended elevational design of the proposed façade to no.46.
- 8.3.5. Internally the layout has been significantly altered, increasing to 19no. single bedrooms, from 8no. bedrooms (10-bed-spaces) plus 1no. management suite. The Council did not require the amendments proposed to the scheme (which included an increase in student bed-space units and student 'houses') at further information stage to be re-advertised with amended notices<sup>8</sup>.
- 8.3.6. Should the Board decide to grant permission, I would advise that the elevational treatment to the front of no.46 be conditioned to be as per the drawings submitted with the application on 07/08/15. This will necessitate some alterations to the internal layout, but I am satisfied that this can be accommodated and agreed by way of condition. For consistency the Board may consider it appropriate to require the full amendments required under condition 2(c) (PL.29S.237621) to be incorporated into the design of the front elevation of no.46, although I do not consider this to be necessary.
- 8.3.7. **Demolition of mews to no.36** - The applicant proposes to demolish the existing mews building to the rear of no.39 Lower Rathmines Road, a Protected Structure. I note, however, that the removal of the said structure was proposed and permitted under PL29S.237621 and the principle of its removal was accepted by the reporting Inspector on the basis that *'the merits of its restoration in the absence of any meaningful connection with the curtilage of no.36 Lower Rathmines Road is limited'*<sup>9</sup>.

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<sup>8</sup> Under article 35(1) of the Planning and Development Regulations, 2001, as amended, the planning authority may require the applicant to publish new notices.

<sup>9</sup> P.19 Inspectors Report of 16/03/11.

8.3.8. Having regard to the AHPG, section 132.1 *Determining the Curtilage of a Protected Structure*, and the example provided in para.13.1.2 of same<sup>10</sup>, I am satisfied that the mews building is within the curtilage of a Protected Structure and therefore also has the benefit of protected status. In this regard, I would highlight the provisions of Section 57(10)(b) of the Planning and Development Act 2000, as amended, which states:

*A planning authority, or the Board on appeal, shall not grant permission for the demolition of a protected structure or proposed protected structure, save in exceptional circumstances.*

8.3.9. The cover letter submitted by Noonan Moran (07/08/15) makes no case for the demolition of Protected Structure mews to the rear of no.36. The Architectural Heritage Impact Assessment report by Blackwell Associates does refer to the mews to the rear of no.36, although curiously, not within its review of no.36 itself (pages 11-13) which it indicates has no defined curtilage or boundary to the rear. A review of the historical use, alterations to and the current condition of the said mews are addressed in pages 25-27, which concludes '*The building present has lost much of its original fabric and is now seen out of context as it no longer part of an ensemble as originally designed. It has changed much and has lost its design integrity in the course of these changes*'. No case is made for 'exceptional circumstances'. I note, from the AHIA report and from my inspection of the structure, that despite past interventions much of the original fabric exists, including an unusual granite staircase.

8.3.10. I note that the Council's Conservation Officer and Area Planner raised no concern regarding the demolition of the Protect Structure, but nor did they make a case for 'exceptional circumstances' upon which the Board may decide to permit the demolition. Whilst the demolition of the Protected Structure would facilitate the redevelopment of the site, its location (at the northeast periphery of the site) is such that it would not unduly restrict potential for the comprehensive redevelopment of the site, albeit an amended version of the current proposal, and I do not consider exceptional circumstances to arise on those grounds.

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<sup>10</sup> *In many cases the curtilage of a protected structure will coincide with the land owned together with it but this is not necessarily so. For example, in the case of a town house, the main house, the area and railings in front of it, cellars below the footpath, the rear garden and mews house may be considered to fall within its curtilage even where the mews house is now in a separate ownership.*

- 8.3.11. Having regard to the decision of the Board under PL29S.237621 to accept the demolition of the mews, the Board may consider that it has already accepted the principle that 'exceptional circumstances' exist to warrant the removal of the Protected Structure in this instance. I would advise the Board that it would be appropriate to make explicit reference to same in the event of a decision to grant permission having regard to the aforementioned provisions of the Act.
- 8.3.12. **Impact on nos.40, 42 & 44** – I am satisfied, having regard to the details and drawings submitted with the application, the alterations proposed in Further Information received 30/03/16, and the reports of the Council's Conservation Officer, that the proposed development of nos.42, 42 and 44 Lower Rathmines Road, being Protected Structures, are generally reasonable and appropriate and will ensure the long term protection of those structures. Furthermore, the proposed works to those structures and to no.46 will enhance the setting of the surrounding Protected Structures and enhance the visual amenities of Rathmines generally.
- 8.3.13. In addition, I am satisfied that the proposed development to the rear of the nos.36 to 44 Lower Rathmines Road, is not such, in terms of height, scale and design, as to materially adversely affect the character of the said Protected Structures, having regard to the existing long term condition prevailing on this site, although this does not necessarily mean that it is the optimum or ideal solution. In this regard I would draw the attention of the Board to the previously permitted development on this site under PL29S.237621, the duration of permission being extended under Council decision reg.ref.2370/10/X1.
- 8.3.14. **Conclusion:** On balance I consider the proposed development will positively impact on the built heritage of the area and is consistent with the provisions of the City Development Plan 2011-2017. I have reservations about the demolition of the mews coach house, a Protected Structure by virtue of its being within former curtilage to no.36 Lower Rathmines Road, a Protected Structure, in the absence of demonstration of 'exceptional circumstances'. However, having regard to the decision of Planning Authority to grant permission for development including the demolition of the said coach house under reg.ref.2370/10, upheld by the Board under PL29S.237621, being an extant permission, it may be reasonable for the Board to consider the principle of the demolition of the Protected Structure as accepted.

8.3.15. Should the Board decide to grant permission I would strongly advise that the proposed front elevation to replacement building no.46 be as per initially proposed on drawings (no.PL.29 PL-Planning Application Proposed Front Elevation onto Lower Rathmines Road) submitted with the application 07/08/15, with entrance at ground level (generally as per drawing no.PL.19 PL-Planning Application Proposed Ground Floor Part 2 submitted 07/08/15) and access arrangements and garden layout general as per drawing no.PL.17 (PL-Planning Application Proposed Lower Ground Floor Part 2 submitted 07/08/15) in the interest of ensuring consistency with the existing terrace of Protected Structures.

#### 8.4. Impact on residential amenity

- 8.4.1. As noted above, the site is zoned objective Z2 Residential Neighbourhoods (Conservation Areas), where it is the objective '*to provide for and/or improve the amenities of residential conservation areas*'. The proposed development will provide for and improve the residential amenities on this site and within existing structures on the site, consistent the zoning objective.
- 8.4.2. There are sensitive residential properties adjacent to the north (no.34 Lower Rathmines Road and the replacement mews to the rear on Fortescue Land) and east of the site (1-3 Bessborough Court and recent mews development on Fortescue Lane, to the rear of Mountpleasant Avenue).
- 8.4.3. The Area Planner raised concerns regarding the potential adverse impact on residential amenities of the adjacent residential properties to the east, at Bessborough Court and Fortescue Lane, in her initial report and the applicant was requested to address these concerns (in relation to Building A) in item 2 of the further information request. In response the applicant submitted significantly amended proposals, including amending building A at all floor levels. Whilst the Area Planner recommended that the second floor level be omitted it is apparent that this relates to concern about visual obtrusion<sup>11</sup> rather than visual intrusion, although she notes that the omission of the second floor would also benefit the surrounding neighbouring properties. She recommended that the 'second floor' level be omitted

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<sup>11</sup> Specifically, she refers to the sloped roof as '*visually more incongruous*' (p.16/22) and the reason for condition no.3 is (p.17/22).

(by condition no.3) '*in the interest of the visual amenity of the area*', rather than in the interest of residential amenity. For clarity the 'second floor level' of the Building A is the top floor level.

- 8.4.4. The initial proposal for Building A was indicated as 5.392m from the boundary with Bessborough Court to the east, however it measured c.3.5m at its nearest distance, taking account of the projecting triangular window bays and generally was no less than 3.8m from the boundary with the most sensitive section of the boundary (i.e. to the rear of the neighbouring dwellings). Although I accept third party submissions that the semi-private front area (south) of Bessborough Court is also sensitive as an amenity space for the residents, I consider it somewhat less sensitive by reason of its shared nature.
- 8.4.5. The FI proposal for Building A comprises a main central block bookended by eastward-projecting wings. The drawings indicate a 6m setback from the main body of the building to the Bessborough Court boundary. This figure is incorrect, albeit marginally, with the correct perpendicular distance to the boundary being c.5.85m. This figure also ignores the reduced distance arising from the projecting-triangular bays, at 'proposed ground floor level', which the Board will note from the drawings (e.g. PL31 Proposed Site Section 30/03/16) is effectively first floor level – the projecting bays are within c.4.2m of the boundary concerned. In addition, the projecting bookend wings are indicated as (north end) 2.331m and 2.928m from Bessborough Court, but the southern wing measures within c.2.1m at the nearest point.
- 8.4.6. The FI Building A is a 4-storey over basement building, with the second floor level revised to attic-level type accommodation over the central body of the building. Excluding the projecting triangular bays, it is setback c.0.9m from the main east façade.
- 8.4.7. **Overlooking** – Overlooking of residential property is a concern to the east, at Bessborough Court, in particular. In general, the arrangement of the building perpendicular to the dwellings at Bessborough Court, effectively obviates potential for direct overlooking between opposing first floor windows. The Board will note, however that there are first and second floor windows on the east-facing elevations of Bessborough Court (southern side), within 13m and 18m of directly opposing first

(effectively 2<sup>nd</sup>) floor level to Building A, and within c.15.5m of the opposing proposed ground (effectively 1<sup>st</sup>) floor corner window. Therefore, it can be seen that significant potential for significant adverse impact on residential amenities of the existing dwellings through invasion of privacy arises from the proposed development.

8.4.8. There would be a significant level of overlooking of the semi-private shared area to the front (south) of Bessborough Court. Given the sunny southerly aspect and relatively private nature of this shared, enclosed area, I consider it to have a high current level of amenity that adds to the residential amenity of the units. Overlooking from east-facing element of the corner fenestrations at proposed ground (effectively 1<sup>st</sup>) floor level will unnecessarily and significantly intrude on the amenities of the said area through direct overlooking within c.2.1m. This can satisfactorily be addressed by either omitting the east element of the two corner fenestrations at the south-east corner at proposed ground floor level, or by requiring the east-facing sections to be fixed and openable and permanently maintained with obscure glazing. The setback of 1<sup>st</sup> floor level and the relative height of the fenestration above the said semi-private open space is sufficient to ensure no significant overlooking occurs from same.

8.4.9. In addition, notwithstanding the absence of a stated standard in the development plan (or generally accepted planning standard similar to the aforementioned 22m standard) to prevent excessive overlooking of private residential amenity space, I have serious concerns about the perceived and actual level of overlooking arising on private open space to the rear of Bessborough Court. I am not satisfied that the use of deflections in the façade to create oblique views from fenestration at ground (effectively first) and second (effectively third) floor levels would adequately mitigate the impact given the number of windows and scale of the building concerned. The private amenity space to the rear of Bessborough Court would be directly overlooked by fenestration on the three upper levels, with the impact of fenestration on proposed ground (effectively 1<sup>st</sup>) and first (effectively 2<sup>nd</sup>) floor levels having greatest impact. The omission of proposed second (top) floor level would provide very little mitigation of this impact. Actual and perceived overlooking would severely impact on the privacy and amenity that the rear garden offers its residents, to such an extent as to be contrary to the Z2 zoning objective for that property.



- 8.4.10. There is also potential for direct overlooking between windows at ground, first and second floor level within Building A and first floor windows to mews dwellings nos.41, 42 and 43 Fortescue Lane, which falls short of the 22m standard for separation distance between opposing first floor windows (it will be as low as 18m). In the context of existing mews development directly fronting onto an historic urban mews lane, I consider the level of overlooking between the opposing development to be acceptable.
- 8.4.11. There is potential for overlooking (and/or perceived overlooking) of the neighbouring mews property to the north, to rear of no.34 Lower Rathmines Road, from the proposed north-facing windows to the hallways at proposed ground (effectively first) and first (effectively second) levels (drawing nos. PL.12 and PL.35) of Building A. This could be satisfactorily addressed by use of permanently fixed (un-openable) obscure glazing.
- 8.4.12. **Overbearing / visual intrusion** – I consider the main potential for visual overbearing to be on the neighbouring residential properties at Bessborough Court, although there is also potential for impacts on the mews to the north to the rear of no.34 Lower Rathmines Road.
- 8.4.13. The visual impact to the front of Bessborough Court would be significant, but in the context of the existing form and scale of the surrounding historical developments, including the large-domed church and the three and four storey terraced to Lower Rathmines Road, I do not consider the proposal to be likely to seriously injure the amenities of that area.
- 8.4.14. The visual impact of the proposed development, as visible from the rear of Bessborough Court is more problematic. The rear of Bessborough will be presented with an extensive four-store elevation a short distance to the east (between c.5.85m and 4.2m), wrapping around to the north to within c.2.3m of the boundary. To best appreciate the potential visual impact, see elevation drawing PL.36 and section drawing no. PL.31. PL.31 shows Building A will present a full three storey elevation to the east, notwithstanding the undulating façade above parapet, with sloping roof level. The current proposed development, the visible impact will be significant, given the proximity of the development to the party boundary (little more than a parking bay length) such as to constitute an unwarranted level of visual intrusion on the

residential amenities of those properties. However, I would draw the Board's attention to the profile of that development previously permitted by Board (extant permission PL29S.237621<sup>12</sup>), highlighted on drawing PL.31 (it is reasonably accurate but possibly shown c.250mm closer than permitted). The visual impact of the proposed development would not be dissimilar to that previously granted on this site.

- 8.4.15. In principle I see no issue with the proposed massing and scale of the development, which does not diverge significantly with the mixed scale of development in the vicinity, although the extension of first (effectively second) floor level c1.5m beyond (north and south) the façade of the floors below (see drawing nos.PL.36 and PL.12) is somewhat jarring and excessive in my view. However, I consider the proposed arrangement of development on the site to be such that the accommodation of development of the scale proposed is at the expense of the surrounding properties – that is, it imposes costs (in terms of significant losses of amenity) on the surrounding properties rather than absorbing such cost within the site.
- 8.4.16. In terms of protecting the visual amenities of Bessborough Court residential properties, the omission of the second floor level (through condition no.3) will have little appreciable mitigating impact. In this regard, I would point out that condition no.3 was not attached specifically to address the potential impact on Bessborough Court. Whilst the omission of the first (in effect 2<sup>nd</sup>) floor level would be more effective in reducing the adverse visible impact on Bessborough Court, this would remove 16no. bed-spaces and greatly interfere with the arrangement of the development such as to be unreasonable. I would therefore advise against same. A more strategic planting scheme along the eastern boundary and between Building A and same would help mitigate the visual impact.
- 8.4.17. Building A would present a 2-storey plus 3<sup>rd</sup> setback within as close as c.1.3m (3.6m at the third storey, i.e. second floor) would have a significant visual impact on the mews to rear of no.34 Lower Rathmines Road. It would project c.5m beyond the two-storey rear element (excluding the privacy screen required by condition of the Board's decision in order to protect the amenities of the site subject of this current

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<sup>12</sup> Drawing no.092-PL19 (section) and 092-PL023 (east elevation) dated 04/08/10 are relevant.

appeal<sup>13</sup>). The proposed development would have an adverse impact on the aspect from the rear of the said neighbouring property such that could not have been anticipated at time of its construction.

- 8.4.18. **Overshadowing** – The main concern from overshadowing impact is on Bessborough Court and on mews to rear of no.34 Lower Rathmines Road. Overshadowing of property within the scheme or who have consented to the scheme on part of their land, is less of a concern as these lands benefit from the proposed development. I am satisfied that access to sunlight and daylight within the scheme is generally acceptable.
- 8.4.19. I note the contents of the Shadow Study, prepared by Noonan Architecture, submitted with the appeal. I note that it does not use the standard dates for assessment, primarily the equinox (centred on either 21<sup>st</sup> March or 21<sup>st</sup> September) as representing the median impact, but usually also including the summer and winter solstices (centred on 21<sup>st</sup> June and 21<sup>st</sup> December) to demonstrate the extreme best and worst case scenarios. The applicant has elected to use the 1<sup>st</sup> March, 1<sup>st</sup> September and 1<sup>st</sup> July, which is a little unorthodox, but would seem sufficient to aid an assessment of shadow impact<sup>14</sup>. The shadow diagrams are set to axonometric rather than in 2-D plan viewed directly overhead, which enables the impact of shadowing in elevations to be seen, but which makes it more difficult (in my view) to compare the extent of overshadowing between extant and proposed structures. I note that the extent of development to the rear of no.34 Lower Rathmines Road is not shown correctly, with greater site coverage indicated than exists.
- 8.4.20. It can be seen that the site and surrounding lands are significantly affected by overshadowing from the high-domed church adjacent the south of the site, but also by the historic terrace within the west of the site. Sensitive receptors, such as the residential properties at Bessborough and rear of no.34 Lower Rathmines Road also produce their own shadows within and outwith their boundaries.
- 8.4.21. It is logical that the erection of a 3-storey plus sloped 4<sup>th</sup> level within between 5.85m and 4.2m west of the party boundary (and between 2.3m and 2.1m at bookends)

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<sup>13</sup> For clarity, I did not view the drawings or file associated with PL29.208145, only the details available online.

<sup>14</sup> The shadow cast on 1<sup>st</sup> of March and 1<sup>st</sup> July can be expected to be slightly longer than that on the spring equinox and summer solstice, respectively, with the shadow cast slightly less on 1<sup>st</sup> September than on the autumn equinox.

with Bessborough Court, will increase the level of overshadowing of that adjacent property to the east. The impact will occur from afternoon onwards, increasing towards evening. The shadow analysis would suggest that no appreciable increase in overshadowing would occur over the existing level of overshadowing. Given the scale of the proposed building (c.2.68m lower than ridge height of historic terrace) and its proximity to Bessborough Court (compared to 40m distance between rear of historic terrace and Bessborough Court, it seems incredible that there would be no appreciable increase in overshadowing. The likely level of overshadowing and loss of light to the nearest property at Bessborough Court from mid-afternoon through to evening is would appear likely to be significant. Loss of daylight would also likely be significant.

8.4.22. The shadow study would also suggest a relatively slight increase in the level of overshadowing on the neighbouring property to the north. The study incorrectly shows the site coverage on that site. The development on site does not extend so far west and the proposed development will project c.5m beyond the rear building line (excluding privacy screen) within c.1.2m of the site's southern boundary. The level of overshadowing resulting up until early afternoon would appear likely be significant. Loss of day light would also likely be significant.

8.4.23. Again, the Board may have regard to extant permission PL237621, which would have a similar overshadowing impact on Bessborough Court, but less of an impact on mews at no.34 Lower Rathmines Road.

8.4.24. **Conclusion:** I am satisfied that the proposed development of Building A, due to its scale and height, by reason of its proximity to the party boundary with existing residential property at Bessborough Court to the east and to the mews property to the rear of no.34 Lower Rathmines Road, will seriously injure the residential amenities of those properties by way of a combination of excessive visual intrusion and overbearing, perceived and actual overlooking and through excessive loss of sunlight and daylight. The level of the impact is such as to be contrary to the zoning objective, Z2 '*to provide for and/or improve the amenities of residential conservation areas*'. This impact cannot be adequately addressed by condition.

8.4.25. Notwithstanding my conclusion, the Board may consider the adverse impacts arising from the proposed Building A as not dissimilar in magnitude to those resulting from that development permitted under reg.ref.237621.

## 8.5. Traffic and access issues

- 8.5.1. 4no. parking spaces are proposed on site, one each to the front of nos.40, 42, 44 and 46 Lower Rathmines Road, accessed by individual entrances to each front garden area. The proposed development will improve the existing arrangement of vehicular entrances and parking to the front of the said properties.
- 8.5.2. There is an existing access to the site from Lower Rathmines via a lower-ground floor level archway under no.44 which evidently can accommodate car and van access below a certain height (I estimate c.2.45m). This will continue to be gated. No parking or vehicular access is indicated to be provided to the rear via this route. It is proposed to accommodate, inter alia, the delivery of refuse and recycling receptacles to Lower Rathmines Road for collection. In the event of a grant of permission, the Board may consider it appropriate to limit the use of the access to pedestrian and bicycles, generally, except for access for emergency services or utilities.
- 8.5.3. An access capable of opening to 4.4m in width is proposed to Fortescue Lane to facilitate emergency vehicles turning and to accommodate pedestrian access. Given the nature, poor alignment and confined width of Fortescue Lane (a public road according to the Council's Roads and Traffic Planning Section), an historic mews lane, it is not feasible to act as a means of vehicular access to the site generally. I consider access by an emergency vehicle to be unlikely to be feasible due to the narrow width of the junction to Mountpleasant Avenue, the right angle bend at the northern end and the presence of uncontrolled parking along the lane.
- 8.5.4. Concerns were raised at application stage, by observers, as to the ability of the development to accommodate access by fire tender. The Council's Roads and Traffic Planning Section noted the proposed fire tender access via Fortescue Lane

and recommended that the applicant clarify how it is intended that fire tenders will access the site (including swept path analysis) given the width of the lane and the presence of parking there-along, which was included in item no.5(ii) of the Planning Authority's FI request.

8.5.5. In its FI response, the applicant clarified that Fortescue Lane is not intended as fire tender access, with the proposed access included on foot of discussions with Dublin City Council's Road Department in relation to the proposed mixed-use development reg.ref.2370.10, where the provision of a turning area on the lane was expressed as desirable by the Council. The gate is intended to be sufficiently large to accommodate same, but will be closed and locked and the opening of same will require contacting the management company. Access for firefighting purposes will be via the archway on Lower Rathmines Road, with a hydrant located within the central courtyard for use by the fire brigade. The Roads and Traffic Planning Section had no objection to the proposals. In response to third party concerns over the proposed fire services access, the applicant confirmed that the proposal complies with TGD B 'Fire Safety' (table 5.1) regarding the provision of a pump appliance and also points out that a fire safety certificate will be applied for and granted before the proposed development commences. I consider this to be reasonable.

8.5.6. In terms of parking compliance, appendix 23 'Guidelines for Student Accommodation' merely indicates that the level and quality of on-site facilities including car parking, will be taken into account. The site is within Parking Area 2 on Map J of the development plan where car parking provision is restricted on account of the proximity to public transport. Parking standard under the development plan (Table 17.1) are generally regarded as maximum standards. Student accommodation is not included in the table. 1no. space is required per residential dwelling; however, the proposed development is residential but clearly does not comprise standard residential dwelling units. Residential institution requires 1no. space is per 20no. bed-spaces, however that use, which is not defined under the development plan, is not equivalent to student accommodation use under the plan;

for example, residential institution is permitted in principle on Z15 lands, whereas student accommodation is only open for consideration. Given the nature of the development and the fact that the lack of parking was deemed acceptable by the Council's Roads and Traffic Section, I consider it reasonable to accept the very low level of car parking within the site context and in view of the development plan standards being maximum standards.

- 8.5.7. The applicant proposes 48no. cycle parking spaces which equates to c.1 space per 3 student residents. No parking standard is set for student accommodation under Table 17.2 of the development plan (2011). Under material alterations to the draft plan (now adopted), a rate of 1 per 2 student residents was adopted. Should the Board grant permission, a condition should be attached requiring the provision of on-site bicycle parking to the standard required under the adopted development plan (2016), the details of which shall be agreed with the Planning Authority prior to first occupation of any student accommodation on site.
- 8.5.8. **Conclusion:** I am satisfied that the proposed development will not have a significant adverse impact on the road network in the vicinity.

## 8.6. **Compliance Appendix 23 Guidelines**

- 8.6.1. It is the policy of the Council (QH30) that *'proposals for student accommodation shall comply with Appendix 23 'Guidelines for Student Accommodation', which sets out the Council's standards for same.*
- 8.6.2. The proposed development, as revised by further information, indicates provision for 135no. bed-spaces, 16no. of which are indicated as twin rooms and the balance as singles. 6no. of the proposed units are accessible units which is in excess of the provision of at least one such unit per 50no. units (or part thereof). I have assessed the compliance of the development with the main quantitative and qualitative standards provided under the Council's guidelines. It can be seen that Building A generally complies with all required standards, except that eight of the proposed

bedroom units on 1<sup>st</sup> floor level (east-side, four at northern and southern ends) may be marginally substandard the required 12-sq.m GFA.

- 8.6.3. Having regard to the need for the first floor level to project beyond the lower levels of the proposed building (northern and southern ends – see PL.36), the simplest approach would be to set the first floor levels back to meet the main southern and western façade below, omit one bed-space unit each from the northern and southern ends and use the remaining c.6.75-sq.m (either end) to increase the size of the remaining 3no. single-unit en-suites. This would also address the somewhat top-heavy appearance of the east side of Building A.

standard	Min/max bed spaces per unit	Common entr. & facilities	>4-sq.m K/L/D per bed-spc	Min. bed-spc units size	Bath's, facilities & accessible units
<b>Bldg A</b>					
- LG	✓	✓	✓	✓	✓
- G	✓	✓	✓	✓	✓
- 1 <sup>st</sup>	✓	✓	✓	X	✓
- 2 <sup>nd</sup>	✓	✓	✓	✓	✓
<b>Bldg C</b>					
- No.40	X 11 BS	✓	✓	✓*	X
- No.42	X 11 BS	✓	✓	✓*	X
- No.44	X 16 BS	✓	X – 2.9m <sup>2</sup>	✓*	X
<b>Bldg B</b>					
- LG	✓	X	✓	X - !	✓
- G	✓	X	✓	X - !	✓
- 1 <sup>st</sup>	✓	X	✓	X - !	✓
- 2 <sup>nd</sup>	✓	X	✓	X - !	✓

**Table 1 – Compliance with standards under Appendix 23 of CDP 2011-2017.**

(Note: ! Denotes marginal non-compliance with possibility to address by condition; \* Denotes other issue arise, e.g. single bed-space units with floor area grossly in excess of twin bed-space standards.)

- 8.6.4. Building C (nos.40, 42 & 44) is grossly non-compliant with the restrictions on the maximum number (8no.) of bed-spaces per 'house' unit, most obviously with 16no. indicated bed-spaces served by single 'house' unit no.44. That same unit also provides grossly deficient shared communal space (comprising living / kitchen / dining of 4-sq.m per bed-space) at 2.9-sq.m per (indicated) bed-space. It should be noted that 4no. 'single' units within no.40 have floor space in excess of the minimum standard for twin rooms, which would bring the total number of bed-spaces to 21no., c.2.6 times the level per 'house'. The level of communal space per bed-space would



then drop to 2.3-sq.m. The level of bath facilities per number of units is substandard for Building C for each of the three 'houses'.

- 8.6.5. Building B (no.46) is non-compliant due to the fact that its four 'houses' (one per level) share a single entrance, with no private hallways or separate access to each separate student 'house' unit (one per split floor level in this building). Rather a shared stairwell runs between the floors and between the split level 'house' units, with no private communal internal hallway between student bed units and their respective dedicated communal space (K/L/D) contrary to the standards. In my opinion, the level of privacy and security for each of those 'house' units is far below what can be considered reasonable for the future occupants. Given that Building B is a new build, it should not be an onerous task to comply with fairly basic standard and amenities.
- 8.6.6. **Conclusion:** There are very significant departures from the Guidelines for the student accommodation proposed to be provided in Building B and Building C (those in Building A are less significant), which would have consequences in the basic level of amenity afforded to students on site. The provision of excessively large (unwieldy) bed-space student 'houses' will likely have implications for future manageability of the accommodation, with implications for the residential amenities of surrounding residential properties<sup>15</sup>. Non-compliance with the Appendix 23 guidelines (regarding number of bed-spaces per 'house') **is not** a new issue, having been raised in third party observations on file. The 160-sq.m GFA limit per 'house' unit is far exceeded in the case of the units in Building C, which is referred to in the cover letter by Noonan Moran Architecture application cover letter and is arguably excusable on grounds of protecting architectural heritage. The same argument cannot apply to the exceeding of the limit in some of the proposed 'House' units within new build Building A. The proposed development is therefore contrary to the stated policy of the Council (QH30) that *'proposals for student accommodation shall comply with Appendix 23 'Guidelines for Student Accommodation' (and to QH32 under the adopted draft development plan, 2016).*

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<sup>15</sup> Note, the adopted material alterations to the draft development plan allows for an increase in student 'house' units to 12no. bed-spaces only on campus.

8.6.7. It should be noted that the Council's guidelines are based on those of the Department of Education and Science under Section 50 Finance Act 1999 (as supplemented in July 2005<sup>16</sup>). Should the proposed development be non-compliant with the Department's requirement, it is my understanding that such that relief cannot be sought under Section 50 and therefore the viability of the scheme (Buildings B and C) is in question. This would be a particular concern where planning gain, in the form of the conservation and improvement of Protected Structures and an historic streetscape (including an appropriate replacement of no.46), comprising part of the overall proposed scheme is thrown into doubt.

### 8.7. **Appropriate Assessment**

Having regard to the nature and location of the proposed development, comprising the provision of new residential buildings on a brownfield site, within the existing historic built up area of Dublin, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site, including South Dublin Bay and River Tolka SPA (site ref.004024) and South Dublin Bay SAC (site ref.000210) c.3.4km to east.

### 9.0 **Recommendation**

9.1. I recommend that planning permission should be **REFUSED** for the reasons and considerations as set out below.

### 10.0 **Reasons and Considerations**

1. Proposed Building A, by reason of its scale, height, plan, the arrangement of fenestration and its proximity to the party boundary with adjacent residential property to the east, at Bessborough Court, and to the north, to the rear of no.34 Lower Rathmines Road, would seriously injure the residentially amenities of

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<sup>16</sup> <https://www.education.ie/en/Publications/Education-Reports/Matters-arising-in-relation-to-the-Guidelines-on-Residential-Developments-for-3rd-Level-Students.pdf>

those properties by way of excessive visual intrusion and overbearing, perceived and actual overlooking of private open space and through excessive loss of direct sunlight and daylight. The proposed development would therefore be contrary to the land use zoning objective applicable to the application site and the adjacent lands concerned, objective Z2 '*to provide for and / or improve the amenities of residential conservation areas*', to Council policy QH30 of the Dublin City Development Plan 2011-2017, and to the proper planning and sustainable development of the area.

2. That development comprising proposed Building B (replacement building no.46 Lower Rathmines Road) and proposed Building C (alterations to nos.40, 42 and 44 Lower Rathmines Road), by reason of materially non-compliance with the standards for such development set out under Appendix 23 of the Dublin City Development Plan 2011-2017, would be materially contrary to Council policy QH30 which states that '*proposals for student accommodation shall comply with Appendix 23 'Guidelines for Student Accommodation*', and to the proper planning and sustainable development of the area.

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John Desmond  
Planning Inspector

13<sup>th</sup> October 2016