



An
Bord
Pleanála

Inspector's Report PL29S.248418

Development	Conservation of gate lodge, demolition of outbuilding and walls, extension to gate lodge to provide 1 bed detached dwelling and associate works. (Protected Structure).
Location	Gate Lodge, Simmonscourt Castle, Simmonscourt Road, Dublin 4.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3396/16
Applicant(s)	Brian Bagnall
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Ivor Management Company Ltd.
Observer(s)	None
Date of Site Inspection	27 th of July 2017
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1.1. The site is located in an established residential area south of Ballsbridge, with access indirectly to/from the main road network via Simmonscourt Road. The site is effectively “landlocked”, except for a short length of private road frontage within the gated residential complex of “Simmonscourt Castle”.
- 1.1.2. Simmonscourt Castle is a complex of modern apartments and townhouses set within the original curtilage and/or attendant grounds of the original Simmonscourt Castle structure, which is now a significant ruin, overgrown and designated as a protected structure. There is a gravel area along the frontage and a plaque providing details of the history of this recorded monument. The former gate lodge structure appears ruinous and overgrown and the site which is not easily accessible appears to be located primarily within Simmonscourt Castle, with the structure between it and the adjoining Simmonscourt View. Both of these residential complexes are not connected and are separately gated.
- 1.1.3. As noted in the Planning Authority report on file, prepared at planning application stage, there is a range of different building types within the Simmonscourt Castle complex. Photographs illustrate the general relationship between the ruined Castle, adjacent apartments and the current appeal site.
- 1.1.4. The wider area is characterised by a number of gated apartment/townhouse complexes, developed over the years as infill developments set within a scattering of retained period mansions. In this context in the immediate vicinity there are large private green areas to the south of the appeal site, in contrast to the more built up environment to the north, east and west of the site.

2.0 Proposed Development

- 2.1.1. The development is to consist of:
 - The conservation of the existing gate lodge/cottage and the demolition of the modern adjoining out building and the boundary walls on the site.
 - The construction of a two-storey extension of the existing gate lodge/cottage to provide a 1-bed detached dwelling, including a private garden between the proposed dwelling and the Simmonscourt Castle ruin.

- Access to the house is proposed across the existing gravelled area in front of and to the north of the existing Simmonscourt Castle ruin.

2.1.2. The application form provides that the total site area is 230sq.m, the floor area of the buildings proposed for retention on site is 24sq.m. The floor area of the proposed new build is 33sq.m i.e. total floor area of 57sq.m for new and retained (net floor area 53sqm). This also notes that existing extensions to be demolished comprise 28sq.m. The proposed plot ratio is 0.25 and proposed site coverage is 0.22.

2.1.3. Raymond McGinley Architects have included a letter to provide the rationale for the proposed development. The documentation submitted also includes the following:

- A Conservation Report – Raymond McGinley Architects.
- A letter from Coonan Cawley Solicitors to confirm that there is legal consent to submit this application.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 5th of April 2017 Dublin City Council granted permission for the proposed development subject to 8no. Conditions. These include regard to infrastructural issues such as drainage, construction and demolition, hours of operation.

Condition no.7 provides for Conservation issues including specification and methodologies for repair and reinstatement and the employment of a Conservation Architect Grade 1 to monitor and implement and ensure adequate protection of the works.

Condition no.8 provides for Archaeological Monitoring and submission of a Method Statement etc.

3.2. Planner's Report

3.2.1. The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. They noted that the proposal is for the refurbishment of the existing single storey cottage (former gate lodge) and the provision of a two storey extension to the side of the cottage. Although the cottage is

not a P.S it is afforded a certain element of conservation importance given its proximity to the adjacent Simmonscourt Castle ruin which is a P.S and R.M. They consider that the refurbishment and reuse of the cottage is to be welcomed but needs careful consideration in view of its locational context and note the archaeological context and concerns of the Conservation Officer. They also have regard to the absence of drainage details. They have concerns regarding the impact of the proposed two storey extension on no.14 Simmonscourt View. They recommended that Further Information be submitted to include the following:

- A Shadow Analysis to show the impact on neighbouring properties including no.14 Simmonscourt View.
- To submit an Archaeological Assessment of the site.
- To submit revised drawings indicating how the proposal has regard to the architectural significance of the P.S. This includes regard to drainage details, impact of design and layout of the proposed 'new build', specification for the conservation works to the interior and exterior of the existing cottage. They also requested that a methodology for the demolition works be provided and details of how it is to inform the conservation works and restoration of detail.

3.2.2. Further Information response

Raymond McGinley Architects have submitted the following:

- Revised drawings in response to the Council's F.I request. This includes a Shadow Study, Drainage plans and proposed Sections and Elevations.
- Conservation specification & Demolition methodology statements document.
- Archaeological Consultancy Services Unit's Archaeology Report.

3.2.3. Planner's response

The Planner had regard to the F.I submitted. They noted that the Shadow Study showed that the proposal would not result in any undue loss of residential amenity in terms of overshadowing. They had regard to the Archaeological Assessment and noted the need for archaeological monitoring in proximity to the recorded monument. They note that the local authority has been supportive to a conservation - led development to put a redundant structure back into use as part of the unique setting

of Simmonscourt Castle. They considered that the A.I submitted adequately addressed the issues raised. They also noted that reports received from the Conservation Officer and the City Archaeologist both recommended permission be granted with site specific conditions that involve careful monitoring of this significant site. The Planner recommended that permission be granted subject to conditions.

3.3. Other Technical Reports

3.3.1. Engineering Department - Drainage Division

They have no objection and recommend a number of drainage related conditions to comply with current standards, including incorporation of SUDs and that a site drainage plan and an appropriate Flood Risk Assessment be submitted.

3.3.2. City Archaeologist Report

They note that the site is within the Zone of Archaeological Constraint of the Recorded Monument – Castle Site, which is subject to statutory protection under Section 12 of the National Monuments (Amendment) Act 1994. In the event of permission being granted they recommend a number of conditions including relative to archaeological monitoring.

3.3.3. Conservation Officer's Report

They noted the architectural significance of the site and recommended that A.I be submitted on a number of detailed issues relative to the potential impact of the proposed development.

3.4. Prescribed Bodies

3.4.1. The Board have consulted the Development Applications Unit, Department of Arts, Heritage, Regional, Rural & Gaeltacht Affairs and there has been no response.

3.5. Third Party Observations

3.5.1. A Submission has been received from Ivor Management Company Ltd who are the subsequent Third Party Appellants. This includes the following:

- The proposal would impact adversely on the castle in ruins which is a Protected Structure and National Monument.
- Development impact needs to be mitigated to ensure the protection of the archaeological heritage.
- There is no access to what appears to be a landlocked site.
- They are of the opinion that only the boundary wall of the existing structure is on Simmonscourt Castle grounds and the structure is actually on the grounds of Simmons Court Estate.
- Parking for this house has not been addressed in this application.
- There is an absence of CGI workings showing the visual impact of the proposed structure on the castle and its aspect.
- The derelict structure has not been used for at least 25 years.
- Planning Notices should have been provided at Simmons Court and 'Kilronan House' as the proposed development borders both of these estates.
- The area is a flood plain having been flooded as recently as October 2011.

3.5.2. A separate submission has been made by GVA Planning on behalf of Michael Burke the owner of apartment nos. 4, 21 and 28 Simmonscourt Castle. This has regard to the planning history and context of the proposed development and includes regard to the following:

- Potential impacts on heritage i.e Simmonscourt Castle Ruin a P.S and R.M. have not been adequately assessed.
- Concerns regarding the quality of the private open space.
- Lack of carparking provision not in accordance with DP standards.
- Potential negative impacts on no.14 Simmonscourt View.
- Concerns about drainage connection.
- Concerns about construction issues considering the proximity of no.14 Simmonscourt View.

4.0 Planning History

Reg.Ref. 2103/13 - Permission refused by the Council and subsequently by the Board (Ref.PL29S.241881 relates) for the Demolition of the existing cottage and modern extensions and the Construction of a two storey three bedroom detached House within the Curtilage of a Protected Structure on the subject site. The detailed reasons for refusal are summarised as follows:

1. The site of the proposed development is located in an area zoned Z2 and designated as a residential conservation area and adjacent to Simmonscourt Castle a recorded monument and P.S. The erection of a two-storey house with ancillary works adjacent to the Castle ruin would materially affect the P.S through the visual impact of the proposed house and physical encroachment of its curtilage upon the Castle ruin and would be contrary to planning policy and to the proper planning and sustainable development of the area.
2. The absence of a convincing case as to why this historic cottage should be demolished rather than refurbished would represent a considerable loss to and seriously injure the amenities of the area and would be contrary to the proper planning and sustainable development of the area.
3. The proposed development would be contrary to DCDP standards relative to private open space for dwelling house developments and to standards relating to provision of adequate carparking. It would constitute an overdevelopment of this sensitive heritage site and would be contrary to the proper planning and sustainable development of the area.
4. The proposed development in this Z2 area would be a discordant, visually obtrusive and overbearing feature in relation to neighbouring property and would seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

Reg.Ref.0448/93 – Planning permission was refused by the Council to demolish the existing cottage and to replace it with a new dormer cottage.

5.0 Policy Context

5.1. Dublin City Development Plan 2016 – 2022

There are a number of policies and objectives that are relevant to the proposed development and these include the following:

Chapter 5 seeks to promote Quality Housing and sustainable residential densities.

Policy QH1 seeks: *To have regard to the DECLG Guidelines on ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007); ‘Delivering Homes Sustaining Communities – Statement on Housing Policy’ (2007), ‘Sustainable Urban Housing: Design Standards for New Apartments’ (2015) and ‘Sustainable Residential Development in Urban Areas’ and the accompanying ‘Urban Design Manual: A Best Practice Guide’ (2009).*

Chapter 11 refers to Culture and Heritage. Section 11.1.3 sets out the challenges which include to protect the structures of special interest and review the RPS and to ensure any new interventions respect the significant archaeological and architectural heritage of the city.

Policy CHC1: *To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.*

CHC2 seeks: *To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage..* and a list of criteria is provided.

Section 11.1.5.1 refers to the RPS. The Planning and Development Act, 2000 (as amended) defines *‘Protected Structures’ as structures, or parts of structures, which form part of the architectural heritage and which are of special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*

Section 11.1.5.7 refers to Demolition of Protected Structures and Buildings in Architectural Conservation Areas.

Section 11.1.5.13 refers to Preservation of Zones of Archaeological Interest and Industrial Heritage and 11.1.5.13 to Monument Protection. Policy CHC9 refers.

Chapter 12 refers to 'Sustainable Communities and Neighbourhoods.

Chapter 14 sets out the Land-use Zoning Principles and Objectives. The subject site is located within the Z2 refers to Residential Neighbourhoods (Conservation Areas).

Section 14.8.2 sets out the Objective which is: *To protect and/or improve the amenities of residential conservation areas.*

It is provided that the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area.

Chapter 16 provides the Development Standards and refers to Design, Layout, Mix of Uses and Sustainable Design. Paragraph 16.2.2.3 refers to Alterations and Extensions and provides that: *Works of alteration and extension should be integrated with the surrounding area, ensuring that the quality of the townscape character of buildings and areas is retained and enhanced and environmental performance and accessibility of the existing building stock should also be enhanced.*

Section 16.10.12 provides that the design of extensions shall not have an adverse impact on the scale and character of the dwelling, or the amenities enjoyed by the occupants of adjacent buildings in terms of privacy, access to daylight and sunlight.

Appendix 17 (Guidelines for Residential Extensions) sets out the more detailed criteria. This includes regard to residential amenity issues, privacy, sunlight and daylight, the relationship between dwellings and extensions and the subordinate approach etc.

Appendix 9 refers to Monuments in Dublin City.

Appendix 24 refers to Protected Structures and Buildings in Conservation Areas.

5.2. Architectural Heritage Protection Guidelines for Planning Authorities

These are of relevance and were issued by the DoEHLG in 2004/2011 –

Section 1.3.1 (f) provides: *Where a structure is protected, the protection includes the structure, its interior and the land within its curtilage and other structures within that curtilage (including their interiors) and all fixtures and features which form part of the interior or exterior of all these structures. All works which would materially affect the character of a protected structure, or a proposed protected structure, will require planning permission.*

Section 2.2.2 refers to a P.S and land within its curtilage. S.2.9.1(c) relates to whether the curtilage of a P.S has been determined.

Chapter 6 provides policies and objectives for Development Control, which seek to ensure the protection of the architectural heritage so that these structures retain their character and special interest and continue to contribute to the social and economic mix of the area. This also relates to the sensitivity of works within the curtilage of protected structures and attendant grounds and/or ACAs.

Chapter 13 deals specifically with the Curtilage and Its Attendant Grounds.

Section 13.5.1 provides: *Proposals for new development within the curtilage of a protected structure should be carefully scrutinised by the planning authority, as inappropriate development will be detrimental to the character of the structure.*

Section 13.7.1 provides: It is essential to understand the character of a site before development proposals can be considered. Section 13.7.2 has regard to the issues to be considered including: (a) Would the development affect the character of the protected structure? (b) Would the proposed works affect the relationship of the protected structure to its surroundings and attendant grounds?

Section 13.7.7 refers to carparking and provides: *Careful consideration should be given to the location of the car park to avoid damage to the character of the structure or its attendant grounds.*

Section 13.8 refers to the impact of new development affecting the setting of a P.S or A.C.A.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Reid Associates have submitted a Third Party Appeal on behalf of Ivor Management Company, 44 Simmonscourt Castle, Simmonscourt Road. They request the Board to refuse permission for reasons to include the following:

Structure Derelict and has no beneficial use

- The current structure on the subject site is completely derelict and has no beneficial use. It has not been or had habitable use in over 50 years.
- There is no evidence of its previous occupancy as a residence. The development cannot be described or classified as a residential extension. Therefore, the application is invalid.
- The proposed development results in a new dwelling on this site and the design is substandard.

6.1.2. Insufficient Legal Interest

- The applicant indicates that he is the prospective purchaser of the site. They submit that there is insufficient legal interest to carry out this development and the site is inadequate and unsuitable for the development proposed.
- Their clients have maintained the area as open space since 1983 and this has conferred a significant amenity both to the castle and to the surrounding residences.
- They refer to the opinion of O'Hagan Ward and Company that any legal rights to the area surrounding the Castle have been abandoned because there has been no use for the property for over 30 years other than by Ivor Management Company, maintained as open space area.
- The subject application site can only be formed by the area of the existing structures on the site and cannot be on part of this open space.

6.1.3. Failure of Circulation to the relevant Prescribed Bodies.

- The application is invalid because there has been a failure to circulate to the relevant prescribed bodies. They refer to recent case law in this regard.
- The location of the public notices for the development is inadequate.

6.1.4. Adverse Impact on Heritage

- The insertion of a new dwelling within the curtilage of the P.S, diminishes the importance and spatial relationship of the Castle to the surrounding open space.
- The private garden area proposed subdivides the setting and open space surrounding the Castle in two.
- There is a lack of available parking in the area and there should be no parking adjacent to the Castle ruin.

6.1.5. Protected Structure and Curtilage

- The definition of a P.S includes all structures within the curtilage.
- The partial remains of the lodge (not a P.S) is in fact contained within the curtilage of the Castle which is a P.S. They are concerned about the impact of the proposed development including the conservation of the gate lodge and the modern extension and encroachment on the curtilage.
- They contend that the Planning Authority assessment did not adequately take the relationship to the P.S into account.

6.1.6. Material Contravention of the Development Plan

- The loss of the public open space and setting for Simmonscourt Castle would significantly disaffect the amenities of the residential conservation area.
- No visual assessment of the impact on the Castle has been carried out relative to the impact of the proposed development on this significant historic structure.
- The proposal is in a zone of archaeological interest and would be contrary to Heritage Policy CHC9 and Conservation Policy CHC2 (Section 11.1.5.1) of the current Development Plan.

- The proposed excessive development fails to conserve and enhance protected structures and their curtilage and is contrary to a conservation-led strategy.
- The P.A decision to grant permission is unsustainable and is contrary to its own development plan policies for conservation and heritage. It is an ad hoc response to conservation issues that cannot be implemented.

6.1.7. Drainage/Flood Risk

- The Drainage Plans submitted as part of the F.I shows the need to connect to the existing services in Simmonscourt Castle Estate, which are in the ownership of their client within the private road of the estate. Their client controls access to such services and refuses to grant such a connection.
- Therefore, they provide that drainage connections cannot be implemented on lands outside the ownership of the applicant.
- Also, the objectives of SUDS cannot be provided for within the development and Conditions 6 and 7 are un-implementable.
- There has been no Flood Risk Assessment of this development and there is recent history of flooding in this area.

6.1.8. Impact on bats/bat roosts

- They are concerned that an ecological risk assessment has not been carried out considering the sensitive nature of the site.
- The threat of demolition of the existing structure on bat roosts and other protected species has not been assessed. They note that a derogation licence has not been obtained.
- They also note that the river Dodder is less than 450m from the subject site and there are badgers along the Dodder.

6.1.9. AA Screening

- There is no evidence of any AA screening of the development on the file. The protection for designated protected species such as bats and badgers has not been taken into account.

- This is not in accordance with Article 12 of the Habitats Directive. The decision to grant is therefore invalid.

6.1.10. Design and Visual Impact and injury to residential amenity

- The proposed development would be obtrusive and overbearing and have an adverse impact on the residential amenity of the proximate property no. 14 Simmonscourt View.
- It would be out of character with the pattern of development in the area and would adversely impact on the amenities of residential properties in the vicinity and would be contrary to the proper planning and sustainable development of the area.

6.1.11. Regard to Established Precedent

- There is an established precedent for refusal of permission for a two storey structure adjacent to the Castle – Ref. PL29S.241881 refers. They note the Board's reasons for refusal and consider that they have not been addressed in the subject application and remain relevant and a guiding precedent for the Board.

6.1.12. Conclusion

- They provide a Concluding Statement which provides that the subject planning application is invalid.
- There is insufficient legal interest to carry out the development.
- The relevant prescribed bodies have not been circulated.
- There is no evidence of AA screening or of an ecological impact assessment being carried out.
- There is an established precedent for refusal of permission for a two storey structure adjacent to the Castle.
- The proposed development would be contrary to policies and objectives relative to heritage and conservation in the DCDP.

- It fails to comply with development plan standards for parking or service drainage infrastructure and would comprise a substandard form of development.
- It would be out of character with the pattern of development in the area and injurious to residential amenity and contrary to the proper planning and sustainable development of the area.

They include a number of photographs showing the context of the site, the derelict state of the cottage, regard to the proposed sub-division of the open space, views of the setting of the Castle and impact on no.14 Simmonscourt View. They also include a letter from O'Hagan Ward & Co. Solicitors having regard to legal issues.

6.2. Applicant Response

6.2.1. Raymond McGinley Architects has submitted a response to the grounds of appeal on behalf of the First Party Mr. Brian Bagnell. They submit their observations in relation to each of the 11 grounds of appeal, which includes photographs and regard to the following:

6.2.2. Structure Derelict and has no beneficial use

- The development sets out to conserve the gate lodge and return the site to use, accords with best conservation principles whereby a derelict dwelling is returned to use.
- The gate lodge was clearly previously used as a dwelling and this proposal correctly seeks to return it to residential use and add a modest extension.
- The application was declared valid by Dublin City Council.

6.2.3. Insufficient Legal Interest

- They refer the Board to a letter from Rice Jones Solicitors (the applicant's Solicitor) contained in Appendix 1 which clearly sets out the title position and also the easements, rights and privileges.
- They also refer to information submitted from Mr Jonathon Deane the current owner of the site.

6.2.4. Failure of Circulation to the relevant Prescribed Bodies

- They consider that this has been taken into account by DCC and note that the documentation and plans submitted clearly referred to the protected structure.

6.2.5. Adverse Impact on Heritage

- The proposed development does not propose a new dwelling but rather seeks to restore the gate lodge and add an extension to bring it up to modern standards.
- It does not propose any development outside of its current built footprint and does not encroach further. They include photographs and a copy of the Proposed Site Plan.
- They provide that the garden area as agreed with the Council will be demarked with a hedge.
- They also note the proximity of an existing modern apartment block to the Castle ruin.
- No parking was sought in the applicant's proposed development. There is already a level access between the access road and the gravelled area.

6.2.6. Protected Structure and Curtilage

- The existing gate lodge is not listed as a P.S. The local authority accorded greater importance than normally attributed to a non-listed building in this case.
- They note that the proposed 1 ½ storey extension is lower than surrounding properties and have regard to drawings illustrating heights.
- The proposed extension does not directly adjoin the gate lodge and the old and new build can be distinguished.

6.2.7. Material Contravention of the Development Plan

- The applicant does not seek to build on public open space, rather to build on the existing footprint - they refer to their Solicitor's letter on file.
- The proposed development is in accordance with the land use zoning for the area and seeks to return the existing cottage to residential use.

- The impact on the Castle in ruin is negligible. The only encroachment consists of shrubbery.
- The issue of Archaeology has been addressed in the documentation submitted with the planning application.
- They note that Archaeological and Conservation Reports have been submitted with this application. Also that the Reports of the City Archaeologist and Conservation Officer have not recommended refusal in this case.

6.2.8. Drainage/Flood Risk

- They refer to Rice Jones Solicitor's letter, contained in Appendix 1 which clearly sets out connection rights.
- They refer to Appendix 2 and note the letter from the owner who is a chartered engineer and that the information submitted includes mapping and has regard to the issue of a Flood Risk Assessment and Management Study.
- It is stated that the risk of flooding relative to the location of this site, is negligible.

6.2.9. AA Screening and Impact on bats/bat roosts

- The applicant has inspected the site over a number of years and has reported that no evidence of bat roosts or badger setts are evident on the subject site. On site surveys have also been carried out have not found evidence of such.

6.2.10. Design and Visual Impact and injury to residential amenity

- The shadow study submitted demonstrates the impact from overshadowing is negligible.
- The site of no.14 Simmonscourt Road is west of the subject site and they consider it will not be adversely impacted.
- The pattern of the residential development in the Simmonscourt area is quite varied and is not consistent.

6.2.11. Regard to established precedent

- This proposal addresses the Board's previous refusal in that it includes the conservation of the existing gate lodge and adding a modest extension. The

footprint of the current build is adhered to, which is well within the site ownership boundary.

6.2.12. Summary

- They provide that the planning application is clearly valid.
- The applicant's legal interest has been clearly set out.
- The issue of Flood Risk Assessment and Management has been dealt with.
- There is no evidence of bat roosts or badger setts on the subject site.
- The current application seeks to fully satisfy the requirements of the local authority/development plan.
- The proposed development is modest in scale, height and massing and does not adversely affect the character of Simmonscourt Castle ruin or its setting.
- The proposed development is not out of character with the varied pattern of residential development in the area and seeks to conserve the cottage.
- The development is an orderly and modest development, situated on exactly the same built footprint that presently exists on the site.

6.3. **Planning Authority Response**

- 6.3.1. Dublin City Council provide that the reasons for granting permission are clearly set out in the Planner's Report for the application. They have not responded to the grounds of appeal as the Planning Authority considers that the comprehensive planning report deals fully with all the issues raised and justifies its decision.

7.0 **Assessment**

7.1. **Principle of Development and Planning Policy**

- 7.1.1. The impact on adjoining properties and the character of the Z2 residential conservation area needs to be considered. It is of note that as shown on Land Use Zoning Map H of the DCDP 2016-2022, the site while in the Z2 zoning is not within a Conservation Area or an Architectural Conservation Area. The Z2 zoning objective includes: *Residential conservation areas have extensive groupings of buildings and*

associated open spaces with an attractive quality of architectural design and scale. The overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.

- 7.1.2. It is of note that as shown on Map H, the subject site is also located within an area of archaeological potential that surrounds the proximate ruin of Simmonscourt Castle, which is both a Protected Structure and a Recorded Monument. Therefore, it is considered to be a sensitive structure of significance in the local area and regard must also be had to the impact on the proposed development on its curtilage. In this respect note is had to Section 13.8.3 of the Architectural Heritage Protection Guidelines which provides: *Large buildings, sometimes at a considerable distance, can alter views to or from the protected structure or ACA and thus affect their character. Proposals should not have an adverse effect on the special interest of the protected structure or the character of an ACA.*
- 7.1.3. The Third Party are concerned that Simmonscourt Castle is one of the most important historic structures in this area of Ballsbridge and Donnybrook and the proposed development comprises ad hoc development within the curtilage of a significant protected structure and recorded monument. They provide that proposal would encroach on an area in long term use as public open space within Simmonscourt estate and that there is insufficient legal interest to carry out the development. Also that the proposed two storey extension disrupts the historic pattern and layout and would form an overly dominant element when viewed both in the context of the Castle and historic Lodge. They consider that it would constitute a material contravention of the Development Plan.
- 7.1.4. The First Party provides that the development seeks the conversion and re-use of the Gate Lodge which while not listed is a worthy example of a Gothic revival building that deserves to be given a new life. They provide that the proposed development is modest in scale and massing and accords with good planning and development regulations and also accords with sustainable development, and conservation principles, whereby a derelict dwelling is returned to use. They do not consider that it detracts from the setting of Simmonscourt Castle.

7.1.5. Therefore, while the principle of a sensitively designed residential development including extension is generally acceptable in the Z2 land use zoning, regard is had to the constrained nature of the subject site and the issues raised in the in the Third Party appeal and to the First Party response. These include relative to the impact on heritage, conservation and residential amenity, access and encroachment, having regard to planning policy, the issue of material contravention and the proper planning and sustainable development of the area and are considered further in this Assessment below.

7.2. Differences between the current proposal and that previously refused

- 7.2.1. The Third Party consider that the previous refusal (Reg.Ref.2013/13 – Ref. PL29S.241887 refers) has provided an established precedent for refusal of permission on these lands. Also, that the current proposal does not override the Board's reasons for refusal. As noted in the Planning History Section above, this application involved the demolition of the existing cottage and the construction of a two storey three-bedroom house in a relatively similar location to that currently proposed. The proposed dwelling was shown as c.7.3m in height and the floor area was given as 138sq.m on this site of 261sq.m. It proposed an entirely new dwelling demolishing what remains of the historic gate lodge. The Inspector's Report was concerned that the demolition of the gate lodge would preclude the possibility of any future restoration. As noted in the History Section above, the Board's second reason for refusal refers.
- 7.2.2. The First Party provides that the previous application made by the applicant for this site was refused planning permission, largely because it did not involve the retention of the existing gate lodge/cottage (which is not a P.S). In the current application the applicant is proposing to retain the existing cottage and conserve and extend it as shown on the drawings submitted. They therefore consider that the current proposal will be of benefit as it includes the restoration of the existing cottage. The current proposal also includes a proposed extension to the gate lodge/cottage. This is to be set back to the rear of the former and includes a side garden area.
- 7.2.3. It is noted that both the previous and current applications propose access to the house across the existing gravelled area in front of and to the north of the existing Simmonscourt Castle ruin. The issue in this case is whether the proposed

development would now be considered to be an improvement on that previously refused and in accordance with the proper planning and sustainable development of the site.

7.3. Validity of the Planning Authority decision

- 7.3.1. The Appellant has raised concerns about the validity of the application and Planning Authority decision and refer to the Planning and Development Regulations 2001-2015. They have raised a number of issues in this regard, and request the Board to declare the application invalid.
- 7.3.2. These concerns have been noted and I am of the opinion that this is a procedural matter for the P.A. to address, a determination on whether the P.A decision is valid or not, would not be appropriate to make here.

7.4. Regard to Legal issues

- 7.4.1. It is provided in the application submission that the proposed development will not impact adversely on the Castle ruin. The footprint is to be similar to the buildings currently on the subject site. There is concern about the issue of encroachment into the curtilage of the P.S Simmonscourt Castle. The Third Party note that part of the green area, to be used as side garden area for the proposed development has been in use as communal open space for the apartment development since the early 1980's. They also provide that the applicant is not in a position to implement access, rights of way or drainage connections on private land outside of his ownership. They provide that the applicant as the prospective purchaser has insufficient legal interest to carry out the development and that the site is inadequate and unsuitable for the development proposed. They include a solicitor's letter regarding these issues.
- 7.4.2. The First Party response refers the Board to the applicant's solicitor's letter contained in Appendix 1 of their Submission, which they provide clearly sets out the title position and also the easements, rights and privileges. They also provide a letter from the current owner relative to the status of the site.
- 7.4.3. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "A person shall not be entitled solely by reason of a permission

under this section to carry out any development”. Under Chapter 5.13 ‘Issues relating to title of land’ of the ‘Development Management - Guidelines for Planning Authorities’ (DoECLG June 2007) it states, inter alia, the following: “*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*”

7.5. Regard to Material Contravention

- 7.5.1. Regard is had to Planning and Development Act 2000 (as amended) and to the particular circumstances where a material contravention would apply. Section 34(6) sets out the procedure under which a planning authority may decide to grant permission for such a development. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc, where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.
- 7.5.2. In this instance the proposed development is clearly not of strategic or national importance. There is no policy or guidelines or such pattern of development in the area advising that such a development should be permitted on this site. However, the site is on land zoned for residential/conservation and is within the grounds of a P.S and R.M and therefore the relevant Conservation/Heritage Policies apply. The Third Party consider that the proposed development is in material contravention of conservation and heritage policies in the DCDP 2016-2022. It is not considered that these policies are conflicting or not clearly stated. In this context it is not considered that a material contravention would occur. Regard is had to the issues raised in the Assessment below.

7.6. Impact on Heritage

- 7.6.1. A Conservation Report has been submitted with the application. This has regard to the locational context of the site and notes that the site was photographed and a preliminary survey of the cottage ruin on the site was carried out and survey drawings submitted. These are contained in Appendix C and D of the Report. This provides that the existing building on the site contains the partial remains of a small cottage or gate lodge. This appears non-habitable and in ruinous condition. All that remains of the building are parts of its walls, with no windows within the openings on the eastern site. The timber roof structure is almost all missing and what remains is beyond repair. There is a modern extension connected to the ruined cottage at its northern end and this is composed of modern concrete block walls and a profiled metal roof. The existing building is mostly obscured by vegetation overgrowth.
- 7.6.2. Regard is had to the history of the site and to the ruin of Simmonscourt Castle, which is considered by the Conservation Report to have been constructed in the fourteenth century and noted in the 'Antiquities of Ireland' published in the eighteenth century. The ruin is also close to the Victorian Simmonscourt Castle which is located to the east of the castle ruin and within the grounds of the modern residential development.
- 7.6.3. It is provided that mapping dating back to 1865 clearly shows the form of the castle ruin and also shows a building on the subject site noted as a 'gate lodge'. The O.S map of 1865 clearly shows the plan of the current cottage structure on site. This 'Gothic revival' style cottage is estimated to have been built in the early to mid-nineteenth century. Characteristic of this and the 'lancet' windows which feature brick surrounds, set within heavy stone walls.
- 7.6.4. There is concern that the proposed development by virtue of its proximity to, its part two storey height, the segregation and subdivision of the existing setting for the protected structure i.e the Castle in ruins would adversely impact on its character and setting. Also that it would materially contravene the development plan policies and objectives for conservation and relative to archaeological heritage. This is also a Recorded Monument (ref. 7540 in the DCDP 2016-2022). In this respect regard is had to policies CHC2 (Protected Structures - Conservation Section 11.1.5.1) and CHC9 (Archaeological Heritage).

- 7.6.5. An Archaeological Report has been submitted in response to the Council's A.I request. This notes that the site is located immediately adjacent to Simmonscourt Castle (DU018-06301) and gatehouse (DU018-06302). The historical background Section notes that the Castle was built in the fourteenth century. Details are given in the Record of Monuments and Places and of previous excavations in the vicinity. Regard is had to the mapping, photographs and documentation submitted. It is noted that the photograph included in Plate 3 shows the castle in wintertime, minus the extensive overgrown planting that was present during the summertime site visit.
- 7.6.6. As part of the assessment a single trench was excavated outside the upstanding built structure. This provides that no archaeological features or deposits were identified and no finds were recovered. However, it is recommended that, due to the proposed development's proximity to the recorded monument, that all groundworks associated with the proposed development should be subject to archaeological monitoring. If the Board decide to permit a condition regarding the archaeological monitoring should be included.

7.7. **Regard to the issue of Habitable House**

- 7.7.1. It is considered that there is an issue in this case as to whether the remains of the cottage constitute a 'habitable' dwelling. As noted in the Conservation Report is it proposed to conserve it and add on the rear extension element. Regard is had to Section 2 of the Planning and Development Act 2000 as amended provides a definition i.e:

"habitable house" means a house which—

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied;

- 7.7.2. It is noted that the former cottage/gate lodge is in derelict ruinous condition where the roof has collapsed and only part of the walls remain and details have not been submitted of when it was last habitable. While details have not been submitted as to when it was last used as a habitable house, this appears to be many years ago.

7.7.3. Therefore, it is considered that this ruinous building in its current form does not constitute a habitable house and that a residential extension cannot be considered as such. Rather while some aspects of the original gate lodge remain, the proposed development would more appropriately constitute a new dwelling on this site, partly within the footprint of the gate lodge and within the curtilage of the ruinous P.S. Simmonscourt Castle.

7.8. **Regard to Conservation issues**

7.8.1. The proposed development consists of the conservation and extension of the existing small former cottage/gate lodge on the site to form a single extended dwelling. The drawings submitted show the existing and proposed development. In view of the ruinous state of the original cottage, few of its original features remain. The Conservation Report provides details of the conservation repair methodologies proposed for the cottage structure. The Conservation Officer considered that the lodge may be an earlier than originally provided i.e mid-18th century. They consider that the application of best conservation practice to this lodge is of the upmost importance for achieving an understanding of the evolution of the cultural landscape from the 14th Century onwards. They requested that A.I be sought on a number of conservation related issues including specifications and methodologies.

7.8.2. In response the architects have submitted a 'Specification of the proposed conservation works to the exterior and interior of the Gate Lodge and methodology for demolition and proposals for salvage of authentic fabric'. This includes photographs of the interior of the existing building and drawings showing the conservation of the three pointed arched window opes on the eastern site of the cottage. It is noted that a considerable amount of work needs to be done to bring the cottage back into habitable use. It is considered that provided it is done in accordance with best conservation practice that the conservation of the cottage is desirable. It is provided that given the physical constraints of the existing site and that the existing cottage is to be conserved, that this is a conservation gain. While there will be a slight impact in terms of the approach to the house, the Conservation Report provides that the impact is considered to be minimal.

7.9. Design and Layout and impact on neighbouring properties

- 7.9.1. The Floor plans and Elevations show the relationship of the cottage and the proposed extension. This is not a subordinate one as the latter is to be higher than the cottage shown with a low pitched roof as 3.94m. It is to be sited to the rear of the cottage structure to be connected by a central lightwell area, to allow for a more transitional approach to the height differential. The floor plans show that the cottage is to contain the living/dining/kitchen area and the extension is to contain the bedroom and en-suite and mezzanine element to incorporate study. The proposed design of the extension will appear separate and in contrast, being contemporary and not having a hipped roof or any particular design relationship with the existing cottage. However, it does follow the footprint to the rear.
- 7.9.2. It is of note that the Conservation Report (dated July 2016) refers to the 'proposed house' and not to the description of development provided in the subject application. In this case the height of the proposed extension is not significantly higher than the Castle ruin, with a proposed ridge height of 6.11m and a proposed eaves height of 4.14m, which is lower than the height of the ruin, which is 6.55m. In addition, there is a modern block of apartments beside the ruin and this building has a height of 7.5m. This context is shown on the Elevational Drawings submitted.
- 7.9.3. The construction of the new two-storey element as proposed sits approx.2.5m distance to the west of the existing gable wall of the two-storey existing building and adjoins the site of no.14 Simmons Court View. The proposed rear (west) elevation shows the context seen from the rear garden on no.14. It is noted that to avoid overlooking, other than rooflights no windows are proposed in this side elevation. At present the subject site is partly overgrown with trees and shrubs and there is a 2.2m high wall and a green vista as seen from the rear of no.14 Simmons Court View. Regard is had to the Shadow Study submitted. This shows that there will be some additional overshadowing effect on the rear garden area of no.14 having regard to early morning sunlight as the proposed development is to the east of this site.
- 7.9.4. The criteria for extensions includes that they should be confined to the rear in most cases, be clearly subordinate to the existing building in scale and design and be sustainable. There is concern that the proposed two storey structure attached to the historic Lodge will create an imbalanced and dominant extension, disproportionate to

the Lodge and will detract from the setting of the Castle. The First Party notes that the proposed extension is 1 ½ storey and is lower than surrounding properties and has regard to the drawings illustrating heights. This includes the existing Castle ruin, the apartment block on the adjacent no. '14' site, the apartment block in Simmons Court View development situated close to the Castle ruin.

- 7.9.5. In view of the height differential and the modern design, the proposed extension will provide a considerable contrast in style to the original gothic revival type design of the cottage to be conserved. It is also considered that it would detract from setting and the character of the structure and of the P.S and R.M of Simmons Court Castle. It would therefore not be in accordance with Policy CHC2 (Protected Structures) or criteria relevant to extensions as per Section 16.2.2.3, 16.10.12 and in Appendix 17 of the DCDP 2016-2022.

7.10. Regard to impact on Open Space

- 7.10.1. The site appears land-locked and there is no access from Simmons Court View to the subject site. As shown on the Site Layout Plan, private open space is proposed to the side of the proposed development, between it and the ruin to provide the private open space for the dwelling. This is to be bounded by a hedge. This provides a subdivision of the current area of what is now a green area landscaped as open space between the site and the Castle. This now appears as part of the open space adjacent to the apartment block in Simmons Court Castle to the south east of the site.
- 7.10.2. The Third Party consider that the area between the proposed development and the Castle comprises communal and public open space. This is by reason of long term usage of such. They provide that the segregation and subdivision of this public open space for private development would diminish the public amenity available serving the existing housing development and would be seriously injurious to the residential amenity of the area. They also include a view of the spatial setting and curtilage between the Lodge and the Castle to be subdivided by the boundary treatment for the proposed dwelling. The encroachment of the development into a long established area of open space which is adjoining a housing development and apartments would set an undesirable precedent. Therefore, it is contended that the site comprises the communal public open space and the setting for Simmons Court Castle a P.S and R.M. It is considered that there is no justification for the

segregation and subdivision of this space which would diminish the setting and open space context for the Castle.

7.10.3. The First Party provides that the applicant's proposed development does not encroach any closer to the Castle ruin than the buildings currently on site. They consider that the provision of a small garden area, does not significantly impact on the Castle ruin and is almost hidden from view, when one views the castle ruin from the approach road, which is the most common angle to view the ruin. However, on site it was noted that when viewed from the area adjacent to the apartment complex or the rear of the Castle there is an impact relative to the subdivision of what appears to be open space, that enhances the setting of the Castle and the residential amenity of the area and is currently not part of the former gate lodge site.

7.11. Impact on Ecology

7.11.1. There is concern that an ecological risk assessment has not been carried out as a pre-cautionary measure. This is particularly in relation to the presence of bats and badgers that maybe in the vicinity of the site. Article 12 of the Habitats Directive provides protection for designated protected species such as bats and there is an onus to ensure their protection. The Third Party consider that the proposed development materially breaches policy CHC2(f) for the protection of bats and would contravene the objectives of the Habitats Directive in relation to protected species. They also note the possible presence of badgers in relation to the proximity of the river Dodder (less than 450m) from the site. The First Party provide that there is no evidence of either species on site and refer to surveys being carried out, although no record of the findings of these is given. It is recommended that appropriate regard be had to ecology and to bats and that this and mitigation measures such as low lighting be conditioned should the Board decide to permit.

7.12. Access and Parking

7.12.1. The legal concerns relative to access and encroachment have been noted above. The site appears land-locked i.e to be between the separate gated residential developments of Simmonscourt Castle and Simmonscourt View. When on site it is noted that only the eastern elevation of the former cottage is within Simmonscourt

Castle estate. The approach to the extended cottage is proposed to be across the existing gravelled area, in front of the Castle ruin. It is considered that this space currently forms part of the setting of the Castle as seen from Simmons Court Castle residential complex. Also that the creation of such access would not enhance the setting of the Castle ruin.

- 7.12.2. There are no carparking spaces proposed for the development. Table 16.1 of the DCDP 2016-2022 provides the 'Maximum Car Parking Standards for Various Land-Uses. This varies between 1 and 1.5 spaces per dwelling. However, this is a maximum standard. There is concern that any intention to comply with these standards and provide parking within the curtilage of the Castle would comprise a breach of the policies of the development plan to protect and enhance protected structures and their curtilage.
- 7.12.3. It is considered importance relevant to the setting of the Castle that if the Board decide to permit that it be conditioned, that no on-site parking or alteration to the front gravelled area (which enhances the setting of the Castle) to provide vehicular access for the proposed development be permitted.

7.13. Drainage and Flood Risk

- 7.13.1. The application did not initially include details submitted relative to proposed connection to services, including drainage and watermain. Also relevant to evidence of rights of access to provide routes and means of making service connections. They included a drawing showing drainage connections as part of the A.I submission. The Third Party provides that the applicant is not in a position to implement drainage connections on private land outside his ownership and they refuse to give their consent for such connections on their lands. Therefore, it is provided that there is no viable service connection for the proposed development and Condition no.2 of the Council's decision cannot be complied with. They also provide that the objectives of SUDS cannot be provided for within the development and Conditions 6 and 7 are unimplementable. Also that despite recent flooding in the area, a Flood Risk Assessment has not been carried out.
- 7.13.2. In response the First Party refer to their solicitor's letter and the letter from the owner of the lands contained in Appendix 2 of their submission. They also note that

the current owner who is a chartered engineer, has dealt with the issue of flooding and includes in his letter a 'Flood Risk Assessment and Management Study Map', commissioned jointly by Dublin City Council, the OPW etc. This map clearly shows that the risk of flooding of the subject site is negligible and is stated in the legend of the map as a '1 in 1000 chance in any given year.

7.14. Screening for Appropriate Assessment

- 7.14.1. The Third Party notes that screening for AA has not been carried out. Their concerns relative to the possibility for bat roosts on the site and the proximity of badgers in the locality is referred to in the Ecology Section above. The site is not proximate to designated Natura 2000 sites, nor does it provide a pathway to such. It is considered that having regard to the nature and scale of the development proposed and to the nature of the receiving environment, no appropriate assessment issues arise.

8.0 Recommendation

- 8.1.1. Having regard to the documentation submitted, to the submissions made, the relevant planning policies and having viewed the site, it is recommended that permission be refused for the proposed development for the reasons and considerations below.

9.0 Reasons and Considerations

1. The site of the proposed development is within an area zoned Z2 and designated a residential conservation area and within the curtilage of a Protected Structure 'Simmons Court Castle' which is also a Recorded Monument (reference number 7540 in the Dublin City Development Plan 2016-2022), within the zone of Archaeological Interest. It is considered that the proposed development which includes a contemporary extension to the derelict cottage/gate lodge for conservation and the introduction of a side garden area which would segregate what now appears as open space, would encroach and impact adversely on the sensitive and historic setting of Simmons Court Castle. It would constitute development which would appear overly dominant and piecemeal and detract from the character and setting of

the Protected Structure, and would therefore be contrary to Conservation and Heritage Policy CHC2 of the Dublin City Council Development Plan 2016-2022. Accordingly, it is considered that the proposed development would seriously injure the visual amenities of the area, would adversely impact on the character and setting of the protected structure and would, therefore be contrary to the proper planning and sustainable development of the area.

Angela Brereton,
Planning Inspector

1st of August 2017