



An
Bord
Pleanála

Inspector's Report ABP 303283-18

Development	Works to Three two storey terraced mews structures and a conservatory extension to the rear.
Location	Rear Nos 127, 129 and 131 Tritonville Road, Sandymount, Dublin 4.
Planning Authority	Dublin City Council
P. A. Reg. Ref.	2970/18.
Applicant	Ken Fennell.
Type of Application	Permission and Permission for Retention.
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Paul Whittington, John McKay and Carol English and, Catherine Russell.
Date of Site Inspection	30 th March, 2019.
Inspector	Jane Dennehy.

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1.0 Site Location and Description

1.1. The application site has a stated area of 975 square metres and is located at the rear/west side of Nos 127, 129 and 131 Tritonville Road and to the north side of Herbert Road off which there is a gated, vehicular entrance. This entrance opens onto a lane off which there is rear vehicular access to Nos 121, 123, 125, 127, 129 and 131 Tritonville Road. Part completed mews houses are located within the site in the rear gardens of Nos 127, 129 and 131 which have been were subdivided. (The grant of permission under P. A. Reg. Ref. 4973/07 refers.) Conservatory development is at the rear of Nos 129 and 131 Tritonville Road.

2.0 Proposed Development

2.1. The application lodged with the planning authority by Crawford Architecture on behalf of the applicant indicates proposals for:

- (1) Permission for retention of the part constructed two storey over basement mews dwellings.
- (2) Permission for completion of the three two storey over basement mews houses. They include: one, one bed, two storey over basement unit with a stated floor area of 109 square metres and, two, two storey over basement units with stated floor areas of 124 and 138 square metres and a balcony. The previously permitted and basement level carpark and entrance under P.A. Reg. Ref. 1717/07 and 4628/08 is retained.
- (3) Permission for construction of a two metres high smoke chimney in the garden at rear of Unit No 3 and,
- (4) Permission for retention of a single storey conservatory extension at rear of Nos 129/131 Tritonville Road which has a stated area of 54 square metres.

The stated total floor area is 1266 square metres, stated plot ratio is 1.3 and stage site coverage is 47%

3.0 Planning Authority Decision

3.1. Decision

By order dated, 27th November, 2018, the planning authority decided to grant permission and permission for retention subject to conditions which include the following requirements:

Condition No 2: Permanent obscure glazing to the rear elevation bathroom window of No 3.

Condition No 4: Standard restriction on Construction hours.

Condition No 5: Noise Control during construction.

Condition No 8: Prioritisation to incoming traffic for use of the car lift.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer issued a recommendation for additional information to be requested in respect of provision internal accommodation, presentation of the rear elevation in view of the designation as a Residential Conservation Area, external finishes and materials, overlooking, parking and the location of a vent for the basement. on for compliance with standards for size and layout of internal and external accommodation, facilities and amenities. In his supplementary report he indicates satisfaction with the details and proposals provided in the further information submission lodged with the planning authority on 14th November, 2018.

3.2.2. Other Technical Reports

The final report of the roads and transportation department in which the further information submission is reviewed, indicates satisfaction with the proposed arrangements for vehicular access to the parking spaces via a vehicular lift/turntable which include establishment of a residential management company. Standard conditions are recommended.

3.2.3. Third Party Observations

Concern raised in submissions from third parties include issues relating to:

- deficiencies with the car lift/turntable and on-site parking arrangements.
- rights of way over the lane,

- proximity of the proposed chimney to the adjoining property at No 125 Tritonville Road,
- Overlooking and interference with privacy and residential amenities,
Substandard private open space provision,

4.0 Planning History

4.1. Details of prior grants of permission of direct relevance to the current proposal follow.

P. A. Reg. Ref. 4379/04: Permission was granted for a basement level at the rear of Nos 129 and 131 Tritonville Road.

P. A. Reg. Ref. 1717/07: Permission was granted for construction of a basement level at rear of Nos 127, 129 and 131 Tritonville Road and minor modifications to the permitted basement level under P. A. Reg. Ref. 4379/04 at the rear of Nos 129 and 131 Tritonville Road. Provision is included for pedestrian connection between the permitted and proposed basements.

P. A. Reg. Ref. 4628/08: The planning authority decision to grant Permission for three two storey over basement mews houses, basement level storage and cinemas and, permission for retention of an extended basement area to the basement permitted under P. A. Reg. Ref. 1717/07 for was upheld following appeal. An extension of the duration of the grant of permission to August, 2016 was agreed to by the planning authority.

4.2. The site, or subsections of the site's extensive planning history also includes unsuccessful applications for apartment or mews developments under P. A. Reg. Refs. 1892/00, 3650/04, and, following third party appeals under P. A. Reg. Ref 5265/05 P. A. Reg. Ref 4973/07, and 1437/08

5.0 Policy Context

5.1. Development Plan

6.0 The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z2: *“To protect and/or improve the amenities of residential conservation areas.”*

Development management standards for residential development are set out in section 16.10.2; for corner and side garden development in section 16.10.9; for infill development in section 16.10.10. and, for mews lane development in section 16.10.16. Policy 113, in conjunction with section 16.10.15 provide for discouragement of underground and basement development at residential development in conservation areas and/or protected structures and unacceptance of any such proposals within these areas if the location is within designated Flood Zone A or B Areas.

7.0 The Appeal

7.1. Grounds of Appeal

An appeal was received from Reid Associates on behalf of Paul Whittington, John McKay and Carol English and, Catherine Russell who are occupants of Nos 121, 125 and 127 Tritonville Road on 20th December, 2018. The submission includes a detailed account of the planning history and planning context of the site and the proposed development. According to the appeal:

- There are defects in the planning application and public notices with regard to accuracy of details and consistency with Articles 22 and 23 of the Planning and Development Regulations, 2000 as amended. It is submitted that the deficiencies and discrepancies are material and cannot be remedied at the appeal stage.

- There are underlying structural stability and fire hazard issues because there is no evidence of completion and compliance with the grant of permission. Compliance with building codes of practice and fire safety has been ignored. There is additional risk because the development is incomplete and there are existing adjoining properties. It is noted that the Fire Service has sought an increase ventilation area in the current application. The structural stability and integrity should be determined. There is no 'as constructed' survey. There were deviations from the prior grant of permission under P. A. Ref. Ref. 4628/08. An up to date measured survey is required. The constructed development is not in accordance with the grant of permission, in 2009 under P. A. Reg. Ref. 4628/08. The additional information submission does not provide clarification and the planning authority has not clarified and addressed the issue as to extent of the discrepancies and as to whether floor to ceiling heights are 2.4 metres, as stipulated and as to the external finishes which were changed and are a blight to the streetscape.
- The extent of venting in the carpark required by the Fire Service, because of potential fire hazard is a serious concern and retrofitting is unacceptable. The recreational utility of the adjoining gardens is undermined, the two metres high vent along the entire northern boundary causing the adverse impact on recreational amenity and property value. There is also no evidence of air pollution analysis having been undertaken to establish impact on human health of air emissions, and potential for health hazards especially at No 125 Tritonville Road, at No 127 Tritonville Road and for the future occupants of the development. Inadequate open space provision is at issue in this regard.
- The applicant has insufficient legal interest to carry out the development and the letter of consent is not from the legal owner. It is therefore inadequate for compliance with the Planning Regulations, namely Article 22 (2) (g) and is invalid. The applicant is receiver of loans attached to the property, acting in the role of liquidating assets to achieve higher value rather than the legal owner. It is necessary therefore to establish that development would not be reliant on compliance with conditions.
- The existing development has significant adverse visual impact on the character of the streetscape, the visual amenities and architectural character

in views along Herbert Road as a result having regard to the Z2: ('Residential Conservation Area') zoning objective and, the proposed development does not alter this scenario. There is poor façade detail and treatment, the buff brick finish is inappropriate, and the workmanship is poor, the form and building line compound the prominence on the streetscape. It fails to comply with the principle in section 16.2.1 of the CDP as to incorporation of exemplary standards of high quality urban design. It fails on the four design principles indemnified in the CDP namely, respect and enhancement of character and context, sustainable design, inclusive design and design for safer environments. The design is not inclusive, there is no sustainability agenda private open space provision is insufficient at 35, 39 and 48 square metres. This and the relaxation in separation distances from the minimum standard of twenty-two metres have not been justified.

- Basement development in residential conservation areas, or, close to or at protected structures are discouraged in section 16.10.15 and Policy S113 of the CDP. The sustainability of the basement structure has not been examined in the case of the current proposal and the site location is classified as Flood Zone A. The site is close to the Dodder, there is evidence of ponding of water, no surface water management proposals are provided. Hard paving exacerbates run off contrary to SUDS requirements. There is routing to a combined drain with capacity and surcharge problems. No consent has been given to connection to the drain at No 125 Tritonville Road. no flood risk assessment was undertaken. In this regard, there material contravention of the CDP 'Residential Conservation Area' objectives.
- The application does not provide for the long overdue resolution of the intolerable situation for residents of adjoining properties due to the incomplete development on the site. The development is seriously injurious to residential amenity: There is an attempt to increase density and further erode separation distances. The presentation of the gable wall towards No 25 Tritonville Road is unfinished and completion involves encroachment onto the adjoining property. There are no roof drainage arrangements and a gutter is proud of the gable so that it drains onto the lane. There is overlooking of the bedroom at first floor level in No 127 Tritonville Road. The new vent pipe is a

new obnoxious feature with public health implications and there is no evidence of minimisation of energy consumption or flood risk amelioration. The lane service numerous properties but is subsumed into the site impeding use as a right of way. There is no method statement for resolution of the problems.

- The proposed development would set precedent for similar development.

7.2. Applicant Response

A submission was received from IMG Planning on behalf of the applicant on 29th January, 2019 and it includes an account of the application, planning background, and context. Attached is a copy of the Deed of Appointment of Receiver. It is stated that the existing development was not completed further to which the applicant was appointed Receiver in February 2014. According to the submission:

- The current application is a new application, to be considered on its own merits. It is not an application for amendment to prior applications. It is accepted that the current scenario is less than optimal, and the overriding objective of the proposal is to rectify and complete the development and to address the conditions attached to the now no longer extant grant of permission under P. A. Reg. Ref. 4628/08.
- The height of the previously approved dwellings was 6.8 metres to parapet level above grand floor level. A compliance submission showing a height reduction required to comply with the condition (No 1) at ground and first floor level to 2400 mm from 2700 mm was lodged with the planning authority but there was no agreement by the planning authority.
- The planning authority's comments in granting permission note that the units had not been constructed in accordance with the original grant of permission, but the amendments were assessed against the current CDP; the principle of development has previously been established; the partial completed development is an eyesore and, the completion of the development is a planning gain, in the residential conservation area.

- Irrespective of the existing development, there will be a requirement, if permission is granted, to implement it in accordance with the application and any conditions attached to the decision.
- The 'as constructed' drawings show changes made during construction: increase in depth of Units 2 and 3 and in the depth of the ground floor at the rear of Unit 1. It is extended out on the same plan as the extended rear walls of Nos 2 and 3 (Drawings 17-006-CRA-TR-XX-DR-A-31110- and 17-006-CRA-TR-XX-DR-A -31111- refer.)
- A structural engineer has confirmed satisfaction that the existing structures are stable and can be retained.
- A Fire Safety Certificate was granted for the permitted development and is now invalid but a Fire Safety Certificate for the proposed development has been issued. The appellant's concerns in this regard have been addressed.
- With regard to the requirement under Condition No 1 of the prior grant of permission for the reduction of floor to ceiling height from 2700 mm to 6400, (reducing the external height by 600 mm) permission is now sought to complete the development in accordance with the proposal in the current application. The drawings show a height of 5945 mm over ground level and this is 855 mm below the previously proposed height and 222 mm below the height required under Condition No 1 of the prior grant of permission. Drawings Nos 17-006-CRA-TR-XX-DR-A-31110- , 17-006-CRA-TR-XX-DR-A -31111-, 17-006-CRA-TR-XX-DR-A-31210- and, 17-006-CRA-TR-XX-DR-A -31211- refer.)
- The applicant's architects are fully aware of the designation of the area as a Residential Conservation Area in the CDP. The three materials incorporated for the front and rear elevations will not detract from the overall aesthetics of the elevations. The bronze coloured powder coated aluminium, a sample of which is to be provided compliments the brickwork, render and zinc cladding detail. (Drawing 17-006-CRA-TR-XX-DR-A -31111B refers.) The revised rear elevations include reduction in overall openings to increase privacy at the adjoining properties and they reflect the window forms in the area.

- Misleading terminology is used in the appeal with regard to the open ventilation area which is enclosed by a wall in the rear garden of Unit No 3. The primary function is to ventilate the carpark naturally and to purge it of smoke in the unlikely event of fire. The vent opens to air space in which fumes would disperse as heat rises. The size of the area was increased so that the vent area equals five percent of the floor area providing ventilation and it is located in the most discreet position. The height of the vent structure below the height of the boundary walls ensure that it is not visible from the adjoining rear gardens. The six vents are within the boundary wall of each unit and additional vents on the roof of the carpark lift would only be used in emergency and have not perceptible impact on adjoining properties.
- Ken Fennell (Applicant) was appointed Receiver over the properties at Nos 127, 129 and 131 Tritonville Road and has full powers to secure, take possession, manage and sell the secured asset and achieve the best possible return on behalf of the secured creditors and borrower. There is no requirement for consent or permission from the borrower to be provided. Appropriate documentary evidence was provided with the application and copies of these Deeds of Appointment are also attached to the submission to demonstrate sufficient legal interest. It is accepted that, as Receiver, the applicant does not have long term commitment, but necessary requirements and liabilities and conditions would pass on to the subsequent owner if the proposed development, if permitted is implemented.
- The location within the designated Residential Conservation Area is fully acknowledged. This designation and the planning context in which the current application is to be adjudicated has not changed further to the grant of permission for the original proposal (following appeal) under P. A. Reg. Ref. 4628/08 when the principle of a mews development was established. The proposed development complies with the development management standard in section 16.10.16 of the CDP. (They are two storey, subordinate in height and scale to the main buildings on Herbert and Tritonville Road, there is sufficient depth between existing and proposed development for privacy and sufficient open space provision. A higher quality residential environment is created. There is innovative architectural response to the established building

lines and plot widths. The off-street parking at one space per dwelling is provided and landscaping is to a high standard.

- There has been no evidence of flooding in the site which is 300 metres from the Dodder river. It is identified as Flood Zone B in the SFRA for Dublin City. (Site 9). In the SFRA assessment further development, (other than extensions and small-scale development) in Flood Zone A and B should not proceed prior to completion of flood defences or other mitigation measures on the Dodder to Ballsbridge and at Sandymount. However, the site is now at low risk of flooding because the Lower Dodder Flood Alleviation Works have since been completed so the site is now within a “defended area”. There is now provision for protection to a combined 1:200 coastal fluvial event for inter tidal areas, allowing for global warming. The development will also comply with SUDS standards which are mandatory requirements.
- The contentions as to deficiencies in the public notices and in the application to warrant invalidation are rejected in the submission:
 - The red line boundary includes the entirety of Nos 129 and 131 Tritonville road, the area to the front of which is to be used for storage during construction although works are to be carried out at the rear. It is clearly evident that the retention is to be sought on a permanent basis, the total floor area of 475 square metres indicated in the application is the combined gross floor area exclusive of the carpark which is 116 square metres. The total floor area, at 1266 square metres, are to be retained includes the floor areas of Nos 129 and 131 Tritonville Road. The increase in total floor area is from 416 square metres previously permitted to 475 square metres, a difference of 59 square metres which is due to the increase in depths of Units 2 and 3 and the ground floor area of Unit 1.
 - There is no wayleave on the lane which is not shown as a right of way of the Property Registration Authority maps. The extent of ownership is the same as it was for the previous application under P. A. Ref. Ref. 4628/08.

- The plot ratio is based on the combined total floor area of 1266 square metres on the application site of 975 square metres and has been calculated in accordance with the criteria in the CDP: gross floor area is the sum of floorspace between external walls, excluding basements and carparking above ground level.) If the laneway, car lift and basement vents over ground are excluded, which is an incorrect calculation of site area, the ratio would be 1.24. Irrespective of the method of calculation, the plot ratio is within the range in the CDP for 'Z2': zoned land of 0.5-2.0. and not excessive for a mews site or the area.
- The CDP requirement for minimum open space of ten square metres per bed space are exceeded, for Unit 1 and although less than the minimum for Units 2 and 3 the derogation is appropriate due to the depth at 7.564 metres.
- The reduced separation distance from twenty metres to 19.815 between the bedroom window to No 127 Tritonville Road is marginal. There is some allowance for the minimum standard of twenty-two metres due to site constraints. Frosted glazing to the bathroom at Unit 3 and reduced window sizes are proposed so to ensure adequate privacy between the rears of the mews and existing houses.
- The claim as to inconsistencies and inadequacies in the application and public notices rendering it to fail to satisfy the requirements of the Planning and Development Regulations, 2001 as amended and as to invalidity are reiterated. Issues are raised as to inconsistencies and inaccuracies in calculation of floor areas, inclusion of details of a right of way over the laneway.
- The view that a Receiver cannot submit a planning application and concerns about risk of lack of compliance with possible conditions if permission is granted are reiterated.
- It is stated that due to the location within Flood Zone B the development must be justified, and a site-specific flood risk assessment is required. The claim as to evidence of pluvial flooding on the site and that it is not addressed is reiterated. It is claimed that the development on site is

not SUDS compliant and evidence of compliance with SUDS requirements should be provided and that it is insufficient to rely on the suggestion that the applicant will comply with the mandatory requirements in this regard.

7.3. **Planning Authority Response**

There is no submission on file from the planning authority.

7.4. **Further Responses**

A further submission was received from the Appellant Party's agent on 18th February 2019. The submission indicates rejection of the responses in the applicant's submission and comprises a detailed elaboration on the issues and it is outlined in brief below.

- The applicant' submission is confused in that it contends that the application should be determined on its own merits while, to avoid first principles, it relies on the prior grant of permission.
- The development is unauthorised. It is not "connected" as asserted in the response to the appeal to the previous grant of planning permission. It is loosely connected in that it comprises unauthorised development in entirety and this acknowledged in section 4.3 of the applicant's submission.
- The view that there is no merit to the proposed development is reiterated. The current proposal exacerbates the existing problem of substandard development. Reference is made to the issues raised in the appeal with regard, intensification and enlargement of the previously permitted development, to the underground parking, fire risk, ventilation and air pollution issues, open space provision, and impact on amenities of adjoining properties. The development cannot fit on the site without compromising development and amenity standards and residential amenities at adjoining properties.
- The Fire Safety Certificate obtained and referred to in the submission has not been submitted. The fire hazard must be removed through reconsideration of the basement carpark.

- The argument about planning gain and the promotion of the development is to enable the applicant to increase the development without proposing solutions to the scenario and there is disregard for the special care required for development within residential conservation areas.
- The advice of the structural engineer as to structural stability referred to in the submission has not been submitted. The full survey and structural report is required. Issues as to structural stability and as to fire hazard and the necessity for compliance to be established are greater now than ever, given the recent cases at apartment developments where defects were identified. This is in the interest of both the future occupants and the residents of adjoining properties.
- The claim that the roof height is to be reduced is not persuasive because it is not shown how the reduction from the previous unauthorised height is to be implemented and there is no undertaking by the applicant.

8.0 **Assessment**

8.1. The assessment of the issues raised in the appeal is set out below under the following sub-headings.

Validity of the application

Fire certificates and structural stability

Basement Development

Flooding Risk and Drainage

Qualitative and quantitative standards – Residential Units

Residential Amenities at Adjoining Properties

Compatibility with the Residential Conservation Area ‘Z2’ development objective.

Traffic Convenience and Safety and Parking.

Environmental Impact Assessment Screening.

Appropriate Assessment Screening.

8.2. **Validity of the application.**

- 8.2.1. The entitlement of the applicant, in this case the Receiver, to lodge the application which is challenged in the Appeal to support the claim that application does not satisfy the requirements of Article 22 (2) (g) of the Planning and Development Regulations is noted. Resolution of this issue and other concerns raised in the appellant submissions with regard to the validity of the application would be a matter for resolution through the legal process. Irrespective of the contentions to the contrary in the submissions made on behalf of the appellant, it is considered reasonable that an assessment and determination of a decision be proceeded with notwithstanding the scope to consider legal proceedings which is open, concurrently to the appellant party.
- 8.2.2. Bearing the foregoing in mind, it is noted that the appeal submissions do not include any documentary evidence to support the claims as to rights of way over the access lane. It cannot therefore be accepted that the applicant does not have legal entitlement to access along it in connection with to the proposed development. Furthermore, it can be borne in mind that a grant of planning permission does not infer an entitlement to implement a permitted development, as is provided for in Section 34 (13) of the Planning and Development Act, 2000 as amended.
- 8.2.3. The various comments in the submission made on the behalf of the appellant as to the longer-term commitment to standards and compliance and as to the purpose of the application have been noted but are outside the scope of material considerations to be taken into account in determination of the appeal.
- 8.2.4. With regard to the claim in the appeal that the existing development was not constructed in accordance with the grant of permission under P. A. Reg. Ref. 4628/08 it is noted that the planning authority has a current enforcement file which was opened in 2013. (ENF 0278/13 refers.) The current application includes proposals for retention of elements of development at variance with the prior grant of permission.
- 8.2.5. It is agreed that there is some confusion as to the claim on behalf of the applicant consideration of the current application on its own merits in that incorporates retention of the elements at variance with prior grant of permission. The existing elements proposed for retention in combination with the elements proposed for

permission are considered on their own merits. If there be are other matters at issue within the enforcement file, they would lie outside the scope of consideration of the application and appeal.

8.3. Fire certificates and structural stability:

- 8.3.1. It is fully agreed with the Appellant that demonstration that satisfactory standards are achieved is essential in all developments and the concerns with regard to the existing and proposed development expressed in the appeal are understandable. However, these matters are subject to separate codes and it is noted that building control standards extant at the time of construction of the existing development have since been replaced. It would be a matter for the developer to establish compliance with the requirements that would be applicable to the proposed development.

8.4. Basement Development

- 8.4.1. The appellant's agent refers to policy S113 of discouragement of underground and basement development at or adjacent to residential properties in Conservation Areas and/or included on the record of protected structures, with any such development below estimated flood levels for flood zones A and B not being permissible in section 16.10.15 of the CDP to support the argument that basement development is unacceptable at the site location. This argument is considered reasonable given the location within Flood Zone 'B' but it is of note that Policy S113 is a new policy objective included for the first time, in the current extant CDP, as opposed to having been carried over from preceding CDPs.
- 8.4.2. Nevertheless, new basement development is not subject of the current application although it is acknowledged that the proposed retention and completion of the dwellings, and implementation of the proposed development, which are two-storey over basement dwellings in which carparking is provided, is dependent on the permitted basement development. (P. A. Reg. Refs 1717/17 and 4238/08 refer.) This must be borne in mind in consideration of the proposed development subject of the current application and appeal. Clarification as to potential for unauthorised development, if construction does not accord with the grant of permission is a matter for the planning authority.

8.5. Flooding Risk and Drainage.

- 8.5.1. With regard to the submissions of the applicant in which it is confirmed that the site location is within a Flood Zone 'B', it is agreed that further to the completion of the Lower Dodder Flood Alleviation Works designed to alleviate any potential for fluvial flooding at a 1.200 event should address any concerns relating to the site. It is noted that no special requirements were included in respect of the prior grant of permission, in 2009, the duration for which was extended for an additional five years, Nevertheless, given the incorporation of the permitted basement development over which the residential units the retention and completion of which is proposed, it is considered that no major implications which could give rise to concern in connection with the current proposal arise. Given these circumstances, it would appear in this instance therefore that preparation and submission of a flood risk assessment report is inessential.
- 8.5.2. It is acknowledged that the details within the current application do not include comprehensive, up to date details of the proposed surface water drainage arrangements and calculations. It is noted that the Drainage Division in its report indicated satisfaction with the proposed development subject to compliance with the conditions attached to the prior grants of permission under P. A. Reg. Reg.1717/07 and, P. A. Reg. Ref 4628/08. A standard condition was attached it being a matter for the applicant to demonstrate compliance with the mandatory SUDS standards and requirements and clarification of the applicant's proposal by these means is considered reasonable.

8.6. Qualitative and quantitative standards – Residential Units.

- 8.6.1. The increased space achieved in the proposed extending out of the ground floor for unit 1 as far as the rear building line for Units 2 and 3 results in enhancement of the quality of the main internal living accommodation. Deficiencies in private open space provision are marginal and should not give rise to significant diminution of attainable residential amenity for the future occupants of the units. The proposed development is considered satisfactory, especially for an infill development within an inner urban location where infill, consolidation and sustainable development in serviced areas is encouraged according to current strategic policy.

8.6.2. Contrary to the assertion in the submissions made on behalf of the appellant, it does not appear that the proposed development results in an increase in height, having regard to the calculations provided for floor to ceiling heights for the permitted, as constructed, and proposed development. A grant of permission, if forthcoming, is applicable to the proposals shown in the plans and particulars lodged with the application. Therefore, it would be a matter for compliance in this regard to be demonstrated for it to be established, to the satisfaction of the planning authority, that the development, on completion is authorised.

8.7. Residential Amenities of Adjoining Properties.

8.7.1. The location of the vehicular entrance and lift/turntable for the basement carparking has been considered previously in connection with the prior grants of permission and that the current proposal does to give rise variation or issues that would warrant reconsideration. It is not accepted that the proposed ventilation arrangements for the carpark and smoke chimney, to be located in the rear garden of Unit 3 would give rise to air pollution that would affect the amenities, including safety and health at the adjoining residential properties.

8.8. While it is acknowledged that the insertion of residential development and its future occupancy, does result in a major change in the environs of existing adjoining residential development. However, it is considered that it is demonstrated that satisfactory standards have been achieved to ensure that undue adverse impact on residential amenities at adjoining properties does not arise even though there is a shortfall from the recommended twenty-two metres separation distance between rear facing first floor windows. It is agreed with the planning officer that the arrangement is acceptable. The modification to the window size in the further information submission, the marginal difference from the permitted development and, the first-floor bedroom use, (as opposed to main living accommodation use) are of note in this regard. Opaque glazing is to be used.

8.9. Notwithstanding the more recent conservatory development at the rear of Nos 129/131 Tritonville Road, the retention of which is proposed, it is considered that that subject to the screening arrangements and opaque glazing shown in the further information submission the rear balcony at first floor level for Unit 1 is acceptable.

8.10. The blank elevation (for Unit No 3) adjacent to the side boundary of the rear garden of No 125 Tritonville Road, comprises a blank elevation that is considerable in depth and height. However, it is positioned adjacent to the end of the rear garden, twenty-five metres beyond the main rear building line of the house at No 125 and extends over a distance of eight metres. It is not accepted that residential amenities at this property would be unduly affected.

8.11. Compatibility with the Residential Conservation Area 'Z2' development objective.

8.11.1. The block of three units are perpendicular to the southern end of Herbert Road. The existing, (and proposed) development will be relatively prominent in streetscape views especially on approach along Herbert Road from the north west. The development reads as separate and independent of the surrounding development in that the context of the historic houses, (protected structures) on Tritonville Road is not affected in that there is a sufficient distance. The observation in the planning officer report that the materials and finishes and the design features are not of a high standard is noted along with the statement as to acceptance of samples provided with the further information submission. It is agreed with the planning officer that owing to part construction of the development and current opportunity complete it, the result, the outcome on balance is to be favoured as an overall improvement. Ongoing maintenance should sustain the development as an acceptable insertion of three dwellings into the streetscape in terms of visual impact and compatibility with the surrounding development.

8.12. Traffic Convenience and Safety and Parking.

8.12.1. As previously stated, there is no material change to the previously permitted development, proposed in the current application. (P. A. Reg. Refs 1717/17 and 4238/08 refer.) However, the concerns indicated in the appeal as to the car lift being frequently out of order, which could lead to generation of demands for on street parking are appreciated. The proposals as accepted according to the supplementary report of the Transportation Planning Division with regard to the incorporation of a turntable and suitability of access for parking are noted along with the proposed appointment of a residential management company, the remit of which would include management of maintenance of the car lift structure. The

recommendation also in the Transportation Report that a system allocating priority to vehicles entering the site from the public road should also be effective in limiting delays and obstruction on the public road.

8.13. Environmental Impact Assessment Screening.

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.

8.14. Appropriate Assessment Screening.

Having regard to the small-scale nature of the proposed development and, to the serviced inner suburban 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.

9.0 Recommendation

- 9.1. In view of the foregoing, it is recommended that the planning authority decision be upheld and that permission for retention and permission be granted. Draft Reasons and Considerations and Conditions follow.

10.0 Reasons and Considerations

Having regard to the planning history for the site, and to the layout, design and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual and residential amenities of the area, would integrate satisfactorily within the surrounding area subject to the zoning objective Z2: (Residential Conservation Area) according to the Dublin City Development Plan, 2016-2022, and the protected structures within it, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions.

1. The development shall be completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged on 31st October 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. A residential management company to take responsibility for the ongoing management and maintenance of those areas, including the entrance and car lift, that are not to be taken in charge by the local authority shall be established, full details of which are to be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of clarity and orderly development.

3. The following requirements shall be provided for and adhered to in the development:
 - The use of the access and car-lift to the basement level carpark shall be confined to use by residents of the three dwellings subject of the application and Nos 129 and 131 Tritonville Road.
 - Parking facilities shall not be sold, sublet or leased to other parties.
 - Priority shall be given to vehicles entering the site over those exiting site in operation of the entrance and car-lift. This and the operation and maintenance of the car lift shall be the responsibility of the residential management company.

Reason: In the interest of clarity, traffic safety and convenience.

4. The first-floor rear elevation windows to Unit 3 shall be fitted with opaque glazing.

Reason: In the interest of the residential amenities of the adjoining properties.

5. Details of all materials, colours and textures of external finishes shall be submitted to and agreed with the planning authority for agreement prior to commencement of development.

Reason: In the interest of clarity and the visual amenities of the area.

6. Construction activity shall be undertaken between 0700 hours and 1800 hours, Monday to Friday and between 0800 hours and 1400 hours on Saturdays. No work shall take place on Sundays or bank or public holidays.

Reason: In the interest of residential amenities of adjoining properties and clarity.

7. Prior to commencement of development, a Construction Management Plan shall be submitted to the planning authority for written agreement. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

7. The design and management of surface water drainage within the site shall be in accordance with the minimum standards set out in Greater Dublin Regional Code of Practice for Drainage Works (Version 6) issued by Dublin City Council. All water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

8. Prior to commencement of development, proposals for a dwelling numbering scheme and associated signage shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development.

9. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, shall not be carried out within the curtilage of the dwellings without a prior grant of planning permission.

Reason: In the interest of residential amenities.

10. 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 of the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion 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 the Board for determination.

Reason: To ensure the satisfactory completion of the development.

11. 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. 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 Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Jane Dennehy
Senior Planning Inspector
5th April, 2019.