



An  
Bord  
Pleanála

## Inspector's Report ABP 301966-18

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<b>Development</b>	Demolition of existing building and construction of a residential/commercial development in two blocks, and ancillary site development works.
<b>Location</b>	Nos 35 and 35A Bolton Street and Henrietta Lane, Dublin 1.
<b>Planning Authority</b>	Dublin City Council
<b>P. A. Reg. Ref.</b>	4292/17
<b>Applicant</b>	Ronnie Craven
<b>Type of Application</b>	Permission
<b>Decision</b>	Grant Permission.
<b>Type of Appeal</b>	First Party X Conditions
<b>Appellant</b>	Ronnie Craven
<b>Observer</b>	Transportation Infrastructure Ireland.
<b>Date of Site Inspection</b>	21 <sup>st</sup> January, 2019
<b>Inspector</b>	Jane Dennehy.

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## 1.0 Site Location and Description

- 1.1. The site has a stated area of 440 square metres and has frontage onto the north-west side of Bolton Street. The site widens outwards to either side towards the rear, north western boundary which adjoins Henrietta Lane, at the rear of Dominick Street. Henrietta Street and to Bolton Street. There is a three storey, four bay building with a flat roof on the site in which there are two retail units at ground floor level and two three-bedroom apartments on the upper floors. The existing building has a stated floor area of 206 square metres of which a floor area of 155 square metres is in residential use.
- 1.2. There is a rear yard and rear access onto Henrietta Lane at a bend where part of the original rubble stone boundary wall survives. The rear curtilage of No 3 Henrietta Street is located opposite at the corner on Herbert Lane. At the time of inspection conservation works were being carried out at the house at No 3 Henrietta Street.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for demolition of the existing structures and for construction of two five storey blocks, the fifth floor on the block facing onto Bolton Street being setback on the site providing for connection at fourth floor parapet level with the adjoining buildings. The two blocks are to be connected by a glazed link over four floors across the eight metres distance between them with the entrance for both blocks being off Bolton Street
- 2.2. The proposed use is for one commercial unit at ground floor level, (the lodged plans indicating café use, though this is not indicated in the descriptions on the notices) and fifteen apartments comprising, seven one bed units, seven two bed units and one three bed (penthouse) unit. Site coverage of eighty per cent and a plot ratio of 2.9 are indicated.
- 2.3. By order dated, 19<sup>th</sup> January, 2018, the planning authority issued a request for additional information for a building condition study with assessment of the existing buildings' significance and scope for reuse, the planning authority being predisposed to retention and reuse of structures of special heritage interest and or which positively contribute to the streetscape character and sustainable development. A

sunlight and daylight analysis of impact on adjoining development including Dominick Street apartments to the east of the site and within the development, and details of proposals to address requirements for public open space provision in accordance with section 16. 10. 3 of the CDP.

2.4. The further submission lodged on 8<sup>th</sup> May 2018 in response to the request includes:

- A statement to support the proposed demolition of the existing building on grounds that it is substandard and of limited value and interest and substandard;
- Shadow analysis based on Revit Autocad software modelling based on which it is stated that adequate sunlight and daylight to adjoining buildings and the courtyard and balconies in the proposed development and,
- A statement that it is not practicable to provide public open space within the development and reference to section 16.10.3 of the CDP which provides for payment of a financial contribution in lieu.

2.5. The submissions include a Design Statement, Flood risk assessment report, photographs of the existing structure, a drainage report and an appropriate assessment screening report.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

By order dated, 19<sup>th</sup> January, 2018, the planning authority decided to grant permission for the development subject to conditions which include requirement for modification under Condition No 4 (a) the appealed condition according to which omission of one floor in the rear block, other than the top penthouse floor is required. Condition Nos 4 (b) – (e) contain requirements relating to glazing, signage and floor to ceiling heights at ground floor level.

Condition Nos 5 and 6 contain requirements for a compliance submission for the proposed use of the commercial unit, and fume and odour control for café or restaurant use.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The planning officer having considered the original application in which concerns were raised leading to the further information request and submission indicated satisfaction with the proposed development in her final report, subject to the modifications required under Condition No 4 and general standard planning and technical requirements,

### 3.2.2. Other Technical Reports

The reports of the Engineering Department – Drainage Division, Roads and Traffic Planning Division indicate no objection subject to conditions. No report was received by the planning authority from Irish Water.

## 3.3. Prescribed Bodies

The submission of Transportation Infrastructure Ireland indicates recommendations for conditions to be attached if permission is granted. (A submission was also made in connection with the appeal – see paragraph 6.4)

## 4.0 Planning History

4.1. There is no record of planning history for the application site according to the planning officer report.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plan is the Dublin City Development Plan 2016-2022 (CDP) according to which the site location is subject to the zoning objective: “Z4: *District Centre: to provide for and improve mixed services facilities*”. Mixed use, residential and commercial development is permissible in principle. For Z4 zoned lands the indicative plot ratio is 2.0 and indicate site coverage is 80 per cent

according to section 16.5. The objectives support consideration of increased intensity and viable retail and commercial facilities and community services.

According to policy objective QH8, it is the policy of the planning authority to promote sustainable development of vacant or under-utilised infill sites and, favourably consider higher density development that respects the design of surrounding development and the character of the area. Section 16.10.10 provides for and encourages infill development subject to consistency with planning standards with some allowance for flexibility in their application for proposals for vacant, derelict and underutilised sites within the inner and outer city.

Section 16.10.17 provides for a policy which favours retention and reuse of existing buildings of historic, architectural cultural and local interest that positively contribute to the streetscape.

Section 16.10.17 provides for payment of a financial contribution in lieu of public open space provision on sites where constraints preclude meaningful open space provision in a development.

Minimum qualitative and quantitative standards for apartments are set in strategic guidance. Sustainable Urban Housing: Design Standards for New Apartments (Dec. 2015)

The properties on Henrietta Street come within the area of the Henrietta Street and some of the environs come within the Henrietta Street Conservation Area for which there is a Conservation Area Plan. In the Conservation Plan the significance of No 3 is stated to be particularly important. Among the objectives is the retention of the historic curtilage of No 3 Henrietta Street, allowing for possible scope for mews development at the rear.

The area immediately to the north west of the site on both sides of Henrietta Lane are subject to the zoning objective 'Z1': to protect, provide for and improve residential amenities with the properties on Henrietta Street, protected structures being subject to the zoning objective 'Z8' providing for the protection of the architectural and civic character and allow only for limited expansion.

The site location also comes within a Zone of Archaeological Interest.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal was received from Pierce and Associates on behalf of the applicant on 28<sup>th</sup> June, 2018 in which it is requested that Condition No 4 (a) be omitted. Condition No 4 (a) contains a requirement for modification of the block facing onto Henrietta Lane, (the rear block) by omission of one floor so that the block is a three storey plus a setback top floor penthouse level. It is stated that the number of units within the block would be reduced by twenty percent to twelve from fifteen if one floor is omitted.

6.1.2. According to the appeal

- The omission of a floor is not justified in the shadow analysis and the north south orientation of Henrietta Lane has not been recognised by the planning authority. The site is overshadowed by its own high building on Henrietta Street. Shadow is cast on the lane and on the opposite site for a limited period in the mornings. The shadow and daylight access impact of the building on the apartments facing Dominick Street in northern area is insignificant. (Drawing Nos 17.15.DS.01 and 02 included in the further information submission refer.) There would be limited shadow effect on No 3 Henrietta Street in the morning and the omission of one floor would not reduce effect on sunlight on the opposite side of the lane. The building overshadows its own site more than the proposed rear block and has significant daylight impact on its northern aspect. There is an open derelict site at the rear of No 3 Henrietta Street
- The six storey apartments facing Dominick Street are remote from shadow cast from the proposed development. Two storey commercial buildings run east west on the lane and small portion at the eastern end would be overshadowed which is not significant impact for a central city area. The orientation of the buildings on Henrietta Street relative to the central core diminishes impacts in daylight close to the application site.
- The receiving environment and city centre context to the site was not taken into consideration in the planning authority assessment. There is a derelict

site in the area which has been ignored. The application site, in effect, is brownfield, within a central core block where there are vacant brownfield sites and inappropriate light industry. The area is in dire need of redevelopment. The proposal is appropriate in density, apartment layouts and design quality considerations. Peripheral buildings are five and six storeys in height. The omission of the floor contradicts the policy of intensification of development in the city and sustainable city centre development.

- A seven-storey development within fifty metres of the site is a benchmark and the proposal to remove one floor from a five-storey building is inconsistent with the established precedent. No 43/45 Bolton has three street frontages, was permitted in 2003 when there was less need for a more compact city centre. (P. A. Reg. Ref. 4719/03 refers.)
- The omission of three units (20 %) results in a loss in demand for use of the LUAS Extension, a major national investment, which runs thirty metres from the site. The omission is contrary to national objectives for building smart cities with public transport.
- The omission of three units (20 %) renders the viability of the project questionable especially as a lift and stairs are to be provided for the block.
- The applicant is willing to pay a development contribution in lieu of public open space provision.

## **6.2. Planning Authority Response**

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

## **6.3. Observations**

6.3.1. In a submission from Transportation Infrastructure Ireland (Prescribed Body) received on 13<sup>th</sup> July, 2018 it is requested that if permission is granted the following requirements should be included in the conditions.

- a condition with a requirement for a construction traffic management plan, similar to the requirement of Condition No 12 (a) attached to the decision to grant of permission;



- a condition with a requirement for attachment of a section 49 supplementary development contribution scheme condition (LUAS Cross City)

## 7.0 Assessment

7.1. The appeal is for the deletion of Condition No 4 (c) attached to the planning authority decision in which the omission of one floor, comprising three of the proposed apartment, (exclusive of the setback penthouse floor) is required. The appeal request for deletion of Condition No 4 is first considered below followed by *de novo* review of the application.

### 7.2. Condition No 4 (a)

7.2.1. The decision to exclude, by condition, one floor from the rear block overlooking the lane is supported. In this regard the site location is regarded as somewhat transitional having regard to the zoning objectives for the adjoining areas and the Henrietta Street Conservation Area. Therefore, sensitivity is required in new development which needs to be balanced against the desirability of consolidation and regeneration of inner city areas as provided for in the CDP and pointed out in the appeal.

7.2.2. Some of the apartments on Dominick Street overlooking Henrietta Lane have a restricted outlook and limited access to sunlight from the south and south west and skylight and daylight/skylight. The reduced height to be achieved by omission of a floor ameliorates overbearing impact and obstruction of sunlight and daylight. The omission of a floor would protect the outlook in this regard and the attainable residential amenities of these apartments.

7.2.3. The potential for obstruction of daylight and sunlight to possible future residential development within the area at the rear and within the curtilage of No 3 Henrietta Street, zoned for residential development is not significant. However, the height of the proposed block gives rise to concern due to the narrow width of Henrietta Lane. Historically it is a service lane providing for rear access to Henrietta Street, Bolton Street and Dominick Street and possible workshop or related activities accessed from it. Structures facing onto it, some of which partially survive would have been one or, at the most two storey and subordinate in relationship to the three and four over basement houses.

- 7.2.4. The description of the space at the rear of No 3 Henrietta Street in the appeal as a derelict site is not accepted as fully accurate as this space comes within the historic curtilage of No 3 Henrietta Street. In the Henrietta Street Conservation Plan, the primacy and special architectural heritage interest and significance of No 3 among the houses on Herbert Street is recognised and there is a recommendation that the historic curtilage be retained intact with there being possible scope for future mews development at the rear which is consistent with the Z1 zoning objective for residential development. (Conservation works were being carried at the house at the house at the time of inspection.)
- 7.2.5. It is therefore considered that the proposed rear block, owing to the height at the frontage would be overbearing and dominant having regard to the scale and width of the lane and would set precedent for possible future similar development. In this regard, detrimental impact on the historic context of the house at No 3 Henrietta Street in its the relationship with its curtilage bearing in mind possible future residential development on the zoned area at the rear is of concern in this regard. To this end, the planning authority's inclusion of the requirement, under Condition No 4 (a) of its decision to grant permission for the proposed development is also supported.

### 7.3. **De Novo Review of the Application.**

- 7.3.1. In reviewing the application on a *de novo* basis, apart from agreement with the requirements of Condition No 4 (a) there is no objection to the proposed design and layout, inclusive of the link and private/communal open space provision. It is agreed that payment of a financial contribution in lieu of public open space provision is reasonable, and that the lack of provision for on-site carparking is acceptable. given the site location and configuration. Furthermore, notwithstanding the recommended omission of one floor, (three apartment units), it is considered the development if so modified, and permitted represents an intensive and sustainable use of the site consistent with the strategic objectives for consolidation of development within the city provided for both within the CDP and within national policy relating to residential development.

- 7.3.2. The proposed entrance on the Bolton Street frontage which extends above the ground floor shopfront level and enlarged window at first floor level overhead are considered inappropriate in breaching continuity of uniformity along the façades in the streetscape and regularity above ground level in scale and proportions in opening and fenestration detail. This concern can be addressed by condition.
- 7.3.3. With regard to the proposals for demolition of the existing building in respect of which the planning authority sought additional information it appears that some fixtures in the building such as a rear staircase, might date from earlier in the twentieth century but this is unclear. There are chimney stacks at the adjoining properties to each side, the relationship to the application site is unclear and which are not referred to in the applicant's submissions. However, a fully comprehensive building survey and analysis is unavailable. An entrance through to the rear direct from the Bolton Street frontage, possibly a coach arch at ground floor at least appears to have been located where No 35A stands at present, according to historic maps.
- 7.3.4. In conclusion, the requirements of the conditions attached to the grant of permission, inclusive Condition Nos 4 (b) – (e) are supported. However, it may also be appropriate to add an archaeological condition given the location at the edge of a zone of archaeological interest.

#### **7.4. Environmental Impact Assessment Screening.**

- 7.4.1. Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.5. Appropriate Assessment Screening.**

- 7.5.1. An appropriate assessment screening is included with the application which has been consulted for the purposes of this screening.
- 7.5.2. The nearest European sites are the South Dublin Bay Special Area of Conservation (000210) and the South Dublin Bay and River Tolka Estuary Special Protection Area (004024) which are circa four kilometres to the east of the site location. There are

no direct pathways to the sites from the site of the proposed development and a potential indirect risk is via hydrogeological connection via the River Dodder.

- 7.5.3. The project is for demolition of an existing building and construction of a replacement of two five storey blocks in residential use with commercial use at ground floor level on a fully serviced inner city urban site. The proposed development is to be connected to public sewer network and the storm water drainage system incorporates SUDS measures providing for controlled discharge via a Bison Block system to the common sewer in Bolton Street.

Having regard to the nature of the proposed development and, to the serviced inner urban location, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

- 8.1. It recommended, should be appeal be considered and determined in accordance with the requirements of section 139 of the Planning and Development Act, 2000 as amended that Condition No 4 (a) be attached. However, a draft set of conditions is also included below should *de novo* consideration be considered appropriate.

## 9.0 Reasons and Considerations

Having regard to the 'Z4' zoning objective for the site and the location within in the central area the consolidation, regeneration and sustainable development of which is a policy objective of the planning authority according to the Dublin City Development Plan, 2016-2022 it is considered that subject to the conditions set out below, the proposed development would not seriously injure the residential amenities of adjoining development by reason of excessive scale and height, overbearing impact and overshadowing, would not adversely affect the integrity and character of the Henrietta Street Conservation Area and would be in accordance with the proper planning and development of the area and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 8<sup>th</sup> May, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The following requirements shall be provided for and adhered to in the development:
  - (a) One floor, excluding the penthouse floor shall be omitted in entirety from the rear facing block overlooking Henrietta Lane. This block shall be a three storey plus penthouse floor.
  - (b) The entrance off Bolton Street extending above the ground floor level shopfront level and the enlarged window overhead at first floor level shall be omitted and replaced with fenestration similar to the other fenestration on the front façade and an entrance design confined to the ground floor level only. The glazing for the shopfront shall be extended across the remaining width of the front façade. Shopfront signage shall be confined to individually mounted or hand painted lettering not in excess of 400 mm in height and with back lighting only being permitted.
  - (c) The link corridor within the site between the two blocks shall be in obscure glazing.
  - (d) A floor to ceiling height of 3.5 metres shall be provided in the ground floor commercial space.

**Reason:** In the interest of the visual amenities of the area, the residential amenities of adjoining properties and the integrity and character of the

protected structures on Henrietta Street within the Henrietta Street Conservation Area

3. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The landscaping scheme submitted to the planning with the application shall be implemented fully within the first planting season following substantial completion of the development.

**Reason:** In the interests of residential and visual amenity.

4. Details of the following requirements shall be submitted to and agreed in writing with the planning authority prior to the commencement of the development:
  - Materials, colours and textures of all the external finishes. Roof tiles shall be in dark grey, blue black or black.

**Reason:** In the interests of visual and residential amenities of the area.

5. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works.

**Reason:** In the interests of visual and residential amenity.

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

**Reason:** In the interest of public health.

7. The demolition of the existing structures and the construction of the development shall be managed in accordance with a Construction and Waste and Construction Traffic Management Plan, which, on appointment of a contractor, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

(a) Location of the site and materials compounds including areas identified for the storage of construction refuse; areas for construction site offices and staff facilities; site security fencing and hoardings; and on-site car parking facilities for site workers during construction;

(b) The timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site; measures to obviate queuing of construction traffic on the adjoining road network; and measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(c) Details of the implementation of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels.

(d) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;

(e) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

**Reason:** In the interest of amenities, public health, safety and sustainable development.

8. Construction and demolition waste shall be managed in accordance with a construction waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best

*Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects*", published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interest of sustainable waste management.

9. Hours of work shall be confined to 0700 to 1900 Mondays to Fridays inclusive, excluding bank holidays and 0800 to 1400 hours on Saturdays. Deviation from these times will only be allowed in exceptional circumstances subject to the prior written agreement of the planning authority.

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

10. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.



In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

11. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

**Reason:** To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

12 Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer

or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion and maintenance of the development until taken in charge.

13 The developer shall pay to the planning authority a financial contribution in respect of the LUAS Cross City Line in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.

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

An Bord Pleanála to determine the proper application of the terms of the Scheme.

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

**Jane Dennehy**  
Senior Planning Inspector  
22nd January 2019.