



An
Bord
Pleanála

Inspector's Report ABP 301274-18.

Development

- (1) Excavation of part garden at rear ground/basement level and construction of storage room with patio, garden terrace to the roof and ancillary stairs between garden levels.
- (2) New boundary iron railing to divide garden and carpark at rear;
- (3) Landscaping of garden including bin storage ancillary to dwelling and, a car space in new garden enclosure.

Location

No 62 Merrion Square South, Dublin
(Protected Structure.)

Planning Authority

Dublin City Council

P. A. Reg. Ref.

4613/17.

Applicant

Dromeenagh LLC.

Type of Application

Permission

Decision

Refuse Permission

Type of Appeal

First Party x Refusal

Appellant(s)

Dromeenagh LLC.

Date of Inspection

17th July, 2018.

Inspector.

Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 63 Merrion Square South is a four storey over basement, brick faced Georgian townhouse which overlooks Merrion Square and which is a short distance from the south-eastern corner with Merrion Square East, Upper Mount Street and Fitzwilliam Street within the Georgian Core of the City. It is among the last townhouses to be built, between 1790 and 1810 presumed as part of a small group by the same builder. The house may formerly have been the Agent's house for the Fitzwilliam Estate.
- 1.2. The house has a full height two bay bow, an extended return at the rear and a rendered basement level with a stone slab patio constructed in the 1970s, accessed from granite and concrete steps from the rear gardens and a door at the lower level of the return. The retaining walls around the patio area are faced with decorative red brown brickwork. A boundary wall in calp lime stone which may have previously been rendered, and which has recently been capped is located along the party boundary between Nos 62 and No 63 Merrion Square.
- 1.3. The historical plot is subdivided. The original mews at the lower end of the plot and the mews at No 61 have been replaced by a two storey office block with vehicular and pedestrian access off Fitzwilliam Lane, the former service lane parallel to and at the rear of Merrion Square East. A hard-surfaced carpark is located at the rear and front of the office building in part of the former rear gardens and coach yards and the party wall between both properties has been removed. It is understood that the works carried out to the existing buildings, the rear garden and the construction of the office development at the rear took place during the 1970s.
- 1.4. The house, previously in office use has been converted into and fitted out as a single dwelling unit, an initial proposal to provide for a separate independent dwelling unit at basement level having been abandoned. (P. A. Reg. Refs. 2830/14 and 2915/15 refer.)
- 1.5. At the adjoining property at No 63 Merrion Square, (occupied by the Society of Antiquaries), the original surviving coach house/stable/mews building and gardens have been restored in recent years and conservation repair and maintenance works have been carried out to the main the house and two storey return at the rear.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicate proposals for alterations to the rear private open space to provide for a landscaped garden to the west of the return. While new excavation works below ground level are not included, the proposed development comprises construction, at basement level, of a detached, flat roofed structure in concrete construction for storage use with a roof garden on granite slab at the existing ground level. A decorative iron railing forms the parapet and a spiral staircase will be located at the corner. The entire construction in which the basement floor is to be stepped at the southern end is to be set below the level of the party wall with the adjoining property at No 63 Merrion Square.
- 2.2. The existing part granite, part concrete staircase to the basement patio level is to be removed and a new staircase in Wicklow granite is to be provided between the basement and the return. Paving with 600 x 900 mm granite paving slabs and decorative iron balustrading along with topiary a path and a sunken pond are to be provided with a spiral staircase at the northern end. Access from the southern end is via a new internal boundary with Wicklow granite cobble sets surfacing a carparking space and provision is also made for a boundary fence and sliding gate with a metal archway and sunken pond. The other approach to the garden within the garden use cobble setts for the carparking with a modern fence and sliding gate.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 23rd February, 2018 the planning authority decided to refuse permission based on the reason reproduced in full below:

“The proposed excavation of part of the rear garden at ground/basement level to facilitate the construction of a storage room with a patio/garden terrace to the roof of same and the proposed excavation along the boundary wall with No 63 Merrion Square South would result in excessive intervention to the fabric of the protected structure. The proposal would result in the loss of original details and historic fabric, would be detrimental to the character and setting of the protected structure and of the adjoining protected structures and

would set an unwanted precedent for similar type development. It is therefore contrary to the policies and objectives contained within the Dublin City Development Plan, including Policy CHC2 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer further to the recommendations of the Conservation Officer in her report indicated a recommendation or refusal of permission based on the reasoning reproduced in full above. In addition, she notes the observations and recommendation for inclusion of a condition regarding the layout and parking arrangements at the rear of the site in the report of the Roads, Traffic and Transportation Division. (Section 3.2.2 below refers.)

3.2.2. Other Technical Reports

The Report of the **Conservation Officer** dated, 14th February, 2018 contains comments, and a draft reason to support a recommendation for a decision to refuse permission. She refers to the prior and current application in her comments and states that clarification is required on the details provided in the submissions made in connection with the applications and on some of the application drawings it being stated that the extent of some information is deficient and unclear.

The draft reason is reproduced below:

“Notwithstanding the fact that the proposed singles storey storage building would not improve the view from the ground floor bow end of the principal building, the proposed building will significantly reduce the amenity of, and will encroach upon the existing basement rooms within the principal structure and the rear return to an unacceptable degree. The large glazed bi-folding doors are out of character with the protected structure. the present proposal would not be supported because of the adverse impact on the amenity and character of the protected structure. The proposed works contravene Dublin City Development Plan, including Policy CHC2: “Development will conserve and enhance Protected structures and their curtilage and will: (d) not cause harm to the curtilage of the structures; therefore the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure.” “The

traditional proportionate relationship in scale between buildings, returns, gardens and mews structures should be retained....”

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

4.0 **Planning History**

P. A. Reg. Ref. 4614/17 This is a concurrent application for permission for, (1) Re-pointing the entire front elevation using traditional lime based mortar including ancillary broken / cracked brick repair where necessary. (2) Cleaning of granite stone to basement level at front elevation stone. (3) Installation of balcony at cill level to the first-floor level where balcony has been removed and, (4) Refurbishment of the iron railings to the front of No 62 Merrion Square South and replacement of the damaged granite plinth stones with new moulded 'Wicklow granite' plinth stones. The planning authority issued a request for additional information on 23rd February, 2018 in which comprehensive details of conservation methodology and materials for several elements of the proposed works are requested along with explanation as to justification for the proposed development.

P. A. Reg. Ref. 2155/17: Permission was refused for (1) Excavation of part of the rear garden at ground/basement level and the construction of a storage room with a patio/garden terrace to the roof of same. 2) Ground support works of the proposed excavation along the boundary wall with No. 63 Merrion Square South. 3) Installation of new boundary iron railings to divide the rear garden and the car-park to the rear of the building. 4) Landscaping of the proposed garden including bin storage ancillary to the dwelling and 1 No. car parking space within the new garden enclosure. 5) Refurbishment of the iron railings to the front of No. 62 Merrion Square South and replacement of the damaged granite plinth stones with new moulded 'Wicklow granite' plinth stones. The reason for the decision to refuse permission is based on contravention of Policy CHC2 of the CDP and relates to loss of original fabric, adverse impact on character and setting of a protected structure and adjoining structures and undesirable precedent for similar development.

P. A. Reg. Ref. 2830/14: Planning Permission was granted for change of use from office use to two residential units within the building. Basement level is to be converted into a separate, two-bedroom apartment, with all floors above basement to be returned to a family residence. Permission was also granted for damp-proofing treatment and fire-proofing to basement level and minor modifications to internal walls and openings including removal of modern partitions and doors: provision of new bathrooms and kitchen. These works include: Repair and repointing of existing front and rear brick elevations including return, replastering external basement front wall; Replacement of concrete lintel with arched brick head to rear return at second floor; Repair and refurbishment of existing roofs, gutters, down pipes and windows; Removal of non-original chimney stack to rear return and all ancillary and associated works. Under **P. A. Reg. Ref. 2915/15** permission was granted for amendments to the prior grant of permission which provided for incorporation of the basement level into the main dwelling providing for a single dwelling unit. (The prior grant of permission provided for a separate dwelling unit at basement level.) The permitted development has been implemented.

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 location is within an area subject to the zoning objective:

Z8: Georgian Conservation Area: "To protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective".

No 62 Merrion Square, along with all houses on Merrion Square is included on the record of protected structures.

Merrion Square is a designated Conservation Area as provided for in Section 11.1.5.4 and Policy Objective CHC4 for protection of the special interest and character of conservation areas.

Section 11.1.5.3 provides for protection and reinstatement of an original planform which should not be compromised and for avoidance of unsympathetic alterations

and extensions in new development proposals. Accordingly, interventions should be minimal and sensitive to the architectural detail, scale proportions and design of the original structure and should take into account the evolution of the structure and later works that contribute to its special interests. Existing detail, fabric and features should be preserved, repaired or, if missing or obscured and should be reinstated or revealed. There is provision for relaxation of land use policies and development standards, (on a discretionary basis) in finding an optimum viable use for a protected structure which ensure long term survival and conservation.

Policy Objective CHC2 is reproduced below:

“To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest.*
- a) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances*
- b) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials*
- c) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure.*
- d) Protect architectural items of interest from damage or theft while buildings are empty.*
- e) Have regard to ecological considerations for example, protection of species such as bats.*

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.”

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from Val O'Brien and Associates, Chartered Building Surveyors on behalf of the applicant on 21st March, 2018. A copy of an Architectural Heritage Impact Assessment report prepared and submitted at application stage by Dr. Jason Bolton and an Architectural Heritage Impact Statement prepared by Deirdre Conroy are included with the appeal.

- According to the appeal: the house is in ongoing residential use further to the refurbishment works and the proposed development would compete the development of the dwelling with ancillary open outdoor living space.
- The proposed development is a redesign of the original proposal for which permission was refused under P. A. Reg. Ref. 2155/17 so that potential for damage to the boundary wall with No 63 Merrion Square is mitigated. Excavation and grading affecting adjoining property is not at issue because the current proposal for the structure is stepped off the boundary wall.
- With regard to potential for interruption to original details and historic fabric, the planning authority assessment cannot have been appropriate as it is understood that a visit or survey of the site was not carried out as part of the process. Precedent has previously been established at several buildings in Merion Square South and the Georgian Quarter where similar garden patios and terraces have been constructed.
- It is not agreed that the proposed development would intervene with and affect historic fabric or original details because no material survives. There is minimal manipulation of the ground involved and the structure which is within a steel frame is to be manufactured off site.
- The proposed development is fully in accordance with Policy CHC2 of the CDP because it benefits the area with residential living and ancillary usable space. Storage/garage space ancillary to a dwelling is a well-established provision. Traditional materials are to be used and, due to limited available space the proposed garden patio over the storage area provides amenity

space. It is a reasonable proposal that does not affect original detail and fabric or set undesirable precedent.

- 6.1.2. The Architectural Heritage Impact Assessment report prepared by Dr. Jason Bolton and submitted at application and appeal stages includes a building history based on desk top research, survey details based on visual inspection (with photographs), a description of the existing development with special emphasis on more recent interventions and a description the proposed development with an assessment on the basis of which it is argued that the proposed development will not affect the architectural heritage value of the buildings, the boundary wall or the integrity of the site.
- 6.1.3. The Architectural Heritage Impact Statement prepared by Deirdre Conroy provided with the appeal contains comments on the assessment process carried out by the planning authority which it is contended was unsatisfactory and resulted in an inappropriate decision. It is also stated that there is established precedent, that the proposed development accords with Policy CHC2 of the CDP and enhances the character and setting of the protected structure and adjoining protected structures, would have a positive impact and would set “*a wanted precedent for similar type development.*”

6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

7.0 **Assessment**

- 7.1. The current application, provides for modifications to the proposal in the prior application for which permission was refused under P. A. Reg. Ref 2155/17 in that development in the current proposal is stepped in from the boundary wall with the adjoining property at No 63 Merrion Square, so that potential interference with or risk of damage to the boundary wall is avoided and mitigated.
- 7.2. The issues raised in the appeal are considered below under the following sub-headings:

Impact on integrity and character of protected structures.

Precedent.

Assessment process by the planning authority.

Appropriate Assessment.

Impact on integrity and character of protected structures.

- 7.3. It is agreed that reinstatement of the dwelling to use as a dwelling unit and the associated refurbishment, maintenance and repair and upgrade works carried out by the applicant on foot of the grants of permission under P. A. Reg. Refs. 2830/14 and 2915/15 is a positive from the perspective of the objective of encouragement of residential use in Georgian townhouses in the Georgian Core provided for under the Z8 zoning objective.
- 7.4. With regard to the space within the historic curtilage to the rear of the house, the subdivision of the plot providing for the commercial development at the lower end of the site and, the alterations at the rear of the house which provide for the existing basement level patio and steps and associated features were implemented in the 1970s. This was several decades before the drawing up and bringing into effect of the current policy and legislative framework for architectural heritage protection within the Local Government Planning and Development Act, 1999 and brought forward into the Planning and Development, Act, 2000.
- 7.5. While the previous 1970s developments are unsympathetic, the current application is also unsympathetic and inappropriate in that the proposals do not recognise or relate in any way to the original layout, in terms of the extent and configuration of space below ground at basement level and the original layout of the garden at the rear, notwithstanding the limited rear garden space retained with the dwelling owing to the 1970s subdivision. The baseline for the justification for the proposed design and specifications appears to be that of the 1970s developments. There is no evidence of the original layout having been researched and addressed in the drawing up of the design and specifications for the proposed development so that features, scales and proportions etc., contributing to the special interest can be restored and/or protected and preserved.
- 7.6. Achievement of an improvement or enhancement by way of increased or maximisation of residential amenity potential is clearly distinct to the meaning and understanding of enhancement of the protected structure as provided for in section 11.1.5.3 and Policy Objective CHC2 of the CDP. It is clearly possible for

enhancements on both respects to be achieved in a project in some instances although there are constraints as to possible options if a development is to be sympathetic to the original historic development and consistent with the requirements of development plan policies and the statutory framework for architectural heritage protection. It would be necessary for a more sympathetic and compatible solution which is consistent with the provisions of section 11.1.5.3 and Policy Objective CHC2 of the CDP to be achieved if a proposal is to be favourably considered.

- 7.7. Notwithstanding the argument that the proposed development contributes to enhancement of attainable residential amenity for the occupants it is not accepted that the proposed development could be justified on grounds that it is compatible with or results in enhancements and improvements to the special interest of the protected structure or, would be functional to the long-term use and viability of the protected structure. The proposed development is therefore contrary to the provisions of section 11.1.5.3 and Policy Objective CHC2 of the CDP.
- 7.8. Having regard to the foregoing, the recommendations for refusal of permission within the Conservation Officer's report and in the planning officer's report on the proposed development are supported.

Precedent.

- 7.9. It is not agreed that there is relevant or desirable precedent for the proposed development. The proposed development in effect constitutes replacement of an inappropriate intervention (carried out in the 1970s) with another inappropriate intervention that is inconsistent with the policies and objectives provided for in section 11.1.5.3 and CHC2 of the CDP and good conservation practice. The proposed development should be adjudicated in the context of provision for good conservation practice within the current statutory policy and legislative framework for architectural heritage protection within the planning code providing for good conservation practice. It clearly has not been demonstrated that regard has been had to the historical layout and character of the plot and adjoining plots in drawing proposals for the private open space at the rear of the house.
- 7.10. It is considered that relevant precedent for possible future proposals for the rear private open space and basement access could be taken from the works recently

carried out at the rear of the adjoining property, No. 63 Merion Square, a similar property notwithstanding the subdivision of the historic plot from which the application site is formed which is acknowledged.

Assessment process by the planning authority.

- 7.11. The contention that the planning authority decision for refusal of permission is ill informed, reference being made to lack of a conservation report and contentions that on inspections and surveys were not conducted by planning authority officials are noted. However, it appears that the conservation officer's report was available to the planning officer who assessed the application. A copy of the report dated 14th February 2018 is on the file and the recommendation for a decision to refuse permission is noted and taken into account in the planning officer's report.
- 7.12. In view of the concerns expressed in the appeal submissions as to the lack of site inspections at application stage, it may be beneficial for it to be confirmed that unaccompanied, visual, inspections of the exteriors of the structures and grounds were conducted from the external space within the original historic plots at Nos 61 and 62 and 63 Merrion Square and from the interior of No 63 Merrion Square by the writer on 17th July, 2018.

Appropriate Assessment.

- 7.13. Having regard to the scale and nature of the proposed development and to the serviced central business district location, no Appropriate Assessment issues arise. 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.

8.0 Recommendation

- 8.1. In view of the foregoing, it is recommended that the appeal be rejected and that the planning authority decision to refuse permission be upheld based on the reasons and considerations set out below.

9.0 Reasons and Considerations

- 10.0 Notwithstanding, previous development carried out at the site, in particular the existing basement patio, the proposed development would constitute an

unsympathetic extension and alteration to a Georgian house on Merrion Square which is insensitive to, out of character with and, fails to recognise, complement and enhance the historic architectural detail, scale, proportions, materials and design of the original structure and the external space to the rear that contributed to its special interests. As a result, the proposed development would seriously injure the integrity, character and context of the protected structure and would set undesirable precedent for further similar development at Merrion Square the houses on which are included on the record of protected structures and which is within a Conservation Area, would materially contravene Policy Objective CHC2 of the Dublin City Development Plan, 2016-2022, 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
20th July, 2018