



An  
Bord  
Pleanála

## Inspector's Report ABP – 300611-18

### Development

Change of use from office to residential use, extensions to house and coach house including basement extension, reconfiguration of gardens, external lift alterations and repair, conservation and refurbishments works.

No 65 Fitzwilliam Square North,  
Dublin 2.

### Planning Authority

Dublin City Council.

### P. A. Reg. Ref.

4043/17

### Applicant.

RGRE J and R Fitzwilliam Ltd.

### Type of Application

Permission.

### Decision

Refuse Permission

### Third Party Appellant

Amaska Holdings Ltd.

### First Party Appellant

RGRE J and R Fitzwilliam Ltd.

### Observers

1. Transport Infrastructure Ireland.
2. Patricia and Raymond Turner.
3. Anna Devlin.
4. Kelley Smith and Aidan Walsh.
5. James O'Donnell.
6. Richard Callanan.

### Date of Site Inspection

23<sup>rd</sup> April, 2018

### Inspector

Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The site has a stated area of 504 square metres and is that of No 65 Fitzwilliam Square North, one of a pair (with No. 66) of four storey over basement town houses built by Clement Codd on the northern side of Fitzwilliam Square. This pair of houses, constructed circa 1820, have an ashlar front to the ground level facades, a slightly higher parapet height, longer window opens and doorcases which are more ornate than the other houses on the north side, (Nos 57 – 69) which were built in the late eighteenth and early nineteenth centuries.
- 1.2. The plot has a surviving former stables/coach house which has been considerably altered but which has some surviving fabric with a small courtyard on the inner side of Pembroke Lane. It is at the end of the rear garden space gardens and has a vehicular access via the original arch, which has been altered by way of enlargement of the original opening in which a roller shutter is fitted, in the calp stone boundary wall on the frontage of Pembroke Lane. There is a further underpass beneath the upper floor of the coach house at the east side of the site. A party boundary wall circa 2.5 metres in height adjoins the eastern boundary with No 64 Fitzwilliam Square and the party boundary wall up to two metres is on the west side adjoins No 66 Fitzwilliam Square and adjoining properties facing on to Pembroke Lane to the east side of the appeal site extending southwards.
- 1.3. Both the coach house building is which a two storey structure and the house have been in office use but are now unoccupied. The stated floor area of the existing buildings on the site are 1,068 square metres
- 1.4. The inspector was accompanied by John Ronan throughout a walk through inspection on 23<sup>rd</sup> April, 2018 which was pre-arranged. The site environs were inspected separately on an unaccompanied basis.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for:

(1) Office extensions:

- a) A new basement level under the garden level extending under the coach house building as far as the Pembroke Lane frontage.

- b) A new two storey extension to the coach house building to the north side over the proposed basement level providing for two car spaces, accommodation at first floor level with a terrace overlooking Pembroke Lane and alterations to the elevation facing the parking entrance off Pembroke Lane a terrace at first floor level.
- c) Reconfiguration of the internal layout of the main house and coach house building and associated works.

(2) Gardens

A new rear garden over the basement level and landscaping to include traversable skylights to the office space below, a patio and an open terrace. The garden level is to provide access to the ground level of the coach house building and basement and ground levels to the rear return of the main house via a staircase.

(3) New External Lift.

Demolition of a small lean-to, (3 sq. m.) and construction of a new external lift glazed lightweight structure at the rear with an opening into the return to main house linking access at the basement up to the lower second floor levels.

(4) Repair and Maintenance.

Associated internal and external repair cleaning and conservation and site development and infrastructure works.

2.2. The additional stated floor area of the new build is 268 square metres which, is exclusive of the proposed basement extension. It, combined with the stated floor area of the existing development of 1,068 square metres results in a total floor area of 1,336 square metres. The total stated floor area of the new and retained development, exclusive of the proposed new basement extension is 284 square metres. The stated site coverage is 49 per cent and plot ratio is 1.5 percent exclusive of the coverage of the proposed new basement extension.

2.3. The application is accompanied by a design statement, a conservation report and engineering services report incorporating a flood risk assessment and a written submission by the applicant's planning agent.

### 3.0 Planning Authority Decision

#### 3.1. Decision

By order dated, 11<sup>th</sup> January, 2018, the planning authority decided to refuse based on two reasons both of which are reproduced in full below:

Reason 1.

*“The proposed development, including the lift extension to the rear elevation of No 65 Fitzwilliam Sq. and the extension of the coach house building to the rear of the subject site would have an adverse impact on the setting of protected structure and would therefore be contrary to section 11.1.5.3, 16.10.16, 11.1.5.4 and Policy CHC4 of the Dublin City Development Plan, 2016-2022. The proposal would be seriously injurious to the character and amenities of this sensitive location and would set an unwanted precedent for similar type development. The proposed development is contrary to the zoning objective Z8 to protect the existing architectural and civic design character, and to allow for limited expansion consistent with the conservation objective and not therefore in accordance with the proper planning and sustainable development of the area.”*

Reason 2.

*“The proposed creation of a basement level within the proposal is contrary to Chapter 16.10.15 in the Dublin City Development Plan, 2016-2022 as it is the policy of Dublin City Council to discourage any significant underground or basement level development or excavations below ground level of, or adjacent to, residential properties in Conservation Areas or properties which are listed on the Record of Protected Structures. The proposed basement level within the proposal is considered to be a significant contravention of section 16.10.15 of the Development Plan an overdevelopment of the subject site and would create an undesirable precedent for similar type development. The proposed development would therefore be contrary to the provisions of the Dublin City Development Plan, 2016-2022 and the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

#### Planning Reports

- 3.2.1. The planning officer considers that the proposed continuation of an office use, (non-conforming) is reasonable.

Having reviewed the information and advice in the Conservation Officer's report the planning officer considers that:

- There are major concerns, having regard to development plan policies and objectives (see section 4 below) about the significant excavation works, due to the location within the curtilage of a protected structure and within the ACA and the policies and objectives within Section 16.10.15 which discourage basement development under a coach house development as far as the boundary.
- There are major concerns about interventions to and loss of historic fabric and potential harm rather than positive contribution to the conservation area.
- There are major concerns about the proposed lift structure although acceptability in some instances of modern lifts at rear of Georgian buildings in cultural use with public accessibility is acknowledged.

#### Other Technical Reports

- 3.2.2. The report of the Conservation Officer contains a recommendation for permission to be refused on grounds that:

- The proposed lift would have significant adverse impact on the rear elevation of an important and intact protected structure and the views from the principal rooms. It is noted that the purpose of the lift is for convenience rather than public use in which case relaxation of Part M requirements would be open to consideration;
- The excavation of the entire garden at the rear of the house to facilitate the basement development would seriously injure the character stability and setting of the existing development, a significant protected structure and is contrary to Policies of section 16.10.15 of the Dublin City Development Plan relating to excavation below ground level, adjacent to residential properties in

residential areas and on the record of protected structures. The conservation officer has considerable concern about potential vibration during excavation and destabilisation of the historic buildings and boundary walls including adjoining structures included on the record of protected structures.

- Infilling of the courtyard of the coach house building with a first-floor extended terrace would be detrimental in impact on the character and amenity of the coach house building and its original setting. The conservation officer is concerned about over sailing of the courtyard by the proposed first floor extension which would alter the form and profile of the coach house structure and its setting. She points out that national importance is attached to the conservation of coach house form profiles and building lines as well as original features and that the subject structure retains an original footprint and the courtyard setback from the lane which are of special interest.

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

#### **Prescribed Bodies**

3.2.4. The observations of An Taisce were received by the planning authority on 13<sup>th</sup> November, 2017. It is stated that very high architectural heritage importance of the Georgian house and gardens on the site and Fitzwilliam Square is a best-preserved part of the historical city's South Georgian Core and refusal of permission is recommended for the proposed development. Special concern as to proposals for inappropriate subterranean excavation for the substantial basement extension is expressed.

3.2.5. The submission of Transport Infrastructure Ireland contains a statement that that it has no observations for the proposed development.

#### **Third Party Observations**

3.2.6. The issues of concern raised in the seven Observer submissions on file are that of Adverse impact on integrity and character of the protected structure and the ACA, visual impact, basement level development, nature and intensity of use, structural stability, impact on groundwater, vehicular and pedestrian safety, noise and nuisance, construction traffic and demolition and construction works and undesirable

precedent. These matters are raised in the third-party appeal and observer submissions on the appeals and outlined in detail in sections 6.2 and 6.7 below.

## 4.0 Planning History

4.1. According to the information available, No. 65 Fitzwilliam Square has the following planning history.

By order no, P2315 the planning authority issued a declaration on 16<sup>th</sup> September, 2013, under section 5 of the Planning and Development Acts, 2000 as amended in which it is stated:

*“It is considered that the proposal for a change of use from ‘office’ to ‘embassy: office’ is exempted development having regard to Part 4, Class 3 of the Planning and Development Regulations, 2010, as amended, and Article 10 of the Planning and Development Regulations, 2001 (as amended)”.*

**P. A. Reg. Ref. 3568/08:** Permission was granted for changed of use from office use to residential use. This grant of permission was not taken up but agreement to an extension of the duration of the grant of permission was granted under P. A. Reg. Ref. 3568/08/x1 in 2013. The extension to the duration of the grant of permission expires in November, 2018.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the Dublin City Development Plan, 2016-2022 according to which:

- The site of No 65 straddles areas subject to two zoning objectives. The zoning objective for the front southern space facing onto Fitzwilliam Square within the site is subject to the zoning objective Z8: *“to protect the existing architectural and civic design character and allow only for limited expansion consistent with the conservation objective”*. (Office use is permissible.)
- The zoning objective for the rear, northern space facing onto the rear access lane and incorporating the coach house building within the site is subject to



the zoning objective: Z1: *“to protect provide and improve residential amenities.” (Sustainable residential neighbourhoods.) Office use is not permissible.*

- Indicative site coverage is 45-60% for lands zoned Z1 and 50% for lands zoned Z8. Indicative plot ratio for lands zoned Z1 are 0.5 – 2 and 1.5 for lands zoned Z8.
- No 65 Fitzwilliam Square is included on the record of protected structures (Item 2860) and is located within the Fitzwilliam Square and Environs Architectural Conservation Area 2009 which is a statutory Architectural Conservation Area. (ACA)
- Policy Objective CHC4 provides for protection of the special interest and character of all Conservation Areas.
- Detailed policies, objectives, standards and guidance are set out in Chapter 11 for development affecting protected structures. According to Section 11.1.5.3 intervention to fabric of protected structures should be confined to the minimum and should be sensitive to the original structure with special emphasis on the retention and presentation of special features and the special interest of curtilages as an essential to the setting and context.
- According to Section 11.1.5.4 and conservation area and ACAs the planning authority seeks to ensure that development complements the character of the area including settings of protected structures and conserves and protects special historic and architectural interest. According to Section 11.1.5.6 new development should be exemplary positive in impact and should enhance the area.
- According to section 16.10.15 it is the policy of the planning authority to discourage significant underground development and excavation work basements and, extensions to existing basement development, adjacent to residential properties in conservation areas and/or included on the record of protected structures. It is stated that significant basement development has been sought in planning applications in recent years and there is concern as to risk of flooding and excessive provision habitable accommodation over one

hundred percent in site coverage. Such development in Flood Zone A or B areas is not permissible according to Policy SI13.

- Section 16.10.6 provides for recognition of the rarity of coach houses and their original features and the need for their retention and conservation as surviving examples.
- Section 14.5 provides for consideration of relaxation of the application of the zoning objectives for protected structures and section 14. 6 provides for consideration of proposals for extensions of a non-conforming use whether legally established (pre-1964) or in existence for more than seven years on their own merit subject to the proposed development not adversely affecting amenities of premises in the vicinity or the proper planning and sustainable development of the area.

## **6.0 The Appeals**

### **6.1. The First Party Appeal**

6.1.1. The appeal on behalf of the applicant was received from Tom Phillips Associates on 9<sup>th</sup> January, 2018. It contains a detailed account of the background and context of the proposed development particularly with reference to the applicant's conservation architect's statements on interpretation of national and local policies and statutory guidelines on protected structures and architectural conservation areas along with an account of the application. Without prejudice to the original proposal, the appeal submission also includes proposals for revisions to the original application for consideration, should certain elements of the original proposal be unacceptable.

These proposals comprise:

- A reduced footprint for the proposed external lift structure which does not extend beyond the recess into the return or building line of the existing lean to structure.
- A revised elevation to Pembroke Lane in which the original archway and wall are reinstated along with proposals for a timber access gate in the arch.
- A reduced footprint for the terrace at first floor level front elevation facing to Pembroke Lane proposed for the front elevation for the coach house building.

- A reduced footprint for the proposed basement level extension. The revised footprint does not include the extension beneath the coach house building included in the original proposal.

6.1.2. The appeal submission includes fully detailed accompanying documentation to support the appeal comprising:

An appropriate assessment screening report,  
a separate written submission by James Slattery, conservation architect,  
a separate statement and drawings showing proposals for revisions to the proposed development by the applicant's architects, Henry J Lyons and,  
a separate statement by Cronin Sutton Consulting Engineers along with associated drawings and a statement on commercial viability prepared Knight Frank. According to this statement, the proposed development is commercially viable, respects the eighteenth central historic of the conservation area and is a fundamental twentieth century step forward with an active use in preserving the history in an effective way.

6.1.3. Having regard to the foregoing, the response to **Reason 1** attached to the planning authority decision to refuse permission can be outlined in brief as follows:

- The proposed development, because the basement is below ground does not have impact on the established metrics associated with overdevelopment, namely overheating massing, obstruction of daylight at adjoining property, obstruction of views or pressure on local infrastructure.
- There are several precedent lift structure developments details of which are discussed in the conservation assessment document submitted with the appeal. (Precedent examples are: Irish Architectural Archive at No 45 Merrion Square, P. A. Reg. Ref. 1783/00 and 3629/01 and at No 60 Mount Street Lower and, No. 78 Stephen's Green (P. A. Reg. Ref. 2943/00 and P. A. Reg. Ref. 2786/01 refer.)
- Only some of the policies and standards set out in section 16.10.16 are relevant. (All the subsections are referred to in the appeal) Section 16.10.16 (a) and (b) of the development plan relate to new coach house developments rather than an extension for an existing coach house in commercial use on

Pembroke Lane. The importance of the coach house is acknowledged and the proposal is for a sympathetic extension with the building line extending towards but not being visible, except the entrance to be retained by pedestrians on from Pembroke Lane. The existing Pembroke Lane building line is varied.

- The standards set out in section 16.10.16 (e) of the development plan the lightweight design of the proposed extension is positive in impact on the protected structure and the ACA.
- Modifications to the original design proposal for the lift structure provides for a smaller size that fits the recessed area of No 65 and addresses the concern about interference with the setting and the views from the windows of the house. The original proposal to provide access to each floor level via enlarged window opes is unchanged. The structure will be barely perceptible from the outside and views from rear reception rooms will be unaffected. It is requested that the revised design be accepted with details being subject to compliance with a condition.
- Although within the ACA, Pembroke Lane with its wide ranging existing building styles has little significant architectural merit it is accepted that appropriate development should be provided. The repair of the entrance and replacement of the roller shutter with timber gates provides a suitable entrance in character with the coach house and house. Modifications to the original design of the elevation onto Pembroke Lane include additional improvements providing for complete reinstatement of the original arch opening and wall which will improve the streetscape and would set example for future development on the lane.
- The modifications to the design of the terrace facing towards Pembroke Lane at first floor level is reduced in extent and leaves a void to the ground level carparking space below. If acceptable, it is submitted that the details be subject to compliance with a condition.

6.1.4. Having regard to the proposed basement level development and the provisions of section 16.10.5 and Policy SI13of the development plan, the response to **Reason 2**

attached to the planning authority decision to refuse permission can be outlined in brief as follows:

- While no on-site ground investigative work has been undertaken as part of the assessments by Cronin Sutton the report of which is included with the appeal, it is reasonable to rely on the detailed information on the extensive ground investigations conducted for the ESB site redevelopment. These hydrogeological and geological reports are available in the public domain.
- It demonstrates that the proposed development is not near the water table and will not inhibit ground water flow.
- The terminology within the development plan whereby it is stated that, "*in all cases a basement should generally not extend to more than 50% of the amenity/garden space*" suggests that there are exceptions to the policy. There is no explanation for the arbitrary standard of 50%. The planning authority has approved basement development in Conservation Areas and at protected structures at The Goethe Institute, 37 Merrion Square. The permitted *parterre* basement is directly comparable to the proposed development but it is a much greater level of development in the rear garden area and coach house. (P. A. Reg. Ref. 3563/10 refers and details are available in Appendix 3 of the appeal.)
- Landscaping will not include mature trees in that the elongated aspect of the site would result in the trees obstructing daylight at adjoining property and risk to root spread that could lead to subsidence.
- The entire site at present has no infiltration and the application of SUDS measures are incorporated in the scheme as outlined in the Cronin Sutton document.
- The construction methodology full details of which are set out in the Cronin Sutton document ensures no potential impact on the house, boundary walls adjoining properties for the coach house building for which phased underpinning will take place.

- The garden level lightwells will provide for natural light penetration to the basement level accommodation and ventilation and means of escape will be consistent with TGD standards.
- Without prejudice to the original proposal for the basement level development, which is considered appropriate and necessary for the viability of the project, it is requested that the omission of the extended area of the basement beneath the coach house structure in the alternative proposal included in the appeal be taken into consideration. If acceptable, it is submitted that the details of the reduced basement area be subject to compliance with a condition.

6.1.5. Additional remarks in the appeal submission include statements that:

- contentions by third parties as to inadequate documentation and insufficient detail for the proposed construction methodology and conservation assessment are rejected but it is acknowledged that a condition with a compliance requirement for submission of a conservation method statement is appropriate, if permission is granted.
- The concerns of the conservation officer as to lack of clarity on window replacement and repair has been addressed in the conservation architect submission accompanying the appeal.
- Box hedging has been included in the modification to the proposal provided with the appeal to address overlooking and the applicant is willing to accept a condition with a requirement for provision of additional screening if required.

6.1.6. The statement of Knight Frank notes the cost of the project and that economic viability is dependant on reflecting the needs of possible future occupants. It is submitted that:

- the link in the design between the elements is key to attracting occupants.
- the planning authority position on wheelchair access is unreasonable and the interventions necessary for the lift installation should be supported.
- An open plan basement complements cellular office layout in the Georgian building and strong precedent for basement level development in historic buildings.

6.1.7. The Statement of James Slattery, accompanying the appeal includes elaboration on the original assessment included with the application and it contains detailed descriptions of the original and alternative modification included in the appeal regarding impact on fabric and character and significance of existing structures. It is stated that the proposed development enhances character and fabric and amenity over the overall site inclusive of the coach house and the laneway and that there are no concerns as to undesirable precedent.

6.1.8. The submission of Cronin Sutton accompanying the appeal acknowledges challenges in protecting existing structures on site and at adjoining properties and the water table levels. An eight-stage phased underpinning of boundary walls and the coach house is proposed. A method statement is provided. A new podium slab is to be provided for the courtyard and steel frame terrace facing Pembroke Lane. It is submitted that the details (which include provision for vibration monitoring) address the concerns as to lack on formation of potential effects on the site and boundaries which are raised by third parties. Risk of flooding and interference with hydrogeological conditions, groundwater and flow can be addressed by condition. Reference is made, (for assurance as to the acceptability of the proposed works within the appeal site) to the ground investigations and assessment reports available relating to the development permitted under P. A. Reg. Ref.3052/14

## 6.2. **The Third Party Appeal.**

6.2.1. A third-party Appeal was received from Fenton Associates on behalf of Amaska Holdings Ltd. Of Nos 67 ad 68 Fitzwilliam Square on 9thJanjry, 2018. Attached is a conservation report prepared by Dermot Nolan. It is requested that it be decided that permission should be refused based on explicit reasoning that the all elements of proposed development, namely when considered individually and cumulatively materially contravene the policies and objectives of the development plan. It is submitted that the two reasons for refusal of permission attached to the planning authority decision do not explicitly state that the development is a material contravention.

6.2.2. According to the appeal:

- The proposed **excavation and basement extension** is extensive and significantly alters the garden and coach house within the curtilage. It does not comply with and materially contravenes section 16.10.15 (Basements) of the development plan. The conservation officer considers it to “*seriously injure character, stability and setting of the significant protected structure.*” The proposed basement materially contains Section 11.1.5 and Policy CHC2 and Section 11.1.5 3 put under DEP Section. and 16.10.5 which provide for the protection of special interest of and enhancement of protected structures and their curtilage in development proposals.
- **The coach house** has remained largely intact (as stated in the attached conservation report) for one hundred years. The proposed basement breaches the rear building line on Pembroke Lane in occupying the space between the coach house and the entrance. The proposed development materially contravenes Section 16.10.16 of the development plan which is explicit as to recognition of the rarity of coach houses and the need to retain surviving examples especially form and profile which in the proposed development would materially alter and which would materially contravene Policy CHC 4 of the development plan. The observations in the accompanying conservation report concur with those of the conservation officer on the special interest of the existing coach house.
- The proposed lift would obscure the Wyatt windows. The need for a lift is questionable because the building is intended for private occupation and for convenience without genuine need. The suitability for disability access is questionable as access to the return only is available. It would materially contravene Policy CHC 4 of the development plan.
- As the previously permitted change of use of the coach house to office use was not put into effect it should not be a consideration in that it is an unacceptable non-conforming use. It is neither permissible or open for consideration on Z1 (residential) zoned lands.
- If the gardens are developed at 100 % coverage underground the implication for integrity of the Square and its protected structures is irreparably damaged



and undesirable precedent is set. It is a conservation matter of principle not supported by the policies in the development plan in the conservation assessment report prepared by Dermot Nolan provided with the appeal. The additions and alterations proposed individually and cumulatively are contrary to section 57 (10) (b) of the PDA, the Development plan especially section 11.1.5.3. The basement extension being the most contentious element. There is concern as to lack of clarity on fabric to be moved, impact on foundations, if any, and, potential subsidence and the lack of a Conservation Method Statement.

- It is estimated that the volume of the basement is 650 cubic metres involving excavation equivalent to 250 skip lorry loads exclusive of other construction works and traffic and that the proposed development would cause displacement of ground water. Concerns are indicated about intensity of development attributable to the basement, to light pollution from the skylights, and to the arrangements for movement and circulation between buildings and external space which would be irreversible particularly physical separation between coach-house and main house. The coach house and gardens being vital parts of the set piece and hierarchy of space. The houses have been proven to be adaptable for office uses without need for extensive remodelling.
- The external lift involves loss of historic fabric especially the windows sills and masonry and the windows on the rear elevation which reflect the importance to the rooms and maximise the light available to the north facing façade would be obscured. The symmetry of the (most prominent) pair of buildings (No 65 and 66) which is visible from South Baggot Street and west side of Fitzwilliam Street Upper is affected. It is not agreed that the recessed link section of the rear return is appropriate for the lift shaft. There would obviously be some solid components to the lift structure although it is to be a glazed structure and it is unlikely to weather well over time.
- The international recognition of Dublin's historic Georgian Squares implies that their conservation should be a key objective. Refusal of permission is warranted, on grounds of failure, due to the extent and nature of the proposal to comply with the development plan having regard to the Z8 zoning objective, the protected structure status, and location within the ACA.

- The reasoning for the decision on the appeal (to refuse permission) should go further than that of the planning authority decision and clearly state that the development is materially in contravention of the development plan. to ensure that there is no potential undesirable precedent. It is a matter of planning principle.
- There are conflicts in the content of the planning consulting covering letter, the architect report and the conservation architect impact assessment. It cannot be concluded that the project is conservation driven. The proposed development should not be allowed to set precedent for similar development elsewhere on Fitzwilliam Square displacing ground water, damaging and causing additional stress to structure and loss of fabric.

### 6.3. Applicant Response

6.3.1. A Response to the Third-Party Appeal was received from John Spain Associates on 19<sup>th</sup> February, 2018 on behalf of the applicant which also includes the applicant's conservation architect observations on the submission of Dermot Nolan, (conservation architect) included in the Third-Party Appeal. It is stated that the first party appeal addresses some of the issues raised in the third-party appeal but that the proposed revisions included and shown on the plans lodged with the first appeal were not available prior to lodgement of the Third-Party appeal. According to the submission:

- With regard to the request for expansion of Reason for Refusal to include grounds of material contravention of the development plan there is no restriction on the policies, against which the application was assessed because they are open to interpretation and no element of the proposed development materially contravenes the development plan. The concerns of the planning authority resulting in the use of the term "contravention" in the reasoning can be addressed in the revisions proposed in the appeal and use of suitably worded compliance condition.
- With regard to the exclusion of office use from permissible uses within Z1 zoned lands it is submitted, having regard to section 14.6 of the development plan that the proposed extension of the established office use has been

comprehensively justified, the planning authority having accepted the established non-conforming use pre-1963 office use in excess of seven years. It involves an additional space equivalent to 34 percent of the existing office space and it has limited potential for adverse impact and, improvements to the existing building are included. The principle of the development regarding the terms of zoning and established non-conforming use for the coach house has been accepted. The grant of planning permission under P.A. Reg. Ref. 3567/08 the duration of which was extended to November, 2018 refers. The appellant may have misinterpreted the planning history.

- It is not accepted that the proposed development would adversely affect the protected structure. Interventions and alterations are minimal with most of the internal layout retained and some external façade repair work is included, all of which will be implemented in accordance with Architectural Heritage Protection: Guidelines for Planning Authorities. (Section 28 Guidelines.) The proposed development entailing continuation of use ensures the long-term viability in accordance with section 78.3.1 of the section 28 Architectural Heritage Protection: Guidelines for Planning Authorities. (The Guidelines.)
- The submission includes supplementary comments by the applicant's conservation architect which elaborate on the initial conservation assessment report, comments on the revisions proposed for consideration in the first party appeal and comments specifically addressing the issues in the third-party appeal. In this submission contentions as to damage to historic fabric and structural stability, aggressive interventions, displacement of groundwater, undesirable precedent in the third-party appeal are rejected and regarded as based on unfounded assumptions. It is claimed that the modified proposal does not obscure the Wyatt windows. It is also stated that the third-party appellant's claim that the coach house is substantially intact and that there is an established building line is incorrect.
- The proposed works to the external façade, which are limited would be positive in effect on the ACA and the basement extension is not visible outside the site. The modifications to the works adjacent to Pembroke Lane (where the wall has been cut into previously) proposed in the first party appeal provide for reinstatement of the arch, with a timber gate for the entrance and

revised elevation that does not extend to the full length of the building line. It sets a good example for future development in the ACA which encourages reinstatement of features where they have previously been lost or replaced and complies with Policy CHC4 for enhancement of the setting and character of the ACA.

- The revised design proposal for the location of the lift entirely within the recess between the house and the return eliminates potential visual impact on the rear elevation of No 65 in which the Wyatt windows are located included in the first party appeal.
- It is demonstrated in the engineering report included with the first party appeal that there is no potential interference with groundwater which is well below the basement level.
- It is demonstrated in the outline proposals for phased underpinning of the basement included construction methodology report submitted with the first party appeal ensures no adverse impact on the coach house building or boundary walls.
- A standard condition can be included to address potential noise and traffic impact during construction.

#### 6.4. **Planning Authority Response**

6.4.1. There is no submission on file from the planning authority.

#### 6.5. **Observations**

6.5.1. Observer submissions were received from six parties: They are:

1. Transport Infrastructure Ireland. (TII) Prescribed Body.
2. Patricia and Raymond Turner,
3. Anna Devlin.
4. James O'Donnell.
5. Richard Callanan.
6. Kelley Smith and Aidan Walsh.

**Transport Infrastructure Ireland. (TII) Prescribed Body.**

6.5.2. In the submission received on 18<sup>th</sup> January, 2018 it is requested the comments and recommendations made in the observations issued to the planning authority be taken into consideration in the assessment of the appeals. However, in the submission to the planning authority dated, 9<sup>th</sup> November, 2017 it is stated that the TII has no observations to make on the proposed development.

**Patricia and Raymond Turner, Kingram Place, Dublin 2.**

6.5.3. In the submission received on 23<sup>rd</sup> January, 2018 it is stated that the combined effect of the proposed development on No 65 which is an intact dwelling house and coach house with connecting garden is in direct contravention of the development plan and that it interferes with the integrity of the protect structure and its component parts and the ACA. Serious concern is expressed about potential precedent and it is strongly urged that permission be refused.

**Anna Devlin, 23 Fitzwilliam Street Upper.**

6.5.4. Ms Devlin is an owner occupier at Fitzwilliam Street and she points out that some houses in the South Georgian quarter have been returned to residential use. In the submission received on 1<sup>st</sup> February, 2018 it is stated that:

- It is disingenuous to imply, (as is the case in the conservation architect report) that different standards apply to the different elements of the existing development. It is incorrect to claim that significant alterations have ready taken place. Both the proposed lift and basement with the raised garden level are unacceptable, the latter being unsuitable for office use especially because of poor natural light.
- Noise Disturbance during excavation and construction of the basement would be excessive the water table would be seriously affected.
- The proposed development is gross overdevelopment, which significantly exceeds site coverage and plot ration standards for the Z8 zone and particularly unmerited at a protected structure in an ACA.
- The lift cannot be justified on grounds of disability access, it is solely for able bodied convenience, accessing only the return and the use is commercial rather than a publicly accessible use.

- The proposed development conflicts with the development plan standard for conservation area, sustainable residential neighbourhoods (Z1 zoning.) and basement development. (Sections 11.1.5.4, 11.5.5.5 and 11.5.5.6).
- The proposed development would irreversibly damage the historical and architectural nature of the house, Fitzwilliam Square and the Georgann Core. The lift and extensive basement within the proposal which includes removal of existing basement floor level is excessive and far beyond the maxim of to do as much as necessary and as little possible. It is requested that permission be refused.

**James O'Donnell, 19 Pembroke Lane.**

- 6.5.5. Mr. O'Donnell states that he is an owner occupier and business operator at Pembroke Lane where he owns some properties that adjoins the coach house and garden at No 65. He objects to the proposed development on grounds that the original proposal and the modified proposal submitted with the appeal would adversely affect his property and business. He is not assured that the basement construction would not have a severe impact.

**Richard Callanan, No 17 Fitzwilliam Square.**

- 6.5.6. Mr Callanan states that the modifications to the original proposal included with the appeal, "in no way addresses the fundamental breaches of the Dublin City Development Plan as it relates to his Architectural Conservation Area". He considers that the proposed development entails unprecedented debasement of the original fabric, character and structural integrity of this historic part of the city. He supports the case made in the third-party appeal by Amaska as to the "narrowness of grounds" on which the original planning application was rejected. Mr Callanan points out that documentation relating to the appeal was not available on the Board's website during the period for submission of observations and questions whether this has reduced the number of observations that would potentially have been submitted.

**Kelley Smith and Aidan Walsh. No 64 Fitzwilliam Square.**

- 6.5.7. Ms Smith and Mr Walsh state in their submission received on 5<sup>th</sup> February, 2018 that they are the owners of the adjoining property, No. 64 which is to the east side of No 65 Fitzwilliam Square. The submission is accompanied by a copy of the Observation

submitted to the planning authority at application stage. According to the submission:

- The proposed development is contrary to the zoning objective and key policies in the development plan for Georgian Square, ACAS and protected structures including basement construction and, encouragement or residential occupancy. Specific reference is made to Section 16.10.15 (basements), 11.1.5.3 (sensitivity to original structures)
- Reliance on site investigations by other parties for different developers as referred to in the report of Cronin Sutton is unacceptable. There is also lack of detail on excavation and construction methods which is not satisfactorily addressed in the appeal submission. The appellant's adjoining property has not been surveyed.
- Raising of the garden level by 700 mm as proposed may affect the residential amenity of the Appellant property and private open space at the rear which they intend to convert to a garden.
- Submitting significant revisions in the appeal curtails third party rights and is no part of the appeal process as provided for under Section 37 (1) of the Planning and Development Act. Fundamental revisions cannot be addressed by conditions. A new planning application would be required.
- With regard to precedent basement developments there are no policies in the preceding development plans which are similar to section 16.10.15 in the current development discouraging basement development. There is no justification for the breach of the development plan with regard to maximum fifty percent of the garden area for either the original or reduced size basement proposal.
- In the accompanying copy of the observation submitted to the planning authority at application stage objections on grounds relating to intensity of use in the development, conflict with planning policy and the Fitzwilliam Square and Environs ACA, (2009),
- Accuracy of the application in relation to boundaries between the two properties and potential adverse impacts on the party boundary with No 64

especially regarding the basement excavation and construction and the alterations to the level within the garden.

## 7.0 **Assessment**

7.1. There is a first party appeal against the decision to refuse permission, a third-party appeal in support of the decision to refuse permission but with a strengthening of the reasoning for refusal of permission and five observations indicating objection to the proposed development. The applicant in the appeal and response to the appeal and observers' submissions includes modifications to the proposal submitted in the application addressing some of the issues of concern to the third parties and the planning authority for consideration, without prejudice to the original proposal.

7.2. The issues central to the determination of the decision and are considered below under the following broad sub-categories:

Procedural matters (modifications to original design)

Zoning objectives and non-conforming use.

Architectural Heritage Protection.

Appropriate Assessment.

### 7.3. **Procedural (modifications to design)**

7.3.1. The applicant has sought in the appeal to address the issues of concern leading to the planning authority's decision to refuse permission by including modifications to the original proposal submitted with the application for consideration should elements of the original proposal be unacceptable. It should be born in mind that the applicant has not withdrawn the original proposal, the modifications being included for consideration, without prejudice to the original proposal. Rejection of the first party appeal on grounds of invalidity or inappropriate use of the appeal process is considered unwarranted particularly in that the original proposal has not been withdrawn or replaced. The purpose of the inclusion of the alternative design modifications, is to show modifications which would be acceptable to the applicant in mitigating concerns about impact of elements of the original proposal to facilitate positive consideration of the proposed development should elements of the original



application proposal be rejected. It is considered therefore that the contention as to invalidity or inappropriate use of the appeal process should be rejected.

7.3.2. It is acknowledged that the modifications included in the first party appeal were not available at the time of the preparation and lodgement of the third-party appeal but that they were available to the Observer Parties for consideration at the time of preparation of observations on the First Party Appeal.

**7.4. Zoning objectives and non-conforming use.**

7.4.1. The site of No 65 Fitzwilliam Square straddles areas subject to separate zoning objectives. The zoning objective for the front southern section facing onto Fitzwilliam Square is subject to the zoning objective Z8: *"to protect the existing architectural and civic design character and allow only for limited expansion consistent with the conservation objective"*. (Office use is permissible.) The zoning objective for the rear, northern section facing onto the rear access lane and incorporating the coach house building within the site is subject to the zoning objective: Z1: *"to protect provide and improve residential amenities."* (Sustainable residential neighbourhoods.) Office use is not permissible. The coach house has in office use, a non-conforming use.

7.4.2. There is no dispute that the non-conforming office use of the coach house building and, possible expansion of the non-conforming office was considered by the planning authority in connection with the previously permitted development under P. A. Reg. Ref 3567/08 which was not taken up, the duration of which expires in November, 2018. As a result, in principle, there can be a reasonable that an expansion of this non-conforming use in be open to consideration in new development proposals.

7.4.3. Intensity of use by way of a proposed expansion or increase in total floor area of office use is not a sole issue, in isolation for consideration of proposals for expansion of a non-conforming use. The subject proposal is complex having regard to several planning considerations particularly, the basement extension in which the expansion of the non-conforming office use is proposed, in applying the adopted policies and objectives associated with protected structures, the South Georgian Quarter and ACA designation in conjunction with the application of the provisions of section 14.6 of the development plan and similarly, section 14.5 of the development plan. The

latter provides for some relaxation with the application of the zoning objectives in the case of protected structures.

**Architectural Heritage Protection.**

- 7.4.4. The modifications included for consideration in the first party appeal, are primarily intended to address the specific concerns regarding architectural heritage of the planning authority and third parties about elements of the development proposed in the original application, if it is decided that any part of the original proposal is unacceptable. They have been taken into consideration.
- 7.4.5. Repairs and Maintenance. There is no objection to the carrying out of external and internal maintenance and repair works for the house, which although in good condition, are necessary and should be undertaken in accordance with good conservation principles and practice as provided for in the Guidelines and, under the direction of an architect with specialist expertise in building conservation. However, a comprehensive conservation method statement, to include full details of mechanical and electrical installation works would be required. It is agreed that the submitted details are limited. These matters could be addressed by way of compliance with conditions.
- 7.4.6. The proposed Lift Structure. It is agreed that the proposed lift structure to be installed at the rear, east side gives rise to concern as to obstruction of the views through and towards the full length rear elevation Wyatt windows. In addition, the installation of the structure necessarily incurs removal of the lean to and intervention to historic fabric by way of use of and alteration to window openings to link into and provide access at each floor. The visual impact is significantly reduced but not eliminated in the design modifications to the structure shown in the further information submission.
- 7.4.7. While it is acknowledged that the structure facilitates the proposed use by way of connectivity and convenience for the future occupants of the house, it is not accepted that there is a sufficient case to justify the inclusion of the lift structure in the development in which the main house is intended for private residential use and the coach house and proposed basement is intended for private commercial use.
- 7.4.8. Some of the examples, cited as precedent for installation of lifts at Georgian buildings within the city are not persuasive to this end because the proposed development is not intended for use as a public service building with public access such as the

Architectural Archive at 45 Merrion Square and the Goethe Institut at 37 Merrion Square for which, in view of Part M requirements, some flexibility is provided for with regard to universal access in section 18.1.6 of the development plan. The proposed inclusion of the lift structure is not considered to be functional or essential to the achievement of the viability and survival of the historic buildings within the site by way of the continuation of use and viability. To this end, the views of the planning authority and third parties are supported.

- 7.5. Underground Extension: Excavation, alteration of ground levels and construction of a basement. At the outset it should be borne in mind that the current development plan contains, in section 16.10.15 newly introduced policies and standards for below ground/basement level development at historic properties included on the record of protected structures. These restrictions amount to a major departure from the more flexible prior development plan policies on excavation and basement development at protected structures and residential properties in conservation areas. The assessment and approval of most of permitted basement development referred to in the appeal in support of the proposed development appears to have preceded the adoption of the current development plan in which this restriction was included. To this end, the parameters within which the current proposal can be assessed are materially different, and consequently clearly restrictive.
- 7.5.1. The original proposal entails basement level development beneath the garden level and coach house as far as the Pembroke Lane frontage and alterations to facilitate the integration of the new office accommodation. Both the original or modified proposal which excludes the area of excavation and new development beneath the coach house appear, unarguably to be in direct conflict with this policy objective. There is no apparent provision for flexibility in the application of the restriction or, persuasive justification for the proposed development in this regard except that it is acknowledged that intense commercial development within the central business district facilitates consolidation of the centre and sustainable development.
- 7.5.2. While survey and testing work undertaken at a third-party development on Fitzwilliam Street, the documentation for which is available in the public realm is informative and resourceful as a guide, a satisfactory assessment cannot be completed in the absence of satisfactory on site specific investigative works to establish hydrogeological and hydrogeological conditions at the site and, consequent capacity

and suitability of the site to accept the proposed excavation and construction works. Furthermore, the concerns as to the structural stability of the existing historic party boundary walls would be at risk with such major ground works being undertaken. The submitted report on demolition and construction and statement as to a commitment to phased underpinning are not persuasive as to assurances as to elimination of risk due to deficiencies by reason of lack of investigative works, detailed information on existing conditions and on proposed protective measures to address the site-specific conditions. Favourable consideration of the proposed development in the absence of prior availability of comprehensive assessment reports to include details of site investigations is not recommended.

7.5.3. The proposed basement level accommodation involves intensification and expansion of the existing non-conforming use within the curtilage of a protected structure, within an ACA and on a site which is restricted. Irrespective of whether the use is or is not a non-conforming use, development plan policy for such locations is to discourage significant underground or basement or excavation for below ground development and not to permit such development within Flood Zone A or B areas. It is considered that the site location is subject to the application of this policy objective and that the accompanying policy that provides guidance, in the case of "large sites" at the rear of a property would be irrelevant but the proposed development, including the modified, reduced proposal would not come within the scope of this provision because it would not satisfy the requirement that the basement development area not extend to more than 50% of the amenity garden space.

7.5.4. Finally, while the basement level structure is substantively below ground, both the structure, altered levels incorporation of traversable skylights and use would nevertheless alter the character of the rear private garden space, which is designed and intended as amenity space for a town house separating it from the coach house at the rear opening onto Pembroke Lane. Indeed, notwithstanding the non-conforming use, it is arguable, given the footprint and the proposed insertion for the proposed basement level, alteration to ground level that there is no viable private open space which is such that sustains the character and integrity of the protected structure, the Z2 zoned 'residential conservation area and statutory ACA.

7.5.5. The coach house, courtyard and entrance to Pembroke Lane. There is no established building line for existing development, however, given the origins of

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Pembroke Lane as a service lane for houses on Fitzwilliam Square was and remains strongly defined with some the original calp limestone wall surviving on the Pembroke Lane frontage. There is considerable as to utilisation of space on the inner side of Pembroke Lane frontage, some being entirely allocated to on-site carparking. At the adjoining property to the east, the rear garden is halved with the properties facing onto Pembroke Lane to the south and east being located on the remainder. The coach house structure on the appeal site has a setback behind the original stable yard space which has been in use for carparking. The coach house is clearly visible from Pembroke Lane within the ACA and towards the ACA including Pembroke Court to the north from which the form and profile of the coach house, above eaves height is clearly visible.

~~7.5.5.7~~ 7.5.6. Based on a brief external visual inspection of the site it can be concluded that both the original footprint and form of the structure although subjected to some interventions as to the openings and adaptation of the stable space for office use, are substantially intact. The existing roof may be a replacement from some time ago for the original and there is an unaltered ground level underpass providing for connectivity between Pembroke Lane, via the former stable yard space beneath the first floor of the coach house to the north side and the internal rear garden space within the site. It is noted from the conservation assessment report provided with the application that it is stated that some joinery and trusses are intact. However, access to the interior of the coach house structure was not possible at the time of the inspection.) There is no objection in principle to the proposed works to the existing coach house structure subject to the omission of the excavation and basement level construction extending beneath and into the courtyard space proposed in the original application.

~~7.5.6.7~~ 7.5.7. While it is agreed that the elevation of most special interest is the south elevation overlooking the gardens and facing towards the rear windows of the main house, the coach house due to its unaltered form and footprint within the site and the relationship with the main house in the site configuration is of significant special interest and architectural heritage merit historic feature of interest and undisputedly worthy of retention and protection as provided for in the development plan and the written statement for the ACA.

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~~7.5.7.~~ 7.5.8. In view of the foregoing, it is considered that the proposed first floor level, north facing terrace at the coach house would detract from the integrity and context of the coach house structure as an historic feature of interest, in form and footprint, profile, and relationship with the main house as well as the relationship with the context of the grouping of rear facades of Nos 57 to 69 Fitzwilliam Square. The modifications proposed within the appeal reduce the impact of the original proposal but the concerns of the planning officer and third parties on the original proposal which are supported are not overcome in the modified proposal. The retention of the ground level space as open service/parking space without alteration to the ground level as proposed in the original application is regarded as essential and is supported.

~~7.5.8.~~ 7.5.9. It is accepted, as asserted in the submissions made on behalf of the applicant that space on the north side of the coach house on the inner side of the entrance off Pembroke Lane could now be described as a service yard it can be regarded as a continuation of the original intended used as an external stable yard and access area for the original stables at the coach house.

~~7.5.9.~~ 7.5.10. The proposed repair and modification for the boundary wall facing towards Pembroke Lane and entrance which includes installation of double timber gates to facilitate vehicular access is welcome.

~~7.5.10.~~ 7.5.11. It can be concluded that there no objection to the incorporation of the continuation of the non-conforming office use at the coach house which necessitates a building upgrade. However, the proposed basement level extension providing for additional office space use, is in material conflict with the policies and objectives for basement extension development within the curtilage of and/or adjacent to protected structures and ACAs. The limitations imposed in these policies and objectives are onerous and restrictive but are reasonable and warranted. As a result, there is limited capacity for extensions and intensification of use at properties such as that which is subject of the current application but are warranted.

~~7.5.11.~~ 7.5.12. Excavation and Construction Works. As previously indicated, availability of a comprehensive excavation and construction method statement would be desirable so that there is an opportunity to establish that concerns as to risks to structural stability and hydrological conditions can be satisfactorily addressed. As has also

been pointed out in third party submissions, owing to the excavation and earth works involved, the nuisance and disturbance during construction stage of would undoubtedly be considerable and could cause some obstruction along Pembroke Lane. In the event of favourable consideration preparation of a comprehensive demolition and construction management plan including construction traffic management that is acceptable to the planning authority would be essential for the purposes of clarity, orderly development and the protection of amenities of properties in the vicinity and the public realm. The information available in the reports of the applicant's engineers (Cronin Sutton) is deficient in this regard.

~~7.5.12~~ 7.5.13. Residential Amenities: The adjoining house to the east on Fitzwilliam Square is in use as a residential dwelling as are some properties on Pembroke Lane to the east. These residential land uses are not only consistent with the zoning objectives but also with the strategic objectives for the South Georgian Quarter of encouragement of reversion in Georgian properties to residential use. The concerns of the occupants indicated in the observer submissions as to adverse impact and risk to their properties at the time of excavation and construction are understandable. Potential lighting spillage to an undue degree at adjoining properties can be addressed through the technical specifications for the traversable sky lighting to the basement level and existing screening along boundaries but comprehensive details are unavailable. Use of the external lift structure could give rise to perceptions over overlooking and intrusion on privacy. In the event of possible favourable consideration of the proposed development further clarification as to amelioration of these potential impacts would be recommended.

**Appropriate Assessment.**

7.6. An appropriate assessment screening statement has been provided in the applicant's submissions the contents of which have been noted. Having regard to existing development on the site, the central city location, the availability of existing services, the scale and nature of the proposed development, including the proposed excavation works and basement level development and the incorporation of SUDS methods providing for control of surface water flow and protection of the drainage network from pollutant materials in waters to be discharged, it can be concluded that no appropriate assessment issues arise. The proposed development therefore 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, in which modifications to the original proposal are included in the first party appeal for consideration should any elements of the original proposal be considered unacceptable, it is recommended that the planning authority decision be upheld and that permission be granted based on the reasons and considerations set out below.

## 9.0 Reasons and Considerations

Having regard to the inclusion of No 65 Fitzwilliam Square on the record of protected structures, within the area of the Fitzwilliam Square and Environs Architectural Conservation Area 2009 and, within areas subject to the zoning objective Z8: *to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective* and, "Z1" *to protect, provide and improve residential amenities*, it is considered that the proposed development it is considered that by reason of:

- The proposed extent of underground excavation within the Architectural Conservation area and within and adjacent to the protected structures, some of which are in residential use which is in material conflict with section 16.10.15 which at these locations discourages such significant development and,
- the scale and extent of the of the expansion and interventions involved in the proposed extensions at basement level involving alterations to the garden level, the extensions and alterations above ground to the coach house and courtyard and, the external lift structure at the house which are in material conflict with the provisions and policies set out in sections 11.1.5.3, 16.20.16 and 11.1.5.4 and, Policy Objective CHC4 of the Dublin City Development Plan, 2016-2022.



The proposed development as a result, would seriously injure the integrity of the historic fabric, context and setting of the protected structure and the visual amenities and character of the Architectural Conservation Area and would be in material conflict with the (Z8) zoning objective for the site location providing for protection of existing architectural and design character, and limited expansion consistent with the conservation objective, and would fail to protect and provide for and improve of residential amenities as provided for Z1 zoning objective for the northern section of the site. The proposed development would set undesirable precedent for further similar development and would be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
16<sup>th</sup> May, 2018.