



An
Bord
Pleanála

Inspector's Report 29S 249230

Development	Return dwelling from multiple occupancy to single occupancy. demolition of extension to rear reversal of alterations subdividing house, refurbishment works, new electricity and heating, alterations to internal layout, configuration of rooms, reinstatement of internal staircase new internal wall linings structural and fabric repairs. New Single storey flat roof, glass and render finished extension to side.
Location	No 36 Belgrave Square, Rathmines, Dublin 6. (Protected Structure.)
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3263/17.
Applicant	Honora O'Connell
Type of Application	Permission.
Decision	Grant Permission.
Third Party Appellant 1	Phillip O'Reilly,
Third Party Appellant 2	Martin Moloney.
Observer	Belgrave Residents' Association.
Inspector	Jane Dennehy.
Date of Inspection	2 nd February, 2018.

1.0 Site Location and Description

- 1.1. The site which has a stated area of 7.3.5 square metres is that of a detached, mid nineteenth century double fronted villa located on the north side of Belgrave Road and set back from the road frontage. A flat roof two storey extension is located directly at the back of the house with a small remaining rear garden area. The villa is one of a group of four similar detached villas (Nos 33 to 36) on the north side of Belgrave Road.
- 1.2. The internal accommodation within the villa including the space the rear two storey extension, has a stated floor area of 408 square metres and has been subdivided into multiple dwelling units. The accommodation within the original dwelling is spread over three floors, a garden/lower ground level, entrance level/*piano nobile* on which the principal rooms are located and a first floor level. The main entrance to the *piano nobile* is accessed from a landing with granite steps and with cast iron railings to each side parallel to the façade. There is a separate entrance to the lower ground floor accommodation beneath the staircase. The space to the east side between the existing house and extension is wedge shaped and enclosed by a hedgerow.
- 1.3. The location is a short distance to the east of the junction with Belgrave Avenue and Palmerston Road and west of with Beechwood Park a small *cul de sac* off which there is a lane leading to the rear of the property where there is a pedestrian gate in the boundary wall. To the east side is a terrace of two storey dwellings constructed in the mid twentieth century. No 62 at the western end adjoins the appeal site and has a single storey extension to the side. The ground level within this property is lower than the level within the appeal site. Two storey terraced houses dating from the nineteenth century are located on the opposite side of the road.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for works to facilitate return to use of the villa as a single dwelling unit, it previously having been

previously altered to facilitate multi-occupancy, removal of the existing rear extension and construction of a new side extension.

2.2. The proposed works comprise:

- Demolition in entirety of the existing rear extension. (74.4 square metres)
- Reversal of alterations which facilitate the subdivision of the house for multiple occupancy including refurbishment works, new internal wall linking, new electrical and heating systems, alterations to the internal layout reconfiguration of upper and, lower and ground floor rooms, reinstatement of internal staircase connecting ground and first floors, structure repairs to fabric, and,
- construction of a new single storey flat roof, glass and render finished side extension, the stated floor area of which is 31.6 square metres.

2.3. Included with the application is a conservation assessment report prepared by the applicant's architect along with an outline conservation method statement.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 21st August, 2017, the planning authority decided to grant permission for the proposed development subject to nine conditions. Condition Nos. 8 and 9 contain requirements for the project to be carried out under the direction of an architect with specialist expertise in architectural conservation and engagement with the Conservation Officer with regard to the proposed works to the building fabric.

3.2. Planning Authority Reports

Planning Reports

3.2.1. The planning officer having noted the contents of the conservation officer report and observer submissions concluded that the proposed development was acceptable, subject to conditions.

Other Technical Reports

- 3.2.2. The report of the Conservation Officer indicates satisfaction with the proposed development. A condition is recommended for the project to be carried out under the direction of an architect with specialist expertise in building conservation and for consultation with the conservation officer for agreement on the works to the historic fabric.

The report of the Drainage Division indicates no objection subject to standard conditions.

3.3. Third Party Observations

Observations were received from the two Appellant parties and the Observer party. Their objections and concerns with regard to the proposed development are outlined in detail in the appeal and supplementary submissions in section 6. The concerns are about potential adverse impact on the character and fabric and on the setting and context of the existing building, which is protected structure, impact on adjoining properties and potential precedent for further undesirable development.

4.0 Planning History

- 4.1. There is no record of any prior planning history for the appeal site.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is the Dublin City Development Plan, 2016-2022 according to which the site is subject to the zoning objective Z2: *“To protect and/or improve residential conservation areas.”* Policies for the protection of the special character of designated residential conservation areas are set under section 11.1.5.4 and Policy Objective CHC4. The area to the east side of the Appeal site along Dunville Avenue and Beechwood Park is subject to the zoning objective Z1: *to protect, provide for and improve residential amenities.*
- 5.1.2. No 36 Belgrave Road is included on the record of protected structures (Item No 555)

5.1.3. Rathmines is designated as a “Key District Centre”.

6.0 The Appeals

6.1. Third Appeal by Phillip O’Reilly:

6.1.1. According to the appeal submitted by Mr. O’Reilly on his own behalf:

- The villa is one of four unique Victorian villas of significant architectural merit.
- The survey drawings are not accurate, the existing house retains its detached status and the rear extension is lower than shown on the drawings in that it is not more than one and a half storeys in height.
- The detached status of the house should be retained and maintained as such to either side. The proposed east side extension is incompatible and affects the balance, character, harmony of the villa and would dominate the setting of the villa. Any extensions should be confined to the rear of the house.
- Removal of a portion of the east side wall of the house alters the footprint and character of the house and is unacceptable. Radical interventions cause irreparable damage and destruction.
- The proposed development is not acceptable for a protected structure, having regard to standards and policies for protected structures in the development plan.
- The proposed development is contrary to the zoning objective which specifically seeks to protect and improve residential amenities and the objective for extension to, “*reflect and be in keeping*” with the character of the main structure in residential conservation areas. The extension would dominate and be detrimental to the architectural and historic character of the area.
- The proposed development would set undesirable precedent for further similar development.

6.1.2. Mr. O’Reilly points out that permission was refused for a flat roofed extension to a protected structure due to incompatibility with a protected structure under P. A. Reg.

Ref. 3333/16/PL 29S 247291. (The Board's file is attached.) He states the same principles should be applied to the current proposal.

6.2. **Third Party Appeal by Martin Moloney.**

6.2.1. An appeal was received from Mr. Moloney of No 62 Dunville Avenue on his own behalf on 15th September, 2017. Mr Moloney resides at the adjoining property to the east side of the appeal site at No 62 Dunville Avenue and he states that he has a number of objections with regard to procedural matters and, with regard to the planning considerations. The submission is considerable in length and in detail and is outlined below:

6.2.2. Mr Moloney asserts that there are procedural errors in the assessment of the application with regard to the following matters.

- Title regarding land on which the extension is to be constructed was not addressed by the planning authority as required under section 5.3 of the *Development Management Guidelines*.
- The boundary with the appeal site property is disputed. The disputed boundary adds to the width of the property and minimises the wedge shape of the extension. Additional information should have been sought with regard to the *bona fides* of the ownership. There is no assurance for the appellant regarding the boundary.
- Mr. Moloney's capacity to submit an informed appeal has been impeded in that compliance with the proposal cannot be verified due to procedural error, internal coherence and lack of sufficient reasoning with regard to the zoning objective, protected structure status. The planning process should be recommenced in view of doubts about legal interest and use of generic notes with regard to the provisions of section 34 (13) of the Planning and Development Act as amended, (The Act.)
- Incoherent plans are relied on by the planning authority in accepting impractical contiguous street elevation drawings. There is an impossible alignment. The flat roof of the proposed extension if aligned with that of the extension at No 62 would be three metres and not 3.6 metres in height because the level at No 62 is 400 metres lower at No 36. Adjustment by

digging down would be materially different and affects capacity to verify compliance and effectiveness of an appeal. There is a duty of care not to impose conditions that are materially inconsistent.

- The planning authority has a duty of care to apply special care in consideration of proposals and providing substantive meaning and elaborated reasoning. There is a lack of reasoning for the limited value given to the protected structure designation and the Z2 zoning objective in the planning authority's assessment and reason for the decision. It does not meet section 6.8 of the Development Management Guidelines on clarity in drafting reasoning to facilitate assessment by third parties, Chapter 14 of the Development Plan and Section 18. (3) and 20 of the Act, and case law, in particular, *Kelly v Commissioner of An Garda Siochana*, (Supreme Court 2013 IESC 47). Policy statements should be referenced.

- In the reasoning for the decision each of the following should have been addressed:

Is the proposed extension compatible with the "Z2" zoning objective and if so, who and why?

Is it compatible with Council policy with regard to use of consistent building materials and if so why?

Is it compatible with the protected structure? Does it harm the side wall and alter the appearance from the street?

Is it appropriate to use building materials not consistent with the original materials, given the Architectural Guidelines and Residential Extension Guidelines?

Is it in accordance with the Residential Extension Guidelines with regard to adverse impact on neighbours to approval a proposal built so close to the neighbour, preventing established side access within the neighbour property casting a shadow over the garden and adversely impacting on the amenities of that property?

Is it compatible with the Residential Extension Guidelines which require that development not have adverse impact on scale and character of a

dwelling especially given that the conservation report acknowledges that the conservation methodology provided is only “outline”?

- Mr Moloney elaborates by contending that the assessment is deficient due to lack of reference to the zoning objective, the designation of Rathmines as a “Key District Centre” in the development plan, the lack of evidence of consideration of the provisions of Section 57 of the Act with regard to the protected structure status of No 36 Belgrave Square and the Residential Extension Guidelines incorporated within the development plan and Architectural Heritage Protection Guidelines with regard to the impact of the proposed development on the structure itself and neighbouring properties. He contends that there is a lack of transparency regarding matters required by law and that there is no evidence that the preplanning advice of the planning officer was followed in the application.
- Separate itemised reasoning would facilitate the appellant to establish whether the law and Dublin City Council policies have been correctly understood by Mr Moloney, and, if it is decided by the Board to grant permission which is in contravention of the development plan as provided for in section 37 (a) (b) and (c) of the Act. A statement of explanation for the decision would also be necessary, (if the matters are considered sufficient for elaboration on the reasoning) to facilitate the appellant in deciding if he should follow a course of legal action.
- As the applicant may not be the sole owner, section 132 of the Act be invoked to require the applicant to demonstrate beneficial interest or, if relevant letters of consent to the application.

6.2.3. Mr Moloney asserts that there are objections on planning grounds with regard to the following matters:

- The proposed extension would be across the dividing line between Ranelagh and Rathmines and Dunville Avenue and Belgrave Road as well as on the site of No 62 Dunville Avenue and is inappropriate. It is acknowledged that dispute over property boundaries is not a matter for the Board.
- The extension is too close to No 62, towers over it, blocks light to the house and the natural amenities at the side and residential amenities.

- A boundary wall is not provided. (There is no dividing wall between the properties.)
- The pedestrian access around the side from front to back at No 62 would be blocked. There is a level difference and destruction of part of the hedge in the ownership of No 62 would be involved.)
- The streetscape on Belgrave Road which is significant would be damaged.

6.2.4. Mr. Moloney seeks the inclusion following requirements under eight conditions:

- The extension is to be aligned in height with the roof level of the extension at No 62 necessitating digging down 400 mm so the surface is the same level as at No 62.
- A redesign of the front elevation of the extension in a style consistent with the traditional style of the building in windows doors and materials and use of plaster to mimic the main house.
- A stepped rubble stone wall to be constructed at the back at the corner with the back lane walls facing the wall of No 62 and No 36 as far as Belgrave Road to define the boundary with 62 and facilitate protection of hedges, shrubbery and privacy at No 62.
- To protect, repair and make good the 400 mm retaining wall which comes within the property at No 62. Works and vibration may cause damage.
- During construction provision for a wooden boundary fence to the north side of the hedge along the full length of the property line at No 62.
- Confine access to the extension by a small corridor at the back of the main house where the roof is shown. The east wall of the house at No 36 should be left intact.
- The applicant should be required to take all steps to demonstrate her right to execute the grant of permission. Some lands may not belong to the owners of Nos 36 or 62.
- The proportions should be modified so that the widest point is five metres at the front of the extension from the side wall and three metres at the back

where it extends from the back corner of the side wall to reduce bulk. (A diagram is on page 26 of the appeal.)

6.3. Applicant Responses to the Appeals by Mr. Moloney.

6.3.1. A submission was received from Kelly and Cogan on behalf of the applicant in response to the appeal by Mr Moloney on 17th October, 2017 attached to which are copies of a survey carried out on behalf of the applicant and a land transaction deed. According to the submission, the applicant is willing to incorporate some minor modifications, details of which are provided in section 6.3.2 below. An outline summary of the response to the appeal follows:

- The applicant is in full ownership of the site lands and is fully entitled to implement the development if permitted. The contention that part of the site where there is an ill maintained hedge on is in the ownership of Mr Moloney is not supported by any documentary evidence. Registry details match the survey conducted on behalf of the applicant and the 1862 land transaction deed indicates a boundary further to the east.
- The proposed extension is to be at the height indicated on the application drawings.
- The application included revisions recommended during the course of the pre-planning consultation with the planning authority.
- Any contention as to potential loss of access to the property at No 62 is rejected.
- Overshadowing would not be caused by the proposed development. The west facing gable wall at No 62 is overshadowed by the hedge.
- The hedge is not a significant wildlife environment and the proposed sedum layer on the flat roof of the extension will attract butterfly and bees.
- The streetscape is not an architecturally and historically consistent whole as contended in the appeal. There is considerable variation in structures and materials along Belgrave Road and Dunville Avenue. The three villas including No 36 Belgrave Road date from the 1860s to the 1880s are commonly rendered and have bay windows. No 62 Dunville Avenue is a mid-20th century house with a modern combed dark cement jointed brick, picture

windows and a concrete tiled roof. Many structures have been altered, there is a mix from fine 18th century terraces to twentieth century structures of poor quality. It is inappropriate to enforce one particular aesthetic based on one typology on all others especially work that mimics older work.

- A basic principle of good conservation practice is to clearly distinguish the new work from old work. New additions should be “of their time”, as reflected in ICOMOS Charters and the Architectural Heritage Protection Guidelines. The proposed extension is modern in idiom to clearly contrast with the original house. The Conservation Officer has approved the proposed new addition and the proposed interventions to the existing structure to reverse the subdivisions and to facilitate the conversion back to a single dwelling with no significant loss of historic fabric being involved. Intervention at *piano nobile* level is avoided, as the extension is at lower ground floor level. The existing large inappropriate extension at the rear is to be removed.
- The appellant’s request to the Board to clarify his understanding of the law is inappropriate. Ms O’Connell is the owner of the property and signatory of the Deed of Purchase and only members of her family could have an interest.
- A reduction in height of the extension is unreasonable as it does not materially affect Mr Moloney’s property.
- Imposition of a traditional design style for the extension is unreasonable as it would not accord with best conservation practice and the ICOMOS Charters.
- There is some merit to the construction of a new boundary wall but rubble stone would not be appropriate. Exposed stonework is only appropriate in coursed rubble or ashlar stonework boundary walling at 18th century estates. It is inappropriate for No 36 which at a lower ground level is in part lime rendered masonry. Any new wall should be in modern masonry construction with lime render to each side and with the height subject to compliance by condition.
- The applicant is unaware of damage as contended, to a 400mm high retaining wall attributable to any of the minor opening gap works undertaken.

- It is normal practice to erect hoarding or demountable screen fencing during the project.
- With regard to the requirement for rear access to the extension, the appellant appears to seek additional construction at the rear of No 36.
- The request for reduction in width of the proposed extension from 7237 mm at the front to 5000 mm and from 5140 mm to 3000 mm at the rear as shown on the axonometric image included in the appeal is unacceptable and illogical. It would change the emphasis from horizontal to vertical and is based on a belief that the extension is unreasonably large.

In concluding remarks, it is submitted that the proposed works are modest and do not adversely affect the integrity of the protected structure and reference is made to the conservation officer report which is supportive of the proposed development. (An extract is included.)

6.3.2. The applicant is willing to implement the following modifications which have also been referred to in the response to the appeal of Mr. O'Reilly.

- An original staircase fragment including part of a handrail and balusters survives and could be used as a model for reconstruction of the original stairs at the west side of the rear hall which is the original position and contributes to reinstatement of the planform.
- Instead of subdivision of the central room to the west side of the upper ground floor reinstatement of an original plan form without disturbance to original architecture can be achieved by omission of the proposed subdivision works.
- Omission of the proposed removal of a wall between bedrooms 3 and 2 at lower ground floor level which would have adversely impacted on the primary fabric.

6.4. **Applicant Responses to the Appeals by Mr. O'Reilly.**

6.4.1. A submission was received from Kelly and Cogan on behalf of the applicant in response to the appeal by Mr O'Reilly on 12th October, 2017. According to the submission:

- No 36 Belgrave Road is of a common villa typology of the later Victorian era, with a planform which is common throughout South Dublin. It is of architectural merit but not to an extent that is unique as contended in the appeal. It is fabricated from pre-formed components internally and externally and postdate the introduction of mass production in the mid nineteenth century. There are no historic, scientific, artistic, social or cultural associations.
- The contentions that the survey drawings are inaccurate are rejected.
- With regard to the proposed extension:
 - It is not good conservation practice for new works to match existing historic fabric. The principle is to ensure that new work is distinguished from the old as indicated in the ICOMOS Charters and Architectural Heritage Protection Guidelines and which should be” of their own time”.
 - The proposed interventions to historic fabric and which facilitates the reversal of the subdivisions to provide for a single dwelling accords with good conservation principles, ongoing protection of the building and reinstatement of the original planform and have been deemed by the conservation officer. The appellant’s contentions to the contrary are rejected.
 - The proposed extension is on ground covered by a concrete slab and is in modern idiom to ensure a clear contrast with the original house. It below the *piano nobile* being at lower ground level, is a light weight structure set back from the front building line and partially hidden by planting. There is minimal impact on the streetscape and the extension is subsidiary to the protected structure.
 - The removal of the existing two storey 74 square metre rear extension in favour of restoration of original fabric and erection of a modest single storey 31 square metres extension to the 334 square metres house is not addressed by Mr O’Reilly.
 - There is little comparison between the proposed development and examples of other unsuccessful applications referred to in the appeal.

In concluding remarks, it is submitted that the proposed works are modest and do not adversely affect the integrity of the protected structure and reference is made to the conservation officer report, (extracts from which are included) which is supportive of the proposed development.

6.4.2. The applicant is willing to implement modifications to the development with regard to an internal staircase, omission of subdivision and omission of a wall. Full details are set out in Para. 6.3.2 in the response to the appeal of Mr. O'Reilly:

6.5. **Planning Authority Response**

6.5.1. In a letter received by the Board on 27th September, 2017 it is stated that the planning authority has no comments on the application and reference is made to the planning officer's report.

6.6. **Observations**

6.6.1. An observation was received from Mary Crosbie on behalf of the Belgrave Residents Association on 12th October, 2017. The submission contents are outlined below:

- It is acknowledged that some intervention is necessary to provide for extensions at protected structures and to facilitate continuing viability but alternative options were not drawn up and considered. There is also no analysis to support any pressing requirement for an additional extension to facilitate conversion back to a single dwelling unit, the existing house being an exceptionally spacious for single occupancy. It is not established that there is a compelling need for substantial expansion of the house.
- There is concern about the scale and design and the basis for the conservation officer's favourable views on the proposed design and materials and its impact on the streetscape. A visual aid should have been provided. The strong vertical symmetries of the house would be disrupted especially in hours of darkness by the illuminated glazing. Disruption to the symmetry of the principle elevations is contrary to the *Architectural Protection Guidelines*
- There is concern about impact on uniformity by obscuring patterns and rhythms in the streetscape, namely the visual integrity of four villas at Nos 33 to No 36 which should be preserved and which would be contrary to the

development plan. The extension, although single storey would also be overbearing in relation to No 62 Dunville Avenue.

- The proposed demolition of historic fabric is a concern. The public notices and application drawings are deficient in detail but were accepted at face value by the planning authority. The demolition involves removal of a chimney as well as an opening and this is contrary to the recommendation that new work should involve the smallest possible loss of historic fabric and ensure important features are not obscured, damaged or destroyed in section 6.8 of the Architectural Heritage Protection guidelines and similar policy in the development plan for retention and protection of historic fabric.
- The wedge shape is an erosion of the border between the historic townlands of Rathmines East and Ranelagh South which were legible in the planting. This remnant of the rural landscape prior to suburban expansion in the Victorian Period has been ignored and a clear break should be retained. The extension is contrary to section 6.8.6 of the Architectural Protection Guidelines for discouragement of infill of gardens and other spaces of historic interest. Further research could reveal more underlying characteristics.
- The impact on No 62 Dunville Avenue with regard to the development on the boundary and to the west is a concern as is the lack of consultation with the owners.
- The residential amenities of No 36 would be enhanced by maintenance of the external side access.
- Various discrepancies are in the application of concern and were overlooked by the planning authority. Demolition issues were neglected by the planning authority in its assessment. Considerable loss of historic fabric was not considered and it is sizeable on the west wall and the east wall.
- Demolition of the existing extension to the rear is appropriate as it detracts from the house and surroundings. T
- The demolition of the part two storey side extension of the west side as opposed to refurbishment may be evidential of an incremental pattern on the

west side found in historic maps. The applicant's conservation report did not distinguish historic fabric on the west flank of the house and it was neglected in the planning authority assessment. It should be identified and considered in a different light. There is doubt about the extent of interventions without a prior, reliable survey being conducted in advance to identify elements to be retained, replaced and or removed to allow for evaluation for proper evaluation of the interventions and assessment of the impact of the additions. Discrepancies erode reliance on conclusions.

- A small amount of survey research would have informed the application and the appropriateness of the application. An outline conservation methodology as submitted with the application is not enough to inform and to justify the decision on major and intrusive interventions

6.7. Further submission of Mr. Moloney, Third Party Appellant.

6.7.1. A further submission was received from Mr. Moloney on his own behalf on 5th January, 2018. Mr Moloney responds to applicant's submission and elaborates on the comments and concerns expressed in the appeal.

- Investigation remains necessary to determine the demarcation of the two plots of land and boundaries for the applicant and appellant properties. The consequence is that the development could adversely affect the property at No 62 Dunville Avenue and impede the amenity for the occupants. Consideration of the proposal should be withheld until the boundary has been determined and agreed through mediation between the parties or legal process. The applicant should not obtain a grant of permission for development on land that she does not own.
- There are several maps showing different boundaries which the appellant has therefore opted not to provide to the Board. The surveyors employed by the applicant cannot provide the requisite assurance as to the boundary line in that the engagement of them was not mutually agreed and not specialised in resolving with boundary disputes and the method used cannot be correct. The 1862 map which is stated to indicate the boundary "further east", demonstrates uncertainty as to the precise boundary. It shows the plot of No 36 in a different shape to the Land Registry map and may mark the physical

boundary but it does not mark the legal boundary. The boundary line is not clear and is contentious and is open to dispute. The parties, (applicant and appellant should make reasonable efforts to resolve the dispute so that a grant of permission for development on land which the applicant has no interest in can be avoided.

- The statement that the extension is to be at the height shown on the drawings is not clarification of the height and the details on the drawings which vertically and numerically indicate different heights.
- If the extension is at ground level the roof at the level of the stringcourse the height would reach the upper window sills. The appellant includes a montage in the submission noting the lack of one in the application.
- The procedural points raised in the appeal which the appellant contends are sufficient to justify refusal of permission are uncontested by the applicant.
- The applicant is unreasonable in not initiating mediation and that it should be established as whether An Bord Pleanala is bound by the Mediation Act. A detailed account and argument with reference to the Practice Note of the Society of Chartered Surveyors on boundaries and The Mediation Act, 2017 with regard to Consultation with Neighbours or the Local Residents Association where it has been established that there is an uncertainty about matters such as boundary definition is included in the submission in this regard.
- The applicant's contention that there is no significant wildlife in the hedge is not supported by an expert judgement. The appellant is resident is familiar with local wildlife and decline in the bee population is a particular concern.
- The claim that the hedge, (which is lower than the extension at No 62) blocks the light to the west elevation is rejected because the proposed extension would be at least half a metre higher and blocks light to the garden and house.
- There is a substantive reason to refuse permission because the amenities of the appellant at No 62 would be removed by the proposed extension being

built up to the side of No 62 affecting the long established external access to the house and gardens at along the side.

- There is a mid nineteenth century appearance to unified streetscape of four mid nineteenth century villas, a distinct feature on the north side of Belgrave Road. Dunville Avenue and Belgrave Road have distinct histories. It is important to keep an open break between No 36 Belgrave Road and No 62 Dunville Avenue.
- Although the extension is ten percent of the overall size of No 36, Belgrave Road it is wedge shaped being wider at the front adding circa 58 % to the frontage with a small setback with significant impact on the streetscape. It is preferable for additional development to be at the back of the house to avoid impact on the locality and neighbours.
- A replication in the new build of the appearance of the original is the best option. In absence of better design as the height and wedge shape of the extension is not in accordance with good conservation practice, detracts from the visual integrity of the original structure with the high impact of the increased width, modern materials and design at close proximity to the road. The need for the hedge to the front is an admission of the negative impact on the streetscape where it would be an eyesore across the open land between No 36 Belgrave Road and No 62. Dunville Avenue.
- The argument as to the value in returning the house to a single dwelling is not a matter on which great emphasis should be placed, the existing subdivision into flats being acceptable. There is an excessive favour for gentrification with regard to the reversion to a single dwelling.
- Members of the applicant's extended family may have an interest in the property.
- With regard to the requested conditions:
 - The motivation for the requested requirements for height limitation and imposition of a traditional style is to provide for protection of the amenities of the appellant's property

- The applicant agrees that there is merit to construction of a wall. A well designed wall is welcome and exposed rubble stone walls are very common throughout areas developed in the late Victorian period. The appellant would be satisfied with a correctly formed opinion by An Bord Pleanála about appropriate wall construction on the eastern boundary but the two parties could come to an agreement on the detail. Remedial action would be required for the removal of the hedge.
- The applicant should be required to build a wall on the inner side of the hedge to mark the dividing line and to provide sufficient foundation to contain the pressure of works. A photograph is provided to support Mr Moloney's contention that a 400 mm high retaining wall (built without foundations) was damaged when a concrete slab was broken up.
- Assurance as to installation of protective fencing is welcome but there should have and should consultation on the detail as to location, height etc. There should be a condition that work cannot proceed unless a mutually agreeable arrangement has been made and that it is erected on the applicant's property but there is uncertainty about the boundary demarcation.
- The applicant should be obliged to appoint a Chartered Surveyor to confirm the interest in the lands or come to an agreement with the appellant on the location of the boundary line.
- A reduced size extension is unacceptable to the applicant but it is a compromise and mitigates the impact on No 62 Dunville Avenue, namely the hedge and side access and the risk of construction on land outside the applicant ownership. It is not agreed that there would be a proportionate change from horizontal to vertical with a 5.1 metres length at the front and 3.4 metre height. The extension would be taller than wide by 0.4 metre at the back where it is not visible from the street. The side access to the garden at No 62 should not be sacrificed to allow for the extension.
- It is unusual for a dividing line between two urban properties to be unmarked on the ground. The application is unique in building up to

boundaries. And it is legitimate for the Board to reject the proposal due to lack of reasonable effort to define the boundary line.

The Board is requested to refuse permission and require the applicant to work with the appellant in determination of the boundary line. Resolution on this would result in a further application being uncontentious.

6.8. Further Submission of Mr. O'Reilly, Third Party Appellant.

6.8.1. A further submission was received from Mr O'Reilly on 8th January, 2018. He also reiterates his views on the proposed development as submitted in his appeal and comments on the response to the appeal as outlined below:

- It is believed that the boundary is the hedge planted by Mr. Moloney, that the proposed extension would be very close to his property and that the ground level rises in a westerly direction. If floor levels are at the existing ground level at No 36 overshadowing would be increased in the afternoon and evening on the garden and to the rear façade of the house at No. 62. It would be greater than the shadow from the hedge and would adversely affect residential amenity.
- The proposed flat roof and sedum layer is inappropriate for a visible location in a residential conservation area and fails to respect the four villas, the terraced Edwardian houses on Killeen Road and Victorian houses on Belgrave Road, Dunville Avenue and the many protected structures.
- The focus should be on upgrading the existing house inside the existing envelope and removing inappropriate interventions allowing for the gardens to be left to the advantage of the wildlife including bees. The roof garden is not a substitute.
- There is out of character development in the area in that Victorian area development was not completed and it is regrettable in that it is adversely affected by the twentieth century structures on Dunville Avenue and other areas which are Z1 and not Z2 zoned lands and should be separated. Discrete separation between No 36 Belgrave Square and Dunville Avenue prevents the four villas (Nos 33, 34, 35 and 36) from being “dragged down” by the twentieth century development. A detailed and lengthy description,

commentary and discussion on the architecture and development in the area with reference to the observations in the applicant's submission is provided to support the claim that the four villas have a uniformity that should be protected due to the uncoordinated historical streetscape on both sides of Belgrave Road and the streetscape which is mediocre on Dunville Avenue.

- Mr O'Reilly reiterates his view that the design of the extension is wholly inappropriate and negative in impact on the existing house and streetscape. He and supports the views of Mr. Moloney and he comments on 'good conservation practice', with regard to the relationship between new build (in an extension) and the original in setting and character and to homogeneity of the area. He reiterates his views as to unacceptable interventions to historic fabric in the form of the proposed openings etc. He rejects the recommendations of the conservation officer and confirms his view that the proposed development would have detrimental impact on the building in that it does not respect the character and style of the original and his understanding of the built environment and destroys the setting, symmetry and balance and is incongruous and totally disruptive to the setting and symmetry.
- Mr O'Reilly does not agree that the rear extension damages the integrity of the existing dwelling and considers that the solution is to omit the side extension instead of attaching conditions such as those mentioned in the submission of Mr. Moloney.
- Mr O'Reilly rejects the contention that the *piano nobile* of the existing house is unaffected by the proposed extension at the lower level.

A course rubble stone wall is appropriate and was used all over Rathmines, Ranelagh and Rathgar in the nineteenth century when the area was developed contrary to the view of the applicant's agent. The assertions as to the alternative boundary walling and adaptation for modern need is rejected.

- Mr. O'Reilly comments on and rejects the case made by the applicant's architect particularly the remarks by the applicant's architect that he considers himself to be a conservation architect and his use of the term "*best conservation practice*" to support the proposal along with remarks made in relation to the other developments which he considers irrelevant. (P. A. Reg.

Ref 4202/16 (PL 248477), P. A. Reg. Ref 3457/17 (PL 249379) and P. A. Reg. Ref. 3441/11 refer.)

7.0 **Assessment**

7.1. There are two appeals and one observer submission which are considerable in detail. The issues can be addressed under the following subheadings.

Procedural issues.

Legal Title and encroachment onto adjoining property.

Return to Single Dwelling unit from Multiple Occupancy.

Impact on existing villa. (protected structure.)

Interventions to historic fabric

Existing extension and private open space provision

Proposed Extension: Design, footprint, height and form.

Impact on character and context of surrounding Residential Conservation Area. (Z2 zoning objective)

Impact on Adjoining Property.

Structural Integrity and stability.

Existing Passage at side.

Overbearing impact – ground level variation

Overlooking and Overshadowing.

Hedgerow and Boundary treatment - wall construction.

Nature conservation – hedgerow.

Appropriate Assessment

7.2. **Procedural Issues.**

7.2.1. One of the appellant parties has expressed considerable concern as to the whether the planning authority assessed and determined a decision on the application in accordance with planning and other legislative provisions and other considerations. While a *de novo* review of the application and documentation available in connection with the appeals comes within the remit of the Board, adjudication as to consistency with proper procedure in the reasoning provided for the planning authority's decision and associated matters does not come directly within the Board's remit. For the purpose of clarity, it should be noted that there are no mandatory requirements for consultations, mediation and agreements with an adjoining property owner within the planning code in relation to planning applications.

7.3. **Legal Title and encroachment onto adjoining property.**

7.3.1. The case made in the appeal as to the desirability that Legal Title and entitlement to implement the development proposed be established prior to determination of a decision on an application is appreciated and has been taken into consideration. It has been concluded that is reasonable to consider and determine a decision on the application and appeal in spite of the issues raised as to lack of clarity as to Title lack of clarity about the boundaries raised on one of the appeals. There is no documentary evidence available in the submissions made in connection with the application and the appeals that confirms that the applicant's ownership or possible multiple ownership or interests is incorrect or that the claim to ownership of the entire site area is incorrect and/or exceeds the boundaries for No 36 Belgrave Road involving encroachment onto the property at No 62 Dunville Avenue.

7.3.2. However, notwithstanding the valid and worthiness of the argument as to variation in historic maps and records as to the historic boundaries, which in this case also involves potential overlap of the historic boundary between the historic Ranelagh South and Rathmines East districts, reliance on land registry documentation would take precedence for planning purposes. Should the boundary definition be contested, or indeed any survey conducted by on behalf of any party, be disputed, resolution through the legal system and registry documentation would be necessary. In this instance, notwithstanding the dispute over the boundary, proceeding with determination of the application with reliance on the provisions of section 34 (13) Act

is reasonable which confirms that a grant of permission does not also confirm entitlement to implement a grant of permission for development. The opportunity for referral of Title and property boundary issues for resolution through the legal system is unaffected. Matters relating to the boundary considered in connection with the following assessment of the appeal are confined to planning considerations provided for within the Act.

7.4. Return to Single Dwelling unit from Multiple Occupancy.

- 7.4.1. The remarks as to desirability for retention of the subdivision into multiple dwelling units on grounds of efficiency and sustainable development interest whereby a continuation with the greater and intensity of use and density can be sustained is reasonable, given the existing facilities and well serviced inner urban area close to transport and facilities. For new development and replacement development on brownfield or infill site at such locations an expectation of achievement of high density would be both desirable and reasonable subject to good qualitative standards. However, it would be excessive and particular onerous for return of an existing historic villa at an inner suburban location to original single dwelling unit use to be rejected on such grounds, notwithstanding the argument as to the considerable size of the existing and existing and proposed internal accommodation. The applicant should have a reasonable expectation as to acceptance of single dwelling unit use subject to planning and technical standards being satisfactory.

7.5. Impact on existing villa. (protected structure.)

Interventions to historic fabric:

- 7.5.1. The existing dwelling is a fine nineteenth century villa with bay windows and is possibly among the group of four at Nos. 33 to 36 Belgrave Road it is the villa of most special interest in terms of architectural characteristics, features and materials. Taking into account the supplementary and revised proposals indicated in the response to the appeal, with regard to the interior of the villa, namely, the internal staircase, plan form and omission of wall removal at lower ground floor level, the overall extent of adverse impact in terms of interventions to historic fabric, is on balance limited. To this end, the opening in the east gable wall, in particular, facilitating linkage to the proposed extension, is reasonable if the extension is acceptable to attachment of and compliance with conditions with regard to

implementation of the works in accordance with an agreed comprehensive conservation method statement under the direction of an architect with specialist expertise in historic building conservation.

The existing extension and private open space provision.

- 7.5.2. There is no objection to the proposed removal of the existing rear extension subject to good demolition and construction practice which can be provided for in a comprehensive method statement. The existing extension at the rear provides for considerable additional internal accommodation, facilitating the multiple occupancy. It is agreed that the applicant would have an option to retain and incorporate the existing extension into the proposed single dwelling unit as argued by of the third parties. Nevertheless, the applicant is entitled, should permission be granted to provide for an alternative additional accommodation to suit her preferences. It is of note in this regard that the existing rear extension takes up a considerable amount of the original garden space and does not have a southerly aspect.
- 7.5.3. In effect the removal of the existing rear extension results in scope for reasonable provision for private open space to the rear which can be substituted for the space to the side on which the proposed extension is to be constructed. For the purposes of clarity in ensuring that there is no confusion as to the adequacy of private open space provision to serve the development and as to overdevelopment, a condition can be included, should permission be granted for occupation of the proposed extension to be conditional on the prior completion of the removal of the existing rear extension and inclusion of the area in the rear private open space.

Proposed Extension: Design, footprint, height and form.

- 7.5.4. With regard to the proportions and footprint of the proposed extension, it is agreed that the proposed “wedge shape” form, a source of objection to the third parties is unsatisfactory due to incompatibility with the form and proportions of the existing villa. Even though the proposed extension is single storey only, the width of the frontage should be of modest proportions and reflective of a small scale, subordinate and low profile addition within the context and setting of the original villa. A design feature for the villa is itself is for it to be strongly recognisable as a detached villa in a relatively open backdrop and context with principle rooms at an entrance, *piano nobile* level over the lower ground floor/ garden level.

7.5.5. To this end, notwithstanding the single storey height and provision for a setback from the front building line the proposed additional infill as far as the boundary is excessive in width, given the proportions of the existing villa. There is insufficient integration in that the proposed extension is disproportionate and also affects the open context an original design feature for significant separation between the villas in the group of four. A satisfactory balance can be achieved by a reduced width whereby the footprint is rectangular or square and provides for vertical emphasis as opposed to an irregular shape inconsistent with the square or rectangular planforms of the original buildings. An open context can be retained in the separation from the hedge and the reduced footprint does not preclude scope for sufficient meaningful internal accommodation to be achieved

7.6. Impact on Residential Conservation Area - Z2 zoning objective.

Impact on architectural character and context of surrounding streetscape.

7.6.1. The four villas at No 33 to 36 Belgrave Road located between the junction with Belgrave Avenue and Dunville Avenue, while not identical, are clearly readable as a recognisable as distinct grouping of considerable interest and merit within a wider environs of mainly Victorian streetscapes to the west and a mix to the east including the mid twentieth century terrace of houses on Dunville Avenue immediately to the east the west end unit of which is the adjoining property of the Appellant at No 62.

7.6.2. Additional to the architectural heritage interest at location is the historic boundary between the Rathmines and Ranelagh which is a significant demarcation but somewhat undefined as discussed in the submissions made in connection with the appeals. It is agreed that this distinction, at the east side of the appeal site, should be recognised in conjunction with the open context and separation between each of the villas. This can be achieved satisfactorily by the reduction in width and by an increase in the setback from the front building line from that shown in the application. Owing to the road alignment, it is considered essential that on approach from the junction to the west the open context around the villas should be retained along with a gap at the intersection with Dunville Avenue where the front, east side boundary is lengthened to accommodate the orientation and configuration of Dunville Avenue and the houses on the plots on its north side. The existing hedge to the west side of No 36 Belgrave Road partially terminates the vista on approach along Belgrave

Road and it can be satisfactorily retained in these views with the reduced width single storey extension in position with an increased setback from the front building line and restriction to single storey height with a flat roof, an alternative roof profile being less compatible with the existing structure.

Design and materials.

- 7.6.3. It is agreed with the applicant and the conservation officer that the design intent for clearly distinct contrast in design and materials for the extension is consistent with best conservation practice and that, subject to some modification that can be addressed by condition these elements of the proposed development are acceptable. Subject to modifications, the proposed extension's design and materials are consistent with this approach in terms of the relationship with an existing historic villa. The modifications considered necessary to ensure the achievement of satisfactory integration and connection with the existing historic villa and the characteristics and features are a requirement for vertical emphasis in the fenestration and for a minor modification to the solid to void ratio at the front elevation. This can be achieved by incorporation of substitution of two vertical windows whereby translucent glazing does not exceed two thirds of the width, of the front façade, exclusive of the casement doors. This can be addressed by condition and should also address the concerns as to visual dominance, especially at night time in the streetscape that are raised by one of the third parties.

7.7. Impact on Adjoining Property.

- 7.7.1. It can be confirmed that the variation in the ground levels between the two sites, the level within the Appellant property being lower and that this is not evident in the information provided on all the application drawings. It is noted that the space on which the proposed extension is to be positioned and that the proposed extension is to be built onto the boundary. A modification, by condition to the footprint providing for a reduction in width and provision for significant separation from the adjoining property has been recommended to render the proposed development acceptable in the context of the existing villa and the immediate streetscape in the environs. Bearing in mind the variation in ground levels, the proposed height at 3.61 metres over the site's surveyed ground level and 3.4 metres above the finished floor level, supplemented by a recommended separation distance from the boundary and hedge

is such that the side passage, single storey extension and rear private open space would not be adversely affected with the proposed modified development place.

7.7.2. The works, subject to good construction practice can be carried out without adverse damage to the hedgerow and retaining wall on the adjoining property, would not encroach on the side passage from front to rear adjoining the side extension on the adjoining property, and is of height and mass that would not be overbearing or tower over the adjoining property. The height variation, estimated to be circa 500 mm between the application site and the adjoining site having regard, particularly to the single storey extension and rear façade and rear garden of the adjoining property is a relevant material consideration. This height difference between the proposed extension and existing side extension on the adjoining property is modest and reasonable. Furthermore, it is considered that there is little or no scope for overlooking or increased potential for overshadowing to occur and it is likely that proposed removal of the existing two storey extension would enhance the perception of open access to skylight at the adjoining property.

7.7.3. The hedgerow which appears to be a mature escallonia hedge is not consistently dense throughout the entire boundary and could benefit from some supplementary planting. However, a boundary wall on the inner side would ensure maximisation of privacy for both properties and it is recommended that one be erected. There is some dispute about the appropriateness of rubble stone walling for the location between the parties but it is considered that a simple block wall, suitably capped and rendered if constructed from the front building line as far as the rear boundary would be appropriate. Retention of the hedgerow and omission of wall construction along the front side boundary would benefit the interests of preservation of the visual amenities and characteristics at this sensitive location between the historic areas of Ranelagh South and Rathmines East at the edge of the Residential Conservation Area. It is agreed that the escallonia hedgerow is beneficial to wildlife but it does not have special ecological merit warranting extreme protection or mitigation.

7.8. **Appropriate Assessment.**

7.8.1. Having regard to and to the nature of the proposed development involving demolition works, alterations, construction of an extension and upgrades to existing historic villa and, to the location in a mature, serviced inner urban area, no Appropriate

Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. In view of the foregoing it is recommended that the planning authority's decision to grant permission be upheld but with modifications to the proposed design for the development of the extension and a requirement for the existing rear extension to be removed and the rear of the dwelling to be made good prior to occupation of the extension. Draft Reasons and Considerations and Conditions follow.

9.0 Reasons and Considerations

- 9.1. Having regard to the historic architectural character of the existing villa and the group of four villas on the north side of Belgrave Road, to the site size, configuration and orientation relative to adjoining properties to either, the size, design, height and massing of the proposed extension and to the proposal for removal of the existing rear extension the area of which can be allocated to rear private open space provision, and to the location at the historic boundary between Rathmines East and Ranelagh South, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the adjoining property by reason of close proximity and overbearing and overshadowing impact, would not be seriously injurious to the fabric, character and integrity of the existing villa, (a protected structure) or to the architectural character of the existing built environment within the area subject to the zoning objective; Z2: "Residential Conservation Area" within the Dublin City Development Plan, 2016-2022 would not be prejudicial to public health by reason of adverse impact structural stability of adjoining property and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and lodged with the application as amended by the plans and particulars lodged with An Bord Pleanála on 12th October, 2017 and 17th October, 2017 except as may otherwise be required to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed.

Reason: In the interest of clarity

- 2 The development shall be modified as follows:

The width of the proposed extension shall be confined to a maximum of four metres.

The proposed extension shall be setback from the front building line of the existing villa by a minimum distance of two metres.

With the exception of the proposed casement entrance doors the front façade glazing shall be amended so that maximum of two thirds of the width of the front façade shall be glazed and a minimum one third in width shall be solid.

Prior to the commencement of the development the applicant shall submit and agree in writing revised plan and section drawings for the written agreement of the planning authority.

Reason: In the interest of the satisfactory integration of the proposed extension with the existing villa (a protected structure) and with the

established architectural character of the surrounding streetscape within the Residential Conservation Area and the visual amenities of the area.

3. Prior to occupation of the proposed extension, the demolition of the existing rear extension shall be fully completed and the space in which it was located shall be allocated into private open space to the rear of the villa to the satisfaction of the planning authority.

Reason: To ensure adequate private open space provision to the rear of the villa in substitution for the existing private open space at the side, clarity, orderly development and residential amenities.

4. Details of the proposed boundary treatment including materials and finishes and for hard and soft landscaping within the perimeter of the site shall be submitted to and agreed with the planning authority prior to the commencement of the development. The boundary treatment shall include provision for a 1.5 metre high wall, fully capped and rendered on the inner side of the existing hedge between the front building line of the existing dwelling and the rear building line of the proposed extension. The wall shall be completed prior to occupation of the proposed extension.

Reason: In the interest of residential amenity and orderly development

5. Prior to the commencement of the development the applicant shall engage an architect with specialist expertise in historic building conservation who shall prepare a comprehensive method statement to include survey and condition study and, an itemised conservation methodology for the proposed works to the existing structure which shall be submitted and agreed in writing with the planning authority prior to the commencement of the development.

Reason: To ensure implementation of best conservation practice the interest of the protection of the integrity of the fabric of the existing villa, (a protected structure).

6. The proposed development shall be carried out under the direction of an architect with specialist expertise in historic building conservation and in

accordance with the recommendations within: *Architectural Heritage Protection: Guidelines for Planning Authorities* issued by The Department of the Environment, Heritage and Local Government in 2005.

Reason: To ensure implementation of best conservation practice the interest of the protection of the integrity of the existing villa, (a protected structure).

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

Reason: In the interest of public health.

- 8 Hours of construction shall be confined to the hours of 0800 and 1900 Mondays to Fridays excluding bank holidays and 0800 hrs and 1400 hrs on Saturdays only. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of the protection of the residential amenities of the area.

Jane Dennehy
Senior Planning Inspector.
7th February, 2018.