



An  
Bord  
Pleanála

## Inspector's Report ABP-300309-17

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<b>DEVELOPMENT:</b>	Vehicular and pedestrian entrance, a two storey detached structure comprising a garden store and study located in the northwest corner of no. 65 Pembroke Lane, together with a single storey detached store located behind the front boundary wall, site clearance and ancillary site works
<b>Location</b>	65/67 Pembroke Lane, Ballsbridge, Dublin 4
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3810/17
<b>Applicant(s)</b>	Michael Holland
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Pembroke Road Association Thomas Corrigan
<b>Observer(s)</b>	Eithne O'Callaghan
<b>Date of Site Inspection</b>	06/03/2018
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is located on the eastern side of Pembroke lane, a residential mews lane that runs to the rear of Pembroke Lane and Raglan Road to the west and Eglin Road to the south. The site comprises two former mews plots which have been combined – no. 65 and 67.
- 1.1.2. A substantial three storey over basement dwelling is under construction in the north-eastern corner of the site (PL29S.245618 refers). The site is bound to the west by a two storey mews dwelling with off street car parking (no. 63 Pembroke Lane) and to the east by a two storey mews with its gable wall directly on the lane (no. 69 Pembroke Lane). North of the subject site are the three and two storey Caroline Court apartment blocks.
- 1.1.3. Photographs from the site visits are appended to this report.

## 2.0 Proposed Development

- 2.1.1. Permission was sought for a new front boundary wall including the relocation of the previously approved vehicular and pedestrian entrances (PL29S.245618), a two storey detached structure (44.41sq.m.) comprising a garden store and study and a single storey detached garden store (6.4sq.m.). A cover letter submitted with the application states that the site was purchased following the grant of permission for no. 65 and that a commercial structure on the subject site was recently demolished. The proposed new structure is to provide storage and ancillary use for the under construction dwelling at no. 65.
- 2.1.2. Details provided on the application form include:
  - Total site area: 435.9sq.m.
  - Floor area of buildings to be retained: 461sq.m.
  - Floor of proposed development: 50.81sq.m.
  - Proposed plot ratio: 1:0.85, propose site coverage: 41.8%

### 3.0 Reports on file following submission of Application

#### 3.1. Third Party Observations

- 3.1.1. A number of objections to the proposed development were submitted to the Planning Authority. The grounds of objection are similar to those raised in the third party appeal.

#### 3.2. Planning Authority Reports

- 3.2.1. **Roads Traffic Department:** No objection subject to 3 no. conditions
- 3.2.2. **Drainage Division:** No objection subject to conditions
- 3.2.3. **Planning Report:** Proposal is for the amalgamation of two sites (65 and 67 Pembroke Lane). Enforcement files (E007/17) relating to demolition of structure on site and (E0990/16) in relation to alleged breach of planning condition. Site is independent of main structure. Proposed development is small in scale and unlikely to result in any overlooking or overshadowing of neighbouring property. Given the positioning of structures on site and the nature and scale of the permitted development, the proposed development will not result in any negative impacts. Proposed limestone cladding is visually inappropriate and should be conditioned out. Recommendation to grant.

### 4.0 Planning Authority Decision

#### 4.1. Decision

- 4.1.1. On the 1<sup>st</sup> November 2017 the Planning Authority issued a notification of intention to **GRANT** permission subject to 9 no. standard conditions. Condition no. 3 states:  
3. The limestone surround to the relocated vehicular and pedestrian entrance shall be permanently omitted from the development. The entrances shall be formed with a randomly coursed natural stone cladding with granite capping as per reg. ref. 3334/15 and PL29S.245618. Reason: In the interests of orderly development and visual amenity.

### 5.0 Planning History

**PL29S.245618** (Planning Authority Reg. Ref. 3334/15): Permission was granted for the demolition of a warehouse and the construction of a two-storey plus attic (324sq.m.) over basement (137 sq.m.) three-bedroom dwelling, total floor area of

461sq.m., set back from Pembroke Lane with a recessed terrace at first floor level on the southern façade. Condition no. 2 of the Boards decision required the developer to modify the development as follows:

*2. The development hereby approved shall incorporate the following amendments:*

*(a) The proposed terrace at first floor level shall be fully recessed into the building. The section of approximately one metre which projects forward of the front building line shall be omitted so that it does not project forward of the front of the building.*

*(b) The west facing window serving the en-suite at second floor level shall be conditioned to be a high level window with a cill level of approximately 1.8 metres.*

*(c) The mansard roof to the rear shall be constructed in accordance with the Proposed Elevations Plan drawing number PL-009 Revision A submitted to the planning authority on the 26th day of August, 2015.*

*Reason: In the interest of residential amenity.*

- 5.1.1. **PL29S.245416:** At no. 63 Pembroke Lane, permission was granted for the completion of a dwelling house (alterations to house type permitted under planning register reference number 3217/14 consisting of minor internal changes, alterations to roof design on the southern and eastern elevation, increase in overall ridge height of 470 millimetres, alterations to the southern and eastern elevations).

## 6.0 Policy Context

### 6.1. Dublin City Development Plan 2016-2022

- 6.1.1. The subject site is located in an area zoned Z2 with an objective 'to protect and/or improve the amenities of residential conservation areas'.
- 6.1.2. The sections of the development plan most relevant to the proposed development is 16.10.16 (Mews Standards).

## 7.0 The Appeals

### 7.1. The Pembroke Road Association

7.1.1. The grounds of the appeal can be summarised as follows:

- Policies FC26 and FC27 and section 14.8.2 of the Dublin City Development Plan seek to protect the city's cultural and built heritage.
- The C19<sup>th</sup> stone coach house at 65 Pembroke Lane was demolished without planning permission in September 2017. It should have been retained and maintained. There is a lack of transparency in the subject proposal regarding the 'exempted development' demolition of the coach house. This has irrevocably altered the historic Pembroke Estate. Policy 16.10.16 of the development plan refers to the importance of stone / brick coach houses.
- The proposed development must have complete plans for both amalgamated sites. Section 16.10.16 of the development plan states that the amalgamation of plots on mews lanes will generally not be encouraged.
- The statement that no. 65 Pembroke Lane did not abut another property in separate ownership is not correct as it abutted no 63 Pembroke Lane. Photos submitted.
- Section 16.10.17 of the development plan refers to the retention and re-use of older buildings of significance which are not protected and requires a detailed written and photographic inventory of buildings.
- Planning history of 65 Pembroke Lane:
  - 1890/00 An Bord Pleánala refused permission for 4 no. apartments
  - 4646/03 demolition of structure refused
  - 3850/04 2 mews houses refused
  - 1374/05 demolition of structure refused
  - 3568/05 conversion to 2 mews refused
  - 1693/07 mews granted
  - 1348/08 modifications to mews granted

- At no time was the condition of 65 Pembroke Lane mentioned. The demolition of the coach house is not exempted development. The planning Inspector (PL29S.2456180) recommended refusal due to the presence of a historic coach house, which along with others forms a cluster that positively contributes to the streetscape. The appellant agrees with these findings.
- The proposed newbuilding will block sunlight to the property at no. 67. The basement of no. 67 will receive little sunlight. The two bedrooms and gym at basement level will be blocked by the proposed new building. The designers of the Pembroke Estate recognised the need to provide good daylight to all rooms. The proposed development is in direct contradiction of these principles.
- The Board is requested to refuse permission.

## 7.2. **Thomas Corrigan, 63 Pembroke Lane**

7.2.1. A third party appeal on behalf of Thomas Corrigan was submitted by a planning consultant. The grounds of the appeal can be summarised as follows:

### **Mews on site:**

- No. 65 Pembroke Lane contained a mews structure, adjoining Mr Corrigan's building at no. 63 Pembroke Lane. The mews was demolished without planning permission or a section 5 declaration. It is submitted that this demolition is unauthorised development. Class 50, schedule 2, part 1 of the Planning and Development Regulations has no provision for the demolition of a former mews structure. In class 50 part (a) only buildings within the curtilage of a house, or an industrial building or business premises can be demolished. The former mews is evident in plans where the propping of a wall is shown and in plans from the previous planning application. The contiguous elevation of the permitted planning history and the subject application shows the discrepancy. The proposed development is predicated on benefitting from a prior unauthorised development.
- The boundary line between the subject site and no. 63 should be clarified as the delineation shown on the planning application drawings are incorrect. The drawings implicitly suggest that the demolition of the mews was approved.

The mews abuts the gable wall of the building at no. 63, comprised part of a terrace, was part of the important streetscape and could never have been considered an incidental structure. Images submitted.

- Permission was refused for the demolition of the mews at no. 65 under PL29S.209832 on the grounds that it comprised part of a unified group of mews dwellings that had inherent conservation value which significantly contributed to the character and visual amenities of the residential conservation area.

### **Validity of the planning Application**

- The demolition of the structure was not included in the public notices and is therefore seriously misleading. The Planning officers report fails to mention this or the fact that section 16.10.17 requires a photographic record. The Board is requested to refuse permission on the grounds that the proposed development compounds unauthorised development.
- Section 9 of the planning application form is incorrect as it does not refer to the demolition of the mews. The application is invalid as it does not comply with article 26 of the Regulations.

### **Impact on Residential Amenity**

- The site layout of the proposed development has adverse impacts on the amenity of the appellant's property.
- The proposed building in the north-west introduces a new building line and the upper floor windows would overlook the neighbouring courtyard of no. 63 and would look into the second floor windows of no. 63. There is a gap in the boundary wall directly opposite the window in the Appellants gable.
- Zoning objective Z2 requires special care in dealing with developments. The Planning Authority have not assessed the impact of the proposed development on the Appellants property, contrary to the provisions of section 16.10.12. The Planning Authority did not take account of screening, the building line or floor plan layouts of adjoining structures.

## **Excavation**

- The current excavation works (for a basement of 137sq.m.) in excess of 3m depth, appear to extend beyond the bounds of the site. The stability of the neighbouring sites was required by condition no. 6. It is submitted that there has been a breach of the condition. The Appellant is concerned that there will be a destabilising effect on his property.

## **Streetscape**

- The demolition of the mews has left a gap in the streetscape, leaving it eroded and undetermined. The character of the streetscape is defined by a clear building line.

## **Development Plan**

- The Planning Authority did not consider the demolition of the mews when assessing the development.
- The proposed development would be contrary to sections 11.1.5.3 and 11.1.5.6 of the development plan which refers to the importance of modest mews structures in residential conservation areas, to the development management guidelines that require development to respect its context and to section 16.10.16 which discourages the amalgamation of mews plots.
- The earlier change to the area with the construction of Caroline Court highlights the importance and need to retain plot and laneway character.

## **Conclusion**

- The subject planning application is invalid.
- The Board is requested to refuse permission on the grounds of the unauthorised demolition of the mews in a residential conservation area and the resultant haphazard development which would set an undesirable precedent.
- The proposed development is contrary to the zoning objective, does not respect the building line and would overlooking adjoining properties, all of which would adversely affect the streetscape character of the area.



### 7.3. Planning Authority Response to the Appeal

- 7.3.1. The Planning Authority indicated that they had no further comment to make, directing the Board to the planner's report on file.

### 7.4. First Party Response to Third Party Appeals

- Pembroke Lane is a mix of residential and commercial units.
- Visual timeline of evolution of the relevant plots (63-69) submitted.
- 2006: terrace of four properties, three similar structures (63-67) and house at no. 69. Permission granted (3217/14 and 2987/15) for demolition of former coach house and construction of two storey dwelling at no. 63, with parking adjoining no. 65.
- 2015: Terrace of three properties with gap between house at no. 63 and no. 65. Permission granted for (3334/15) for demolition of warehouse at no. 67 and construction of two storey plus attic over basement. This resulted in a fundamental change, leaving no. 65 a detached structure and no longer part of a terrace. The purchase of the site at no. 65 allows for a garden store and study for the new house at no. 67. A semi derelict structure at no. 65 was demolished within the provisions of Class 50(a).
- The dwelling constructed at no. 63 is entirely within the grounds of that plot and does not directly connect to no. 65. Copy of compliance submission submitted. Photos of separation between no. 63 and 65 and former gable, now boundary wall, attached.
- The decision of the Planning Authority to grant permission is subject to 9 no. conditions. Condition no. 3 requires the omission of the limestone surround. The report of the Planning Officer refers to the alteration of the laneway and therefore that the amalgamation of plots can be considered. The report noted that it was unlikely overlooking would occur, that no negative impacts would arise and that the proposed development would not detract from the adjoining properties.
- The two third party appeals are predicated on development outside the subject application. The appellant's grievances with the demolition are outside

the remit of this application and are not valid grounds of appeal. A separate enforcement issue arose and no further action has been undertaken. The demolition of the structure was provided for in Class 50(a) of the Planning and Development Exempted Development Regulations. Each application is entitled to be considered on its own merits. The Planning Authority accepted the application as valid. The subject site is vacant and the adjoining sites are clearly separate.

- The site cannot be considered to be within the curtilage of the Protected Structures on Pembroke Road. The link is long severed and is no longer a relevant consideration.
- No evidence that the boundary delineation is inaccurate has been submitted. Copy of the applicant's folio detailing the extent of ownership submitted. The red line boundary of the development at no. 63 accords with the subject planning application.
- The tight urban grain of the site is such that proximity is inevitable however no overlooking will occur. The high level window over the proposed stairs means that overlooking is physically impossible. The second window would have a negligible impact on the car parking yard of no. 63 and would not be material.
- No evidence has been submitted to support the claim of unauthorised excavation. The development at no. 67 is proceeding in accordance with plans and within all lawful boundaries. An inspection carried out by the Planning Authority necessitated no further action.
- The proposed development of a high quality design is suitable for a residential conservation area as it will greatly improve the streetscape and enhance the residential amenities of the dwelling under construction at no. 67. The strong building line of the laneway is maintained by the proposed development. The proposed development has had due regard to the zoning objective and will successfully resolve the streetscape with an appropriate infill development.
- The Board is requested to grant permission.

## 7.5. Other Responses

### 7.5.1. Response of Thomas Corrigan to third party appeal by Pembroke Road Association:

- supports the grounds of the appeal
- proposed and existing development is haphazard, contrary to the development plan and would adversely impact the laneway.

## 7.6. Observation

### 7.6.1. The grounds of the observation submitted by the Eithne O'Callaghan of 16 Pembroke Lane can be summarised as follows:

- Very large size and unsuitable style will alter the character of the lane and the area.
- The manner of development on both sites may have been strategic.
- The excavation appears more extensive than permitted. There is a concern for other properties from subsidence and damage to buildings and the proximity to the Dodder.
- The proposed development would set an ill-judged precedent.
- Large basement developments have been restricted in parts of London.
- Permission for a basement was refused on Fitzwilliam Square due to the impact on protected structures. Such a decision should be made for Pembroke Lane.

## 8.0 Assessment

### 8.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the appellants, the planning authority and the Observer. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Extent of proposed development
- Impact on Residential Amenity

## **8.2. Principle of Development**

8.2.1. The subject site is located in an area zoned for residential development, on a laneway that has a number of mews developments and other developments under construction. The zoning objective for the subject site is Z2, which seeks to protect and improve the amenities of residential conservation areas. The development plan recognises the overall quality of such areas and states that development proposals in such areas require special care, where they affect structures that are protected and non-protected.

8.2.2. Section 16.10.16 of the development plan refers to mews dwellings. While the subject buildings are not a dwelling, their use is incidental to the residential use of the main structure on the site. I note part (e) of section 16.10.16 which requires that new buildings should complement the character of both the mews lane and the main building with regard to scale, massing, height, building depth, roof treatment and materials. The subject site and the surrounding buildings have long been severed from the main structures on Pembroke Road. Pembroke Lane has developed a character and a streetscape of its own. I submit that the character of the mews lane is the dominant feature and is the character that requires complementation. The proposed store and study building both tie in with the dwelling at no. 67 in terms of style, finishes, materials etc. and are informed by the building line of no. 63 (to the west). I am satisfied that the spirit and intent of the Planning Authority's policy on mews development is respected in the subject application. Subject to compliance with all other planning considerations, the proposed development is acceptable in principle.

## **8.3. Extent of proposed development**

8.3.1. That a structure on the site was demolished prior to the subject application was raised by both Appellants and the Observer. They request that the Board refuse permission on the grounds that a mews / coach house was demolished without

permission and therefore the proposed development would compound unauthorised development.

- 8.3.2. In response, the Applicant states that the structure on site was a commercial premises and that its demolition was in accordance with class 50(a) of the exempted development regulations. Class 50 (a) refers to the demolition of a building within the curtilage of a house, industrial building, business premises or farmyard complex. The conditions on such an exemption are that the building shall not abut another building in separate ownership, shall not exceed 100sq.m. and shall not facilitate development of class 176 of the Act (development that requires an EIA). The applicant has not provided details of the compliance, other than to state that an enforcement action undertaken by the Planning Authority resulted in no further action being necessary.
- 8.3.3. The Board has no remit to assess enforcement action and is required to assess an application on its own merits. The subject application before the Board does not refer to the demolition of a structure on the site, as no such demolition is proposed. As noted by the Applicant and as confirmed by my site inspection, no. 65 Pembroke Lane has no structure on site. No details of the closure or otherwise of the enforcement action undertaken by the Planning Authority have been submitted to the Board. Therefore the Board must assess the appeal based on the details before it. I note that the issue was not raised as a concern by the Planning Officer in her report. I recommend that without evidence to the contrary, that the Board adopt a similar approach and leave enforcement matters to the competent authority.
- 8.3.4. Likewise the extent of the basement excavation permitted under the previous application has no bearing on the subject application.

#### **8.4. Impact on Residential Amenity**

- 8.4.1. The appellant at no. 63 has stated that the proposed study will overlook his property. Two windows are proposed on the front elevation on the first floor study: one illuminating the stairwell and the second: the bedroom space. The stairwell is not a habitable room and overlooks the parking space for the adjoining dwelling at no. 63. The bedroom space also overlooks the car space of no. 63, but in an oblique rather than direct line. Given that the car parking area is not a recreational space, I am satisfied that such overlooking is acceptable in a built up urban area and no injury to

residential amenity will occur. I am satisfied that the proposed development will not have a negative impact on the amenity of the adjoining structures in the residential conservation area, and therefore the proposed development complies with the zoning objective for the area.

### **Appropriate Assessment**

- 8.4.2. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area and proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site

## **9.0 Recommendation**

- 9.1. I recommend permission be GRANTED subject to the following conditions

## **10.0 Reasons and Considerations**

- 10.1.1. Having regard to the Z2 Residential Neighbourhood zoning objective for the site, to the planning history of the site and to the character of the area and the nature, scale and design of the proposed garden store and study, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the residential amenities of neighbouring property, would not unduly detract from the setting of the protected structures on Pembroke Road, would represent an appropriate form of mews development that would be compatible with its surroundings, and would be acceptable in terms of pedestrian and vehicular safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order 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 particulars.

**Reason:** In the interest of clarity.

2. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwelling without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwelling and to protect the residential amenities of adjoining properties

3. The proposed study / guest space shall be used entirely as an incidental use to the main dwelling at no. 67 Pembroke Lane. It shall not be sold or let separately without a prior grant of planning permission.

**Reason:** To clarify the extent of the development.

4. The proposed limestone surround around the proposed vehicular and pedestrian entrance, as shown on drawing no. PL-004 shall be omitted and replaced with randomly coursed natural stone cladding with granite capping as permitted under PL29S.245618 for the boundary wall at no. 67 Pembroke Lane.

**Reason:** In the interest of visual amenity.

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

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

6. Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these

times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Gillian Kane

Senior Planning Inspector

08 March 2018