



An  
Bord  
Pleanála

## Inspector's Report ABP-311122-21

### Development

Permission for 5 storey office development with terrace at top floor, two 2-bed apartments over 2 storeys with private and communal open courtyards.

### Location

Car park adjacent to No.4, Herbert Place, and Herbert Lane, Dublin 2

### Planning Authority

Dublin City Council South

### Planning Authority Reg. Ref.

4007/20

### Applicant(s)

Esprit Investment Limited

### Type of Application

Permission

### Planning Authority Decision

Grant Permission

### Type of Appeal

Third Party

### Appellants

Irish Georgian Society

R J McBratney

Mark Harty SC

Marion and Adrian Masterson

**Observers**

Louis Masterson

Patrick & Elizabeth Spollen

Clive & Patricia Carroll

Philip O'Reilly

Katy McGuinness & Felim Dunne

The Pembroke Road Association

South Georgian Core Residents  
Association

**Date of Site Inspection**

11<sup>th</sup> July 2022.

**Inspector**

Dolores McCague

## Contents

1.0 Site Location and Description .....	5
2.0 Proposed Development .....	5
3.0 Planning Authority Decision .....	6
3.1. Decision .....	6
3.2. Third Party Observations .....	11
4.0 Planning History.....	11
5.0 Policy Context.....	12
5.1. Development Plan.....	12
5.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018. ....	15
5.3. Urban Development and Building Heights Guidelines for Planning Authorities, December 2018 .....	15
5.4. BRE (Building Research Establishment) guide 'Site Layout Planning for Daylight and Sunlight' .....	16
5.5. Natural Heritage Designations .....	18
5.6. EIA Screening .....	18
6.0 The Appeal .....	18
6.1. Grounds of Appeal .....	18
6.2. Applicant Response .....	27
6.3. Planning Authority Response .....	34
6.4. Observations .....	34
6.5. Further Responses.....	36
7.0 Assessment.....	48
7.2. Appropriate Assessment .....	49

7.3. Principle of Development .....	49
7.4. Impact on Protected Structures and the Conservation Area. ....	49
8.0 Recommendation.....	58
9.0 Reasons and Considerations.....	59
10.0 Conditions .....	<b>Error! Bookmark not defined.</b>

## **1.0 Site Location and Description**

- 1.1.1. The site is located in central Dublin, off Baggot St and close to the Grand Canal, in a car park between No. 72 Baggot St and No.4, Herbert Place, Dublin 2.

## **2.0 Proposed Development**

- 2.1.1. The proposed development consists of: (i) provision of office development 1,657 sq.m of up to 5 storeys in height (including lower ground floor) with terrace at set back top floor; (ii) provision of two no. 2-bedroom apartments over 2-storeys accessed from Herbert Lane including private and communal open space in the form of courtyards, terrace and balcony; and (iii) all associated and incidental site development and infrastructural works including site clearance, plant, substation and PV panels, landscaping and bicycle parking.
- 2.1.2. In response to a FI request – it is stated that it is intended to retain and refurbish the existing railings including the current pedestrian gate and to provide a new stone clad wall with a sliding gate behind, to form the new wider pedestrian entrance as indicated.
- 2.1.3. The application (22/12/2020) was accompanied by:

### **Drawings:**

Architect's drawings by Smith + Kennedy Architects.

Landscape drawings by Kevin Fitzpatrick Landscape Architecture (KFLA)

Engineering – DBFL Consulting Engineers

Tree protection / Tree constraints – Arborists Associates Ltd.

### **Documents:**

Planning Report by John Spain Associates

Architects Report by Smith + Kennedy Architects

Conservation Impact Assessment by Buchan Kane and Foley Grade 1  
Conservation Architects

Infrastructure Design Report by DBFL Consulting Engineers

Transport Statement Report by DBFL Consulting Engineers

Landscape proposals by Kevin Fitzpatrick Landscape Architecture (KFLA)

Daylight, Sunlight and Overshadowing Assessment by Metec

Energy Statement by Metec

Arboricultural Impact Assessment by Arborists Associates Ltd

Appropriate Assessment Screening by Openfield Ecological Services.

2.1.4. The response to the further information request (23/06/2021) was accompanied by:

Drawings:

Architect's drawings by Smith + Kennedy Architects.

Landscape drawings by Kevin Fitzpatrick Landscape Architecture (KFLA)

Documents:

Preliminary Construction Management Plan by DBFL Consulting Engineers

Photomontages by Digital Dimensions Architectural Visualisations.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The planning authority (PA) decided to grant permission subject to 17 conditions, including:

3) revised drawings of the front boundary along Herbert Place, omitting the sandstone wall and retaining and re-using the maximum amount of original railings, also co-ordinating the construction management plan requirements for a new temporary construction access from Herbert Place.

4) roads requirements – a) to g) including: b) final details of the temporary construction access arrangements to be agreed as part of the Construction Management, c) Cycle parking to Development Plan standard, d) 6 no. visitor cycle parking spaces, and e) A Mobility Management Plan shall be submitted.

5) drainage requirements – a) to h) including: c) surface water discharge must be attenuated to two litres per second in accordance Greater Dublin Regional Code of Practice for Drainage Works Version 6.0, d) incorporation of SuDS, f) flood risk assessment for the proposed development, which identifies and proposes design solutions to mitigate the potential risks from all sources including coastal, fluvial, pluvial and groundwater, to be submitted.

6) submit details of the materials, colours and textures of all external finishes including samples, for agreement in writing by the Planning Authority.

8) protection of trees to be retained.

10) waste requirements (construction) - a) to e) including: a) Construction and Demolition Waste Management Plan must be furnished to and approved by Dublin City Council having regard to Circular WPR 07/0, b) In the event that hazardous soil, or historically deposited waste is encountered during the construction phase, the contractor must notify Dublin City Council and provide a Hazardous/Contaminated Soil Management Plan, to include estimated tonnages, description of location, any relevant mitigation, destination for disposal/treatment, in addition to information on the authorised waste collector(s).

11) waste requirements (operational) – a) to b).

17) bond.

### 3.1.2. Planning Reports

3.1.3. There are two planning reports on the file, the first 24/02/21, includes:

Overshadowing and Overlooking:

A Daylight, Sunlight and Overshadowing Assessment for the proposed development has been submitted. To analyse the effect of the proposed development on the properties in the immediate surrounding area of the site, a VSC simulation was carried out. Fig. 8.0.2 shows the windows assessed in the study. Of the 16 windows assessed, 11 will not be compromised as a result of the proposed development because the VSC in all cases is greater than 27% or the percentage of the former value is greater than or equal to 80%. Five of the assessed windows achieved a VSC below the guideline value of 27% and the percentage of the former value is less than 80%. Therefore further analysis of these windows, which are located in 3 separate units was required. The report then assessed the ADF of the rooms served by these windows. The ADF results demonstrate that, with the proposed development in place, the BRE Guideline ADF values were achieved for the assessed rooms.

It is considered that the two residential units to the west of the application site (windows 5-8) will experience a reduction in their daylight/sunlight. However,

following an assessment of ADF the report concludes that the rooms served by these windows will still receive good daylight access.

The assessment of sunlight to amenity space concludes that the amenity space to the east of the site achieves the BRE guideline for sunlight availability on the 21st March. The amenity spaces within the proposed development do not achieve the BRE Guideline for sunlight on the 21st March but they do meet it for the 21st June.

In relation to overlooking the applicant proposes angled aluminium louvres on the glazing to the residential units fronting onto Herbert Lane. Perforated brick is proposed on the rear elevation of the office block to reduce overlooking.

Conclusion:

The site's appropriate development is welcomed. However the site is located within an extremely sensitive location, in a conservation area, adjacent to a historic terrace of protected structures and fronting onto the canal. There are also a number of mature trees on this site which provide a significant green frontage.

The site is zoned Z8 in which office and residential are permissible uses. Given the current housing shortage, the provision of residential fronting onto Herbert Lane is in accordance with policy QH5 of the development plan. It is considered that the proposed residential units complement the character of the mews lane with regard to scale, massing and design.

Given the site's sensitive location, a high quality design that complements the adjacent historic terrace is crucial. The design of the proposed office development comprises of a modern building with a simple palette of materials chosen to respect and complement the historic terrace. However the Planning Authority has concerns in relation to the plant and the projecting stair core at third floor level.

Only one mature tree on the site is proposed to be retained. The Planning Authority considers that more trees along Herbert Place could be retained or that replacement tree planting should be suggested to enable the proposed development to integrate more successfully into the surrounding area.

3.1.4. Recommending further information (FI) which issued.

3.1.5. Other Technical Reports

3.1.6. Roads, Streets & Traffic Department Road Planning Division, 15<sup>th</sup> February 2021 – recommending FI:

The applicant is requested to submit:

- Details of semi-vertical cycle parking system; increase the number of showers; provide lockers etc.
- Preliminary Operational servicing plan.
- Preliminary construction management plan (CMP) to include a construction traffic management plan.

### 3.2. Further information request:

1) The Planning Authority considers that the proposed design and materials reflect the adjoining historic terrace in a modern idiom. However the Planning Authority still has concerns with the design of the proposed building in terms of the projecting stair core at third floor level and the visual impact of the proposed plant. It is also considered that the detailing of the wide and narrow piers, to reflect the 7 metre structural bay width of the existing terrace, needs greater refinement. The applicant should therefore address the concerns of the Planning Authority in this regard.

2) The applicant should submit a full visual impact assessment to assess mid to long range views, in particular to assess the visual impact of the proposed roof plant.

3) The drawings should clearly indicate where the historic railings along Herbert Place shall be retained.

4) Invitation to retain more trees.

5) per Transportation Planning Division's concerns.

### 3.3. Further Information Response

- 3.3.1. The further information response included revised drawings showing: the proposed bin location, the planting of 4 trees, a reduction in the scale of roof items, the introduction of visual breaks in the front elevation; and photomontages.

### 3.4. Further reports:

- 3.4.1. The second planning report, 20/07/21, recommending permission, includes:

Conclusion:

In conclusion, this site is located within an extremely sensitive location, in a conservation area, adjacent to a historic terrace of protected structures and fronting onto the canal. There are also a number of mature trees on this site which provide a

significant green frontage. The Planning Authority expressed many concerns in the additional information request. Following this the applicant has made changes to the proposed development. The rationalisation of the plant, the re-design of the projecting stairs and the elevation changes helps the proposed development to integrate into the streetscape more successfully. Unfortunately, more existing trees are not being retained however the planting of four mature trees shall help maintain a green front along this section of the Street. It is considered that greater consideration needs to be given to the treatment of the front boundary in terms of retaining the maximum amount of existing railings, providing a wider pedestrian entrance and the provision of a temporary construction entrance, however this could be resolved through compliance. The proposed development makes more efficient use of an under-utilised site within the city centre. The design comprises of a modern building with a simple palette of materials chosen to respect and complement the historic terrace. The provision of residential fronting onto Herbert Lane accords with the character of this mews lane and provides additional housing stock which is particularly welcome given the current housing crisis. It is therefore considered that subject to the conditions set out below that the proposed development would provide high quality office and residential development, help regenerate the area and would comply with the requirements of the 2016 Dublin City Development Plan and the proper planning and sustainable development.

#### 3.4.2. Other Technical Reports

#### 3.4.3. Roads, Streets & Traffic Department Road Planning Division, 9<sup>th</sup> July 2021 – recommending permission –

It is not clear if the proposed cycle parking has been reduced but the bike store has been reduced from 33m<sup>2</sup> to 22 m<sup>2</sup>. It is therefore recommended that in addition to the 24 spaces at lower ground floor an additional 6 spaces are provided to the front.

A new temporary construction access is anticipated from both Herbert Place & Herbert Lane due to the constrained nature of Herbert Lane. The Herbert Lane access is proposed to facilitate minor construction requirements. Due to the level changes between the road and the site a temporary access off Herbert Place is anticipated to be ramped. No specific proposed temporary construction access details, including location and sightlines for Herbert Place, have been provided.

Conditions:

- 1) CMP
- 2) Re Cycle parking
- 3) Visitor Cycle parking
- 4) A Mobility Management Plan
- 5) Costs for repair to roads
- 6) Code of Practice requirements.

### **3.5. Third Party Observations**

- 3.5.1. Third party observations on the file have been read and noted. Issues raised have been raised in the grounds of appeal and/or observation on the appeals.

## **4.0 Planning History**

305818 PA Register Reference Number, 3710/19.

Planning permission for the construction of a new 5-storey 2,050 sq.m office building with a relocated vehicle access off Herbert Lane to 3 no. parking spaces and 20 cycle spaces, including a new sub-station at lower ground floor and with new railings, signage and a pedestrian access off Herbert Place to the upper ground floor, on a site within a Conservation Area currently used as a car park

Refused, 3 Oct 2019, (first party appeal withdrawn), for two reasons:

1 The design of the proposed development is not considered to be of adequate architectural quality, is considered to be visually obtrusive and together with the form, scale, height and proportions of the new development, would be seriously injurious to the special character and setting of the adjoining terrace of protected structures along Herbert Place. As a consequence the proposal would depreciate the value of property in the vicinity and would be contrary to the provisions of the Dublin City Development Plan 2016-2022 and the proper planning and sustainable development of the area.

2. Given the significant depth and scale of the proposed building, the proposal will overshadow and have an overbearing impact on neighbouring properties. In

addition, it is considered the windows and outdoor terrace to the rear of the building will overlook neighbouring rear private open space. As a consequence the proposed development will have detrimental impact on the privacy and amenity of adjoining properties, would depreciate the value of neighbouring property and would be contrary to the provisions of the Dublin City Development Plan 2016-2022.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Dublin City Development Plan 2016 – 2022 is the operative plan. Relevant provisions include:

The site is zoned Z8: Objective: to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective. Lands zoned Z8 incorporate the main conservation areas in the city, primarily the Georgian Squares and streets. The aim is to protect the architectural character/design and overall setting of such areas. A range of uses is permitted in such zones, as the aim is to maintain and enhance these areas as active residential streets and squares during the day and at night-time. Offices may be permitted where they do not impact negatively on the architectural character and setting of the area and do not result in an over-concentration of offices. In the south Georgian core where residential levels are low, it is the aim to encourage more residential use in the area.

The buildings to the east and west are protected structures. To the north and north-west the zoning is Z1, residential.

Policy CHC2: It is the Policy of Dublin City Council to ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

(d) 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.

Policy CHC4:

It is the Policy of Dublin City Council to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include: 1. Replacement or improvement of any building, feature or element which detracts from the character of the area or its setting 2. Re-instatement of missing architectural detail or other important features 3. Improvement of open spaces and the wider public realm, and re-instatement of historic routes and characteristic plot patterns 4. Contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area 5. The repair and retention of shop- and pub-fronts of architectural interest.

Development will not: 1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area 2. Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, shop-fronts, doors, windows and other decorative detail 3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors 4. Harm the setting of a Conservation Area 5. Constitute a visually obtrusive or dominant form. Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of Conservation Areas and their settings. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability.

11.1.5.5 Conservation Area – Policy Rationale - The Architectural Conservation Areas, the Z8 Georgian Conservation Areas, the red-lined Conservation Areas and the Z2 Residential Conservation Areas are extensive throughout the city; the conservation of these areas is a key objective of the City Council and this will assist in the delivery of the core strategy strand for: A compact, quality, green, well-connected city, which generates a dynamic, mixed-use environment for living, working and cultural interaction.

11.1.5.6 Conservation Area – Policy Application - All new development must have regard to the local context and distinctiveness and the contribution to the local scene

of buildings, landmarks, views, open spaces and other features of architectural, historic or topographical interest. The general design principles are set out in a separate policy but it is particularly important within Conservation Areas that design is appropriate to the context and based on an understanding of Dublin's distinctive character areas. Dublin has an outstanding range of Conservation Areas with examples of built form from each of the phases of the city's development: this includes areas of 18th and 19th century terraced housing, modest mews and workers' housing, 20th century housing and areas dominated by governmental and institutional uses and more mixed central areas such as O'Connell Street and Grafton Street. Detailed characterisation of individual areas to inform development proposals has and is being undertaken in Architectural Conservation Area appraisals and these will be a key consideration when assessing development proposals in Architectural Conservation Areas.

New development should have a positive impact on local character. In seeking exemplary design standards, the planning authority will require development in Conservation Areas to take opportunities to enhance the area where they arise. Where a building has been identified as having a negative impact on an area, a proactive approach to improvement will be sought. Where proposals involve demolition, policy for demolition of protected structures and buildings in architectural Conservation Areas should be referred to.

To ensure that no advertising material other than brass, stone, stainless steel signs or other suitable quality material will be permitted in residential Conservation Areas. On commercial properties leading into such areas, advertising will be severely restricted, and shall only relate to the service provided in the premises.

It is not only visual elements that contribute to the character of a Conservation Area, land-uses and activities are fundamental to the character and appearance of Dublin's Conservation Areas. Certain uses are of historic importance to specific areas and some are of national or international importance; these have influenced the evolution and built form within the area and may continue to have a strong effect on its character at present.

## **5.2. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities, 2018.**

- 5.2.1. Further to the national planning framework it is noted that a move towards a much greater level of apartment living is essential in ensuring our major urban areas develop sustainably rather than sprawling inexorably outwards. The document provides guidance in this regard. The guidelines include:

(6.5) The provision of reasonable levels of natural light in new apartment developments is an important planning consideration as it contributes to the liveability and amenity enjoyed by residents. In assessing development proposals, planning authorities must however weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision with the location of the site and the need to ensure an appropriate scale of urban residential development.

(6.6) Planning authorities should have regard to quantitative performance approaches to daylight provision outlined in guides like the BRE guide 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting' when undertaken by development proposers which offer the capability to satisfy minimum standards of daylight provision.

(6.7) Where an applicant cannot fully meet all of the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, which planning authorities should apply their discretion in accepting taking account of its assessment of specific. This may arise due to a design constraints associated with the site or location and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.

## **5.3. Urban Development and Building Heights Guidelines for Planning Authorities, December 2018**

- 5.3.1. To facilitate well located and taller buildings, meeting the highest architectural and planning standards in urban centres, by offering a more responsive policy and

regulatory framework for planning the growth and development of our cities and towns upwards, rather than ever outwards. The guidelines include:

The form, massing and height of proposed developments should be carefully modulated so as to maximise access to natural daylight, ventilation and views and minimise overshadowing and loss of light.

Appropriate and reasonable regard should be taken of quantitative performance approaches to daylight provision outlined in guides like the Building Research Establishment's 'Site Layout Planning for Daylight and Sunlight' (2nd edition) or BS 8206-2: 2008 – 'Lighting for Buildings – Part 2: Code of Practice for Daylighting'.

Where a proposal may not be able to fully meet all the requirements of the daylight provisions above, this must be clearly identified and a rationale for any alternative, compensatory design solutions must be set out, in respect of which the planning authority or An Bord Pleanála should apply their discretion, having regard to local factors including specific site constraints and the balancing of that assessment against the desirability of achieving wider planning objectives. Such objectives might include securing comprehensive urban regeneration and or an effective urban design and streetscape solution.

#### **5.4. BRE (Building Research Establishment) guide 'Site Layout Planning for Daylight and Sunlight'**

- 5.4.1. This British guidance document is frequently referred to in Irish publications. It includes:

Chapter 2 referring to daylight:

Ways of measuring include average daylight factor (ADF) within a room, and vertical sky component (VSC) which is the ratio of direct sky illuminance falling on the vertical wall at a reference point (centre of a window), to the simultaneous horizontal illuminance under an unobstructed sky (such as if the building stood in an empty field max. potential value 40%).

Living rooms and kitchens need more daylight than bedrooms.

BS 8206-2 Code of Practice for daylighting is quoted with an ADF of 5% for a well daylighted space and 2% for a partly daylighted space and minimum values of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. With a higher ADF, indoor daylight will

be sufficient for most of the year, although above 6% summertime overheating may become a problem.

## VSC

VSC is used to measure obstruction of light to existing buildings. Summarised in 2.2.21 as:

If any part of a new building or extension, measured a vertical section perpendicular to the main window wall of an existing building, from the centre of the lowest window, subtends an angle of more than  $25^{\circ}$  to the horizontal, then the diffuse daylighting of the existing building may be adversely affected. This will be the case if either:

- the VSC measured at the centre on an existing main window is less than 27%, and less than 0.8 times its former value.
- the area of the working plane in a room which can receive direct sunlight is reduced to less than 0.8 times its former value.

Chapter 3 referring to Sunlight:

3.1.10 refers to the importance of sunlight to room interiors, and the use of measurements for annual probable sunlight hours (APSH) in this regard.

3.2.3 to assess loss of sunlight to an existing building it is suggested that all main living rooms of dwellings, and conservatories, should be checked if they have a window facing within  $90^{\circ}$  of due south. Kitchens and bedrooms are less important, although care should be taken not to block too much sun. Non-domestic buildings and spaces which are deemed to have a special requirement for sunlight should be checked; they will normally face within  $90^{\circ}$  of due south anyway.

3.2.11 states that:

If a living room of an existing dwelling has a main window facing within  $90^{\circ}$  of due south, and any part of a new development subtends an angle of more than  $25^{\circ}$  to the horizontal measured from the centre of the window in a vertical section perpendicular to the window, then the sunlighting of the existing dwelling may be adversely affected. This will be the case if the centre of the window:

- Receives less than 25% of annual probable sunlight between 21 September and 21 March or less than 5% of annual probable sunlight hours between 21 September and 21 March and

- Receives less than 0.8 times its former sunlight hours during either period and
- Has a reduction in sunlight received over the whole year greater than 4% of annual probable sunlight hours.

3.3.17 states that:

It is recommended that for it to appear adequately sunlit throughout the year at least half of a garden or amenity area should receive at least two hours of sunlight on 21 March. If as a result of new development an existing garden or amenity area does not meet the above, and the area that can receive two hours of sun on 21 March is less than 0.8 times its former value, then the loss of sunlight is likely to be noticeable. If a detailed calculation cannot be carried out, it is recommended that the centre of the area should receive at least two hours of sunlight on 21 March.

## **5.5. Natural Heritage Designations**

- 5.5.1. South Dublin Bay SAC (site code 000210) and South Dublin Bay SPA (site code 004024) are the nearest protected sites, located approx. 1.9km straight line distance from the subject site.

## **5.6. EIA Screening**

- 5.6.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. Seven third party appeals have been received against the planning authority's decision to grant permission. Since there are many issues in common I have summarised the appeals in a grouped format, except for the two expert reports submitted as part of the Carroll appeal which are referred to separately.

6.1.2. Third party appeals have been received from the Irish Georgian Society; R J McBratney, 40 Percy Place; Mark Harty SC, 72 Baggot St Lower and the mews to the rear; Marion and Adrian Masterson, 21 Temple Gardens, Rathmines; Louis Masterson, 57 Herbert Lane; Patrick & Elizabeth Spollen, 10 Herbert Place & 35 Herbert Lane, Conor Sheehan, Consultant on behalf of Clive & Patricia Carroll, 59 Herbert Lane. The grounds include:

Protected structure 73 Baggott St and adjoining properties on Baggott St Lower

- The site was formerly part of No. 73 Baggott St, used as a tennis court; the carriage entrance of no. 73 is possibly unique in Dublin.
- Part of the curtilage of no. 73 Baggot St. It is an interlude between the gables of no. 73 Baggot St and No. 1 Herbert Place and was not intended to be built on. The house numbering at Herbert Place was originally different. As part of the curtilage, it is protected.
- It formed part of the curtilage of the protected structure when listing.
- The walls form part of the protected structure.
- Windows and doors in the curtilage wall will necessitate the removal of the entire boundary wall of the site.
- The stone walls (stone kerb with iron palisades on top) are original. The unique stand alone brick stable building, was recently conserved by the OPW. Part of the stone curtilage wall is also jointly shared with nos. 71 and 72 Baggot St.
- The wall which surrounds the yard (of 71 and 72 Baggot St.) is of significant antiquity and is at the very least contemporaneous with the building of the houses.
- The change in scale, from the 5 storey block to the coach house, is excessive. The 5 plant boxes (at roof level) are unsightly.
- The bins are to be located within the existing original piers at the end of Herbert Lane with hinged bi-fold gates (on plan) and perforated brick wall above. The detail is inadequate. The matching piers and archway immediately adjacent, which accesses the mews to the rear of no. 71 and 72 Lower Baggot St, are shown in a photo. There has been no proper conservation assessment.
- The development will have a significant impact on the boundary wall, on the use

of the yard and on the enjoyment of both the mews and the home at 72 Baggot St Lower.

- The construction of a development of such a considerable scale, bulk and height at close proximity to the protected structures at Herbert Place and Baggot St Lower, will undermine the historic relationship between these terraces and the traditional proportionate relationship in scale between these significant buildings and backland development at Herbert Lane.

#### Conservation area and Herbert Place:

- The fact that the proposed development will be constructed to adjoin the gable of a protected structure is not referenced in the notices for the application.
- Herbert Place is the sole remaining intact example of Canal frontage in the South Georgian Core.
- The projecting colonnade remains to 50% of the façade.
- Double height glazing at 4<sup>th</sup> and 5<sup>th</sup> floor is incongruous to the Georgian terrace.
- The parapet line is 4m above that of the existing terrace.
- Double height glazing at 4<sup>th</sup> and 5<sup>th</sup> floor is incongruous to the Georgian terrace.
- The parapet line is 4m above that of the existing terrace.
- The terrace is complete, and not incomplete, as asserted by the applicant.
- It is inconsistent with the recommendation in the pre-planning to omit a colonnade.
- The overshadowing assessment submitted confirms that the proposed development will result in a very significant loss of sunlight to the rear amenity area of no 4. However a detailed assessment quantifying the loss of sunlight and daylight access to lower levels rooms, within no. 4, or other nearby structures, was not submitted. The assessment includes a first floor window in the rear return of no. 4 and a second floor window in the main house, instead of the basement and ground floor windows, which are most likely to suffer negative impacts due to loss of daylight access. The assessment indicates a significant reduction of VSC to the rear return.
- The properties along Herbert Place are fragile constructions relative to modern

constructions. They have no formal foundations just black grey blocks that comprise the basement walls. The basement limestone blocks are laid on compacted Dublin clay which is competent to some extent. Where insufficient it is easy to see – on Herbert Lane years of motor traffic has caused a number of street facing walls to lean, become unsafe and require re-building. The characteristic brick construction is typically laid as a single brick onto the limestone blocks. A number of the internal walls are not cross tied, over the years a number of returns to the rear of the main house have detached or been removed. The construction technique proposed, including piling, its bulk and abutting directly on to the terrace, will damage the terrace. Damage throughout the life cycle of the proposed building is likely. The life cycle based on nearby streets is 20 to 50 years. The force required to take down a contemporary five storey commercial building (as observed on Wilton Terrace) is such that when (not if) applied, to the proposed building, it will be catastrophic for the terrace. It will result in structural damage, monetary cost and reduced standard of living to residents.

- The terrace is referred to as Victorian – suggesting a lesser heritage and protected structure status than older areas and buildings of the city. It is definitely Georgian in its essence, conceived in the Georgian period, probably constructed in the late Georgian to very early Victorian period, but having all the core characteristics and finishing detail of the late Georgian period.
- If granted, two classes of people on the terrace will be created: those who are bound by strict protected structures laws and the developer – allowed to abut and claim to be part of the terrace but who can avail of completely different standards. If a building arises on the developer's car park it should be at a conservative and safe distance to protect the terrace architecturally, structurally and financially, no less than 5m.
- Recent permissions are going to impact significantly on the vistas from Baggot St Bridge, one of the key approaches to the South Georgian Core, and will ensure that the views to the south west of Baggot St are entirely modern and corporate. There has been a significant reduction in the number of residential units to that side of Baggot St. It is all the more important that the key zoning objectives and policies of the Z8 area are respected and followed.

- The report did not find that the design comprises of a 'contemporary architecture of exceptional design quality which is in harmony with the Conservation Area'.
- The Conservation Officer was not consulted, in breach of good practice.
- It will dominate the streetscape in the manner of a landmark office building rather than attempt to sit discretely and sympathetically within the conservation area.
- Having regard to the national and international heritage importance of Dublin's South Georgian Core the Irish Georgian Society has significant concerns about the scale, bulk, height and intensity of the development proposed adjoining No. 4 Herbert Place, a protected structure.

#### Herbert Lane

- The 2 storey residential element is out of character with Herbert Lane where all existing mews have a pitched roof while the proposed apartments are flat roofed with the roof line corresponding with the ridge line of the existing mews.
- Failure of the design to continue the existing ridgeline the full length of Herbert Lane.
- The inclusion of gable end windows in the new construction c 6m away from the ground floor and first floor windows of no. 57 and 59 Herbert Lane. With roof lights and a modern glazed rear to the building, there should be no need for gable windows. They do not exist in either of the mews houses currently terminating each end of the whole terrace. The proposal contains first floor terraces at the back, the nearest of which is 6m from the appellant's first floor bedrooms.

#### Use

- Questioning the need for office space, there should be more residential.
- The proposal comprises two separate and unconnected buildings on separate streets, Herbert Place and Herbert Lane. The building on Herbert Place is not mixed use and therefore contrary to the plan.
- Z8 – there is now an overconcentration of office use along the canal, contrary to the aim to have a living city.
- Refusal across the canal (Reg Ref 3878/20) is quoted and considered to apply.

### Metrics

- Questioning the accuracy of material information concerning the size of the site, methodologies used and/or information relied on and presented in a number of specialist reports submitted with the application.
- Appellants are unclear how much land applicants control in the area.
- Site area stated as 1178 sq m on application form but 887 sq m on site location map. Site area stated as 1284 sq m on previous application form – DCC 3710/19.
- Site coverage is given as 40% = 0.4. building footprint is stated as 587 sq m. The site coverage appears to be arrived at by including part of the roadway, which per development plan shouldn't be included. Based on a site area of c 887 sq m, site coverage is closer to 66%.
- A plot ratio of 1.5 is quoted. Based on a site area of 887 sq m it would appear to be 2.05.
- The lane measurements are incorrect.

### Traffic

- Condition 11 (b) cannot be complied with, without significant redesign of the proposed development, which risks amplifying the impacts on the access of the Carroll's property and other properties.
- A shredding vehicle engine has to run at high revolutions while shredding is being carried out.
- Impact of additional vehicular traffic, pedestrians and cyclists on Herbert Lane.

### Landscape

- Response to FI – loss of trees – CGI (computer generated image) but no formal statement.

6.1.3. Attached to the Carroll appeal are two reports from specialist consultants: a traffic consultant and a daylight/sunlight assessor. With reference to the case Balz v ABP the Board is requested to pay particular attention to the traffic and daylight reports and explain why their conclusions are not accepted if they are not.

6.1.4. Transport Insights, (report accompanying the Carroll appeal).

- The occupancy of the office is half typical industry staff occupancy.
- More refuse than envisaged.
- Refuse trucks (two bins) at present reverse down, usually only as far as the cul de sac. The refuse collectors on this truck walk down the lane the bring the bins to the truck.
- The possibility that the cul de sac will be used for paper shredding trucks. As the truck engine has to run at high revs while the shredding is carried out. This process is very noisy and would emit serious pollution, in what is a very confined space.
- Hindering access and egress to nos. 57 and 59 Herbert Lane.
- No residential spaces proposed.
- The garage accesses to nos. 57 and 59 Herbert Lane are gated and open outwards. On Herbert Lane there are also a number of vehicular accesses to the rear of properties of nos 65-73 Baggott St Lower, which accommodate parking for ca. 26 no. vehicles in total. The existing gated vehicular access at the southern end of Herbert Lane is noted to accommodate access to 2 no. mews houses (1 currently under construction) and access to the rears of 71-73 Baggott St Lower.
- Pedestrian footpaths are not provided along the one-way stretch of Herbert Lane.
- A small section of footpath measuring c0.97m in width is provided to the north of the site on one side of the vehicular carriageway; substantially less than the 1.8m minimum recommended. Many properties along Herbert Lane have on-site car parking facilities in the form of garages which open directly onto Herbert Lane's vehicular carriageway. Car drivers must cautiously edge out onto the laneway in order to avoid potential for conflict with cars and cyclists and with oncoming pedestrians who have no option but to walk in the vehicular carriageway. The one-way section of Herbert Lane has an effective carriageway width of c3.7m excluding car parking, resulting in pedestrians often having to stand in, between parked cars (drop-off or loading/unloading), to await an oncoming vehicle to pass.
- Servicing – bin lorries currently reverse from Herbert Street down Herbert Lane. While a refuse vehicle is parked at the western end of Herbert Lane it may occasionally reverse into the cul-de-sac, to allow vehicles wishing to egress the one

way section of Herbert Lane to pass. To service this development, they are likely to reverse from Herbert Street down Herbert Lane. The addition of large refuse vehicles to the cul-de-sac end of Herbert Lane, where there is no dedicated pedestrian infrastructure or refuge would greatly increase the risk of conflict and potential injury to local residents. Refuse vehicles would likely have to spend more time waiting for bins to be transported to and from the bin store, resulting in lengthy blockages of access to Nos 57 and 59 and to the existing gated access at the southern end of Herbert Lane.

- Trip generation and modal split – referring to the Employment Density Guide (UK) they assert that the occupancy rate is underestimated, at 50% of the likely occupancy.
- Referring to the National Transport Authority's Canal Cordon Survey, where car use in 2017 was 29.2%. They agree that the availability of car parking will act as a limiting factor on car usage. This data should not be deemed to represent an accurate description of the means of travel of people travelling to and from the proposed development as Canal Cordon Survey quantifies people crossing the cordon and includes through trips, with these trips less likely to be on foot or by bicycle. Census data for 2016 includes information on people travelling to a workplace zone. For this zone 24.5% of people are car drivers and 2.1% car passengers. Restricting car parking within a development is an effective means of limiting the number of trips made by private car when on-street pay-and-display parking and clamping enforcement is in operation within the vicinity of a development. The area surrounding has such measures in place. Adjusting the peak hour travel to take account of the increased occupancy they envisage, they provide, in table 6.6, peak hour trips. They state that the cycle parking provision for staff is 31 spaces versus the 24 proposed without visitor parking. The provision for residents of 1 space, in a hallway, is below the requirement for likely occupancy of 3 persons per unit.
- Mobility Management Plan – this should be in place at design stage as is best practice. Mobility patterns which have not been adequately considered or planned for, will likely be undesirable and could give rise to negative consequences such as overspill car parking and blocked access driveways.

- Preliminary CMP – the document states that given the constrained nature of Herbert Lane, only smaller vehicles will use the lane; since the building footprint comprises the majority of the site, storage and loading/unloading on site will be constrained and the contractor will have to carefully manage access/egress and deliveries to take account of the constrained nature. That the CMP can be altered, negates its value. It does not specify how residents of nos. 57 and 59 Herbert Lane will be protected from the impacts of construction traffic. Statements appear to conflict with one another and lead the appellant to believe that the contractor will only retroactively provide construction staff car parking offsite when car parking in the vicinity becomes a problem, and the residents of no. 57 and 59 have already been unduly impacted.

#### 6.1.5. BPG3 (this report accompanied the Carroll appeal).

##### Review of Daylight Report:

- The tests were carried out with reference to the earlier design.
- Many worst case scenario windows were not included in the test. It may be argued that many did not qualify, being commercial accommodation, however the residential provenance and the possibility that they could revert to residential should be considered. That they do not serve main living rooms, has not been stated/documentated. The full impact has not been ascertained.
- Any departure from guidelines must be clearly identified. This is not done. The statement that as VSC is below 27% and that more analysis is required, is not part of BRE.
- The test results do not demonstrate 'no significant loss of daylight' as stated.
- One third would experience a reduction in VSC of greater than the 20% recommended by BRE: 5, 6, 7, 8 and 15; of which some would experience more than double that recommended: 6, 7 and 15.
- Positive results from ADF testing do not substantiate their claim of no significant loss of daylight, because loss of daylight has not been considered. The secondary testing only considers after-development.
- APSH - Baseline levels generally form an integral element of any impact

assessment. Report does not give the levels of sunlight which are currently available to neighbouring windows; therefore it is difficult to validate.

- Minor adverse impact is hard to accept. It is only appropriate to conclude minor adverse impact where the loss of light is only marginally outside the guidelines.
- The annual and winter sunlight levels predicted for window 15, are likely to depart significantly from the guidelines, as is the winter sunlight levels predicted for window 12. It has not been stated/documented that they do not serve main living rooms.
- Solar access to neighbouring outdoor areas – this test is based on quantitative numeric testing to show if the area of outdoor space that can receive 2 hours of direct solar access on the 21<sup>st</sup> March, is either 50% of the total area or greater than 0.8 times its former value. No numeric data has been reported, therefore conclusions are inadequately substantiated. The assessment identifies that the outdoor spaces to the south of no. 21 Herbert Street and to the north of no. 4 Herbert House would receive no solar access in the existing scenario on the 21<sup>st</sup> March, ie, no area receiving 2 hours of direct solar. This is surprising. Appellant's use Google earth imagery to show sunlight on 20<sup>th</sup> April 2020 to these areas. It is a reasonable assumption that at least some level of solar access is available a month earlier. Compensatory design solutions should have been advanced to compensate for any departures identified in primary testing, and is not present in the report.
- Sunlight access to proposed accommodation – internal skylight levels have been assessed with reference to ADF but not APSH to main living rooms. This is stated to be a significant omission.

### **Applicant Response**

6.1.6. John Spain Associates have responded on behalf of the applicant to the grounds of appeal, 14 September 2021. The response includes:

Under the headings:

- Land use and material contraventions
- Site area and associated metrics
- Conservation and architecture

- Transport and servicing
- Impact on amenities
- Other items.
- Land use and material contraventions
  - Z8 – the site is an urban infill brownfield site and could not be described as a significant development in the context of the area, so as to go beyond the provisions for limited expansion, permissible under the Z8 zoning; and has been designed with a massing which integrates with the character of the area in a modern form utilising traditional materials. Both office and residential are permissible uses. The previously refused scheme comprised only offices. This proposal provides for a mix. Re. overprovision of offices in the area, the proposal of more suitable accommodation will facilitate a potential move for commercial tenants out of the Georgian buildings, allowing for their potential return to residential use.
  - CHC2 – that the site comprises part of the curtilage of 73 Baggot St, it does not.
  - CHC4 – the subject site is located in a Conservation Area as distinct from an Architectural Conservation Area. The development supports CHC4, as they itemise.
  - Section 16.2.2.2 (infill development) – the development seeks to match the height of No 4 and increases in height at the SW corner in a similar manner to the northern end of the terrace. The predominantly brick material seeks to replicate the vertical emphasis of the Georgian windows and provides for a uniformity of scale and compliments the character and architectural quality of the terrace. In relation to the mews, the proposed height of 2 storeys, and the form and extent of the proposed two apartments, are comparable in scale with the existing mews development. The site itself is of low quality. There is a consistent ridge line along the mews but the site is a different context. The majority of buildings which comprise the terrace along Herbert Place have flat roofs. Re. louvres, to allow light and prevent overlooking – a number of mews building with

unscreened windows face each other. The proposed development is significantly more considered.

- 16.10.16 (mews dwellings) – a) that no such consensus is in place, the City Council encourage them but do not require them. In this case there is an established pattern, b) demolition – no building demolition, c) two storeys and subordinate, the proposal is two storeys and subordinate, d) no flat blocks proposed, e) character, the proposal utilises the existing stone wall and brick at upper levels. A guide to complement the existing character does not equate to matching it like for like, f) no amalgamation or subdivision is proposed, g) no car parking is proposed, h) the width of the laneway is unchanged, i) the width is established, j) the guidance on private open space refers to a single dwelling as a mews. The proposal provides for the required standards of the 2020 apartment guidelines, k) there is no main house, l) the 22m opposing windows separation can be relaxed – the site is located in an inner city environment and the proposed building line generally follows that of the adjacent plot. Great consideration has been given to ensuring a high quality of amenity for the occupants. It does not materially contravene 16.10.16.
- 16.10.1 residential quality with reference to BRE guidelines, and reference to Atlantic Diamond with ref. to the Urban Development and Building Height Guidelines. The subject development is not reliant on these guidelines as the heights are in accordance with Dublin City Development Plan 2016 (28m commercial, 24m residential). Nonetheless as is evident from the Metec Consulting Engineers report (attached), that appropriate and reasonable regard has been had to the BRE guide.
- Site area and associated metrics:
  - It is acknowledged that there were inconsistencies. The site has been remeasured and confirmed as 889sq m. which is the area within the submitted red line, reflective of the folio and extent of landownership.
  - Plot ratio – 2
  - Site coverage 60%

- City Plan indicative standards Z8
  - Plot ratio – 1.5
  - Site coverage 50%
- Exceptions are provided for:
  - adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed - the site is in close proximity to DART and Luas
  - to facilitate comprehensive redevelopment in areas in need of urban renewal,
  - to maintain existing streetscape profiles,
  - where a site already has the benefit of a higher plot ratio,
  - the approximate site coverage of nearby plots and their plot ratio exceed the indicative standards of the City Plan. - No. 4 has a site coverage of 0.6, and a plot ratio of 1.8; No. 23 has a site coverage 0.6, and a plot ratio of 1.6.
- Conservation and architecture – an attached response is referred to. The site is clearly vacant and separate in the 1838 and 1864 Ordnance Survey mapping and therefore not connected to the protected structure or part of its curtilage.
- Transport and servicing:
  - An attached response is referred to.
  - Existing use is a car-park. Proposed car-free development will substantially remove vehicular traffic from the lane in favour of access to the cycle parking.
  - A preliminary Mobility Management Plan has been prepared & accompanies the response. The proposed bicycle parking exceeds the development plan requirements. Condition no. 11 (b) is explicit and does not set out details to be agreed. A response to Condition no. 11 (b) is attached.

- Impact on amenities:
  - An updated Sunlight and Daylight Assessment accompanies the response. A number of points suggested for assessment in the appeal have now been assessed – notwithstanding the contention of Metec that these points do not warrant assessment based on the use of the room, in a large number of cases. Points assessed which have an impact, based on the BRE guidelines, have been subject to a further supplementary analysis comparing the proposed scheme against a notional four storey continuation of the terrace, in addition to an ADF analysis. The comparative analysis demonstrates that these points would also be impacted by what would be considered a reasonable baseline development.
- Other items:
  - That it adjoins the gable of a protected structure has not been referenced in the published notice – construction next to a protected structure is not a requirement of a brief description of development for the purposes of the Regulations.

6.1.7. Attached to the response are additional reports:

- Itemised response by Smith + Kennedy Architects
- Traffic & Transportation by DBFL Consulting Engineers
- Preliminary Mobility Management Plan by DBFL Consulting Engineers
- An Updated Daylight, Sunlight and Overshadowing Assessment by Metec, Consulting Engineers

6.1.8. Updated Daylight, Sunlight and Overshadowing Assessment Metec, Consulting Engineers, includes:

Ref 1 – No 4 Herbert Place is an office, otherwise impact to 4 of 6 windows assessed exceeds BRE guidance loss.

Ref 2 - No 47 Herbert Lane – is residential, 4 windows assessed, 2 serve circulation areas. The others: a dual aspect living/kitchen and a bedroom. The impact of 65.55% and 62.19% reduction in VSC exceed BRE guidance loss. Both

are classified as minor / moderate adverse; the loss of VSC is from 20.32% to 7% (↓65.55%) in the kitchen and from 10.05% to 3.8% (↓62,19%) in the bedroom.

The impact is further assessed in relation to the achievement of ADF and it is stated that the main contributing factor, in the failure to achieve the target ADF, is the fact that the building is a rear mews facing onto a tall profile terrace of buildings, which restricts the skylight access of the building.

Ref 3 – rear of no. 21 Herbert Street - is an office, otherwise impact to 1 of 6 windows assessed, exceeds BRE guidance loss.

Ref 4 – no. 21 Herbert Street - is an office, 4 windows assessed, impact does not exceed BRE guidance loss.

Ref 5 – no. 69 Baggot Street - is an office, 3 windows assessed, impact does not exceed BRE guidance loss.

Ref 6 – no. 71 Baggot Street - is an office, 3 windows assessed, impact does not exceed BRE guidance loss.

Ref 7 – no. 72 Baggot Street - is an office, 3 windows assessed, impact does not exceed BRE guidance loss.

Ref 8 – no. 73 Baggot Street - is an office, 3 windows assessed, impact does not exceed BRE guidance loss.

Ref 9 – no. 73 Baggot Street (shown on map to be to the rear of the carriage arch) - is an office, 2 windows assessed, impact does not exceed BRE guidance loss.

Ref 10 – No. 10 Herbert Lane – is residential - 9 windows assessed: only 1 does not exceed BRE guidance loss. Others are discounted due to their use or the availability of a second window. Losses of 33,68% (bedroom), 48,52% (study), 55.23% (bedroom), 45.15% (second window to previous bedroom), 36.78% (bathroom), 32.62% kitchen (further analysis), 37.55% (second kitchen window further analysis), and 65.09% (garage) are recorded.

Ref 11 – No. 59 Herbert Lane – is residential - 6 windows assessed: 3 retain VSC in excess of 27%. One, a bedroom, has a 32.74% reduction, to result in a VSC of 22.39%, more than 20% loss but serving a bathroom. One a bedroom incurs a loss of 27.32% to 24.66%, below the 27% VSC target, and is deemed a

minor/moderate loss. One to a circulation area incurs a loss of 48.43% to 15.89%, below the 27% VSC target, but because of its use is not deemed a relevant impact.

Ref 12 - Herbert Lane Mews, to rear of no. 68 Baggot Street – is residential - 2 windows assessed, impact does not exceed BRE guidance loss.

Ref 13 - Herbert Lane Mews, to rear of no. 67 Baggot Street – is residential - 3 windows assessed, impact does not exceed BRE guidance loss.

For ref 2, 10 and 11 identified as having a VSC below 27% and less than 80% of their former value, an ADF calculation was undertaken. Table 9.0.2 shows the results: for Ref 2, windows 1 and 2 do not achieve the target ADF. It is asserted that the main contributing factor in the failure to achieve the target ADF is the fact that the building is a rear mews facing onto a tall profile terrace of buildings which restricts the skylight access of the building.

Sunlight:

Windows:

- Annual probable sunlight hours for all windows analysed is given in tabular form. Only windows of a main living room facing 90° of due south were considered. One window to No. 47 Herbert Lane, required further analysis, based on an existing APSH of 13.51% annual, reduced to 2.22%, and winter 2.87% reduced to 0%.
- The further analysis provided is an additional simulation of extending the existing Georgian terrace profile and returns. APSH of 13.51% annual, reduced to 3.26%, and winter 2.87% reduced to 0.35%.
- ADF for the additional simulation gave an ADF of 1.48 in comparison to the proposed 1.37 for the kitchen / living space, and 0.68 in comparison to the proposed 0.59 for the bedroom.
- They assert that the results indicate that, as outlined in the BRE guidelines in city locations such as this one, a higher degree of obstruction may be unavoidable.

Neighbouring Amenity Space

- Sunlight hours is shown in grids; with no accompanying data; and is stated to involve no change to existing.

## 6.2. **Planning Authority Response**

6.2.1. The Planning Authority has not responded to the grounds of appeal.

## 6.3. **Observations**

6.3.1. Observations on the appeals have been received from 4 parties:

Philip O'Reilly, 18 Grosvenor Place, Rathmines;  
Katy McGuinness & Felim Dunne, 6 Herbert St;  
The Pembroke Road Association; and  
South Georgian Core Residents Association.

6.3.2. Submissions include:

- The status of Herbert Place should be maintained and no development allowed on this site.
- This is not a vacant site or brownfield site, it is a garden within the curtilage of no. 73 Lower Baggot St.
- An impact assessment should have been carried out by the Conservation Officer.
- The PA has failed to assess this planning application in compliance with the Architectural Heritage Protection Guidelines, 2011.
- The validity of the application is questioned based on
  - declared site size being questioned - first and second applications 3710/19 and 4007/20 was 887 sq m; on this application form: 1284 sq m and latter 1178 sq m; and
  - the OSI (license) number: the same – is 12 months apart, in breach of copyright; they question the validity of the application.
  - the site is part of the curtilage of the protected structure.
- Zoning – Z8 allows limited expansion consistent with the conservation objective and to encourage residential use.

- The height, bulk, monolithic office use and inappropriate design, damages the architectural character, design and overall setting of the existing Georgian terrace.
- Overconcentration of offices.
- The traditional plot widths, as expressed with great subtlety in the Georgian architecture of the existing terrace is absent from the proposed design.
- The addition of a penthouse is contrary to the character of the protected structures.
- No design argument can support the addition of dumb projecting box, at the end of the development.
- The floor to ceiling glazing, double height expression, monolith office architecture are inappropriate. At a minimum, principles of good design in conservation areas demands that the height and form should correspond in detail to the adjacent protected structures and the existing two storey mews lane.
- The value of the canal and green spaces during the COVID lockdown is referred to and associated with the cholera epidemic in the 1870s. The fear of cholera and TB, the need for space between buildings, good ventilation, trees to help with pollution and provide visual and acoustic screening, were factors in the layout of the Pembroke Estate.
- Interventions in the built fabric elsewhere are referred to, and the importance of the district for Cultural Tourism.
- The need to preserve and safeguard the architectural pause at the end of the terrace.
- The proposed development will set a negative precedent for planning in the South Georgian Core, or will damage the historic and architectural streetscape of the overall area and represent a significant loss of amenity, or is of such concern to local residents that it makes the overall area unattractive as a residential location due to the planning uncertainty for residents.
- All developments in the Z8 area should have a 40% residential component, particularly since the Council have removed the requirement within individual houses. Otherwise a residential vision for the South Georgian Core will never

materialise.

#### **6.4. Further Responses**

6.4.1. The appeals and the first party response were circulated and responses were received:

6.4.2. A response from Kathy McGuinness and Felim Dunne includes:

- Further details to demonstrate that the site is part of the curtilage of the protected structure No. 73 Baggot St.
- That the Architectural Heritage Protection Guidelines, quoted, are clear on how such development proposals should be treated.
- That the inaccurate site area requires the Board to consider if there is a valid application.
- Regarding failure to respond to the design required for this location per chapter 16 of the development plan.

6.4.3. A response from R John McBratney, includes:

- The office use is 1,667 sq m. The so called mews houses have no view of the canal, no balcony and no garden. They are more likely to be used as an overnight facility to an office worker. The commercial enterprises which currently occupy the Georgian buildings are small enterprises. In most buildings there is more than one small commercial enterprises. The house size is 275 sq m. It is inconceivable that all or any of these small enterprises would have the need for 1,667 sq m or a meaningful fraction of it. Even 5 tenants, one on each floor, would have an area of 333 sq m, far in excess of that occupied by tenants of Georgian buildings. The argument that it will provide the opportunity for Georgian buildings to revert to residential is specious and without merit. The so called mews houses will do nothing to encourage more residential use in the area.

6.4.4. A response to the first party response, from Conor Sheehan, on behalf of Clive Carroll, includes:

- They rebut the first part arguments re. compliance with the zoning, including that they don't accept that the proposed development will facilitate the movement of

tenants out of Georgian buildings; the removal of trees; height of the building; colonnade; exceeding plot ratio and site coverage; it is not limited expansion; the loss of light will militate against conversion to residential; the inclusion of apartments represents a fraction of the proposed development; and impact on existing residences.

- CHC2 – they remain of the opinion that the site is part of the curtilage of No. 73 Baggot St. listing the reasons: current registration, historic maps, transfer from folio 8109F on or about the 8<sup>th</sup> January 2019 (details of the folio are attached), the gate between the lands, e-mail from DCC referring to curtilages, Section 2 of the P&D Act, Architectural Heritage Guidelines, irrespective of any argument about whether the site formed part of No. 73 in c1830, the evidence suggests that it was historically associated with No. 73 at least since 1889 and is shown as forming one site on a map dated 22/2/90 attached to folio, and therefore appears to have formed part of the curtilage of No. 73 when the Planning and Development Act 2000 came into effect. It contravenes CHC2. Re. the argument that Dublin City Council validated the application, the applicant's failed to include it in their application form.
- CHC4 arguments advanced by the applicant in relation to compliance with CHC4 are challenged. It is not an exceptional design; it does harm the street/buildings; it does harm the setting of the conservation area; it is visually dominant.
- Section 16.2.2.2, infill – the 5 storey part is next to a 1 and a half storey building; it does not respect the prevailing 4 storey height along Herbert Place; it has higher site coverage and plot ratio; the colonnade is forward of the building line and not in sync with the historic uniformity of the streetscape.
- Section 16.10.16 mews – that the laneway is unchanged – min width 4.8m – widths relied upon are inaccurate.
- Section 16.10.1 – building height – re. Mr Justice Barrett's judgement and the first party response that the building height guidelines do not apply – and that appropriate and reasonable regard has been had to BRE – they refer to the BPG3 report attached.
- Site area and associated metrics – clarification of the site area of 887 sq m, the proposed development has a higher plot ratio and site coverage than cited in the

application form. It does not adjoin major transport termini.

- Transport and servicing – a further report from Transport Insights is attached, condition 11 b cannot be implemented, the Board cannot modify the condition, designed to enable the applicant to agree a significant re-design.
- Impact on amenities – see BPG3 report.
- Other items – statutory notices. They do not need to refer to proximity to No. 4 Herbert Place, but they do need to refer to works to the curtilage of No. 73 Baggot St.
- Observations on report of Buchanan Kane and Foley – points made earlier are reiterated.
- Observations on report of Smith & Kennedy – points made earlier are reiterated.
- The appellant's indicative CGIs were prepared based on the dimensions shown. Re. the standing close to a wall remark. The overbearing nature of the proposed development is the substance of the complaint. The CGI photos were taken with the photographer's back to the wall of the mews at No. 72.
- The development has not been reduced by 393 sq m since the previous refusal, but just over 200 sq m.
- The appellants live within c 6m of the application site.
- Reports from specialist consultants: a traffic consultant and a daylight/sunlight assessor, are attached to the response.

#### 6.4.5. Transport Insights:

- The assertion that removing the car park and provision of an office building and residential units with zero car parking will remove vehicular traffic from Herbert Lane is not borne out.
- The development will attract a greater number of vehicles and displace existing car park users onto adjacent streets; especially because the design was developed without due consideration to the mobility needs of workers and residents.
- Cycle parking needs to be adequately considered; 24 spaces appears inadequate. The Sandyford Urban Framework Plan standards used by the applicant

are based on employment types including research, office, service-based office and science and technology businesses, characterised by purpose built architecturally designed buildings, where the building setting is normally landscaped reflecting the image of the business it accommodates, unlike the subject development. UK guidance, cited, is preferred by the appellant's advisor. Applied to a net internal area of 1,257 sq m it would result in a requirement of between 20 and 32 spaces. For a development which includes no car parking, the number is likely to be higher.

- No formal cycle parking is provided for the residential units. Per design standards for new apartments 5 spaces are required. Cyclists are to park in the entranceways to the individual apartments. No formal cycle parking is shown, and provision is deficient.
- Cycle parking accessibility – a large proportion of cyclists will access from the Grand Canal cycling route. The location of the cycle parking is not in line with best practice, and does not consider the mobility management of occupants.
- The addition of pedestrians, cyclists and other vehicles to the particularly constrained environment of Herbert Lane represents unnecessary risk. Stated lane width in different sections is contradictory.

Access arrangements:

- Contrary to what is stated, pedestrians are likely to use Herbert Lane, being a shorter route from the nearest bus stop. The additional pedestrian traffic on Herbert Lane represents unnecessary risk. The one way section of Herbert Lane is c 3.7m wide. It's use by pedestrians is hazardous.
- Pedestrian facilities are not provided, save for a small section of 1m wide path.

Servicing:

- The statement that refuse vehicles will undertake the same manoeuvres as at present is of concern to residents. Due to the scale of the proposed development, refuse vehicles will spend more time waiting for bins to be transported to and from the bin store, resulting in lengthy blockage of access to nos. 57 and 59 Herbert Lane and the existing gated access at the southern end of Herbert Lane. The office capacity will be greater than envisaged, resulting in more waste than envisaged. The first party has not responded to the residents concern regarding paper shredding:

noise and pollution.

- Condition 11 b cannot be implemented, without a significant re-design. This has not been addressed in the applicant's response.
- Trip generation and modal split – in addition to points made in the previous submission, the appealant refers to an office development application by the current applicants at a site on Mespil Road c350m from the subject site for a net floor area of 1,700 sqm, projected to accommodate 235 employees:14 per 100 sq m. At the same rate the subject development would accommodate 174 staff, 91 more than predicted in the transport statement. They disagree with the analysis of post COVID impact.
- Re. the availability of on-street and multi-storey car parking, it is unclear how building management would be able to limit the number of persons commuting via private car. They challenge the mode share used by the applicants, which is based on the non availability of on-site car parking as a starting point and apportioning the trips to other modes. The appellants have used both the CSO and the Canal Cordon Survey 2017, and tabulate the differences from these different sources and the applicant's submission. The workplace zone data (CSO) gives car driver mode as 24.5% (and passengers 2.1%) compared to the Canal Cordon Survey car driver mode of 29.2%, both much higher than the applicant's 3%. The shares of all public and active modes of transport were observed to be much lower than the shares predicted in the applicant's submission.
- The appellant's consultants would favour a mobility management plan, developed in framework format during the design and planning stages as opposed to being drafted around the final development proposals; and critique the layout on that basis.
- No further clarity is offered by the applicant on construction routes, the levels of construction traffic, signage or whether banksman will be utilised.
- Should construction staff parking issues arise and the contractor deem it necessary to provide staff parking off-site, the residents of nos. 57 and 59 Herbert Lane will already have been unduly impacted.

#### 6.4.6. BPG3:

- 4 Herbert Place – Metec report has discounted this building because it is not residential. It could revert to residential. Window 3 could serve as a living room and

with the proposed development a retained skylight access of 16.92% VSC is indicative of restricted light. Sec 2.1.6 of the BRE guide advises that when VSC levels are between 15% and 27% special measures (bigger windows etc) are usually needed. An ADF could be run for this room to check if light levels are at least as required for new builds. A large window at basement level, below window 3 has not been assessed.

- 47 Herbert Lane - Metec report has incorrectly assumed that window 1 serves a living room at first floor and window 2 serves a bedroom at ground floor, DCC Reg Ref 2095\_18 indicates the reverse. Skylight access to window 2 (living room) would drop by 62%. A minor/moderate adverse impact is not valid. A drop of 62% and departure from guideline minimum of 52% would typically be described as 'high' or 'major'. Limited amelioration is available from light from an alternative source as the source is 5m away; and there is a substantial external shutter. Use of the ADF goes beyond the BRE guidelines. They have predicted an ADF of 0.59 for the open plan space on the ground floor. On the basis that this contains a kitchen the relevant minimum ADF is 2%. Skylight levels within the open plan space are predicted to be 70% below the minimum standard for new build.

- The first floor bedroom is predicted to experience a drop in light of 66% (from 20.32% VSC to 7% VSC) and result in the levels being 57% below the advisory minimum, which would typically be described as 'high' or 'major'. BRE indicates that when VSC levels fall in the range between 5% to 15% it is generally very difficult to provide adequate daylight unless very large windows are used. The first floor main living room is predicted to experience a drop in annual sunlight of 84% (from 13.5% APSH to 2.22% APSH); and during the winter months a drop of 100%. In lieu of attempting to categorise or describe the level of sunlight impact registering on the main living room of no. 47, Metec have elected to run additional analysis which compares the drop in sunlight levels associated with the proposed development to the drop in levels associated with a hypothetical extension of the existing terrace. Metec argue that because compliance with guidelines would also not be achieved under this extended terrace scenario that latitude should be extended to the departures identified for the proposed development. This line of argument is limited by a number of factors: APSH levels with the proposed development in place, reported on pages 40 and 36, do not agree: on page 36 APSH for window 2 with the

proposed development in place is 2.22% and on page 40 it is 3.26%; with similar discrepancies during the winter months. If the results on page 40 are the correct results, levels of sunlight with the proposed development in place would be less than half the levels with the extended terrace.

- 72 Baggot St - based on DCC Reg Ref 3612/14 it would be more accurate to assume that this is in residential use, rather than Metec's assumption that it is commercial. The failure to consider the mews, at a separation of 10m, is a significant oversight. Internal layouts are on file 3612/14.
- 57 Herbert Lane - window 4 – VSC predicted to drop from 33.73% to 15.10% and therefore it is hard to accept the claim that levels are only marginally outside the guidelines. Windows on the south-eastern elevation, which serve the main living room, have not been considered.
- 59 Herbert Lane – window 6 was discounted on the basis that it is a circulation space. Drawings on DCC Reg Ref 2675/07 describe this room as a parlour and regard should be paid to the levels of light. Skylight level drop of 48% from 30.81%VSC to 15.89%VSC brings levels within the BRE range where special measures are usually needed.
- Outdoor space to the rear of no. 4 Herbert Place and 47 Herbert Lane – the claim that no reduction in sunlight access received by amenity spaces beyond the guidelines, BPG3 has investigated this and show in an appendix to their report that the amenity space to the rear of no. 47 Herbert Lane would receive sunlight levels which do not comply with the guidelines.
- Daylight adequacy within proposed development – the claim that all occupied rooms within the proposed development achieve light levels in compliance with guidelines is open to question. The daylight factor for rooms 1 and 2 on the ground floor are hard to accept. The distributions of light in these rooms do not match the window locations on the layout.
- Sunlight levels available to outdoor space of proposed mews – re. the claim that each dwelling is provided with outdoor space of 32m<sup>2</sup>, this requires the paved area at ground floor which open onto Herbert Lane to be included. Since they are included they should be included in the solar assessment.

- It is not clear that the updated report succeeds in adequately representing either the daylight impacts registering on neighbouring properties or the daylight levels which would be provided within proposed accommodation.

6.4.7. A further response from Clive & Patricia Carroll includes:

- Generally supporting the appeals and focusing on that of Patrick & Elizabeth Spollen, particularly in relation to the construction (structure) of the terrace; and Mark Harty SC re. impact on the mews of property. Both appellants have done what DCC would have wanted, in terms of refurbishing and living in Georgian houses in the South Georgian Core, and have been ignored by the planning officer.

6.4.8. A response from Philip O'Reilly includes:

- Reiterating points previously made.

6.4.9. A response from Patrick & Elizabeth Spollen includes:

- Reiterating points previously made.
- The developer views its parcel of land as extractable – completely and up to the very extent of its boundaries, from its surroundings, both physical surroundings and its historical setting.

6.4.10. A response from Louis Masterson includes:

- Reiterating points previously made.
- Stating that three houses, similar to the terrace, would not fit on the site, that there was never an intention to build on this site and that the site is part of the curtilage of the protected structure No. 73 Baggot St Lower.

6.4.11. A response from Marion & Adrian Masterson includes:

- Reiterating points previously made and including e-mail correspondence with the conservation department of DCC, folio documents 8109F (no 73 Baggot St), and the submission to the planning authority by Clodagh Nolan Design in relation to the layout: three mews and a yard at nos 71, 72 and 73 Baggot St, and which includes three dimensional renderings of the proposed development.
- A typical Georgian house would present a gable of approx. 11.420m whereas the proposed block presents 14.410m with perforated brick finish and a further 6m gable,

emphasising the bulk of the proposal.

- The historic large piers and archway from Herbert Lane, matching that immediately adjacent to the old Coach House, is not mentioned despite the fact that it is shown on the OS map 1864.

- Quoting from a book titled The Buildings of Ireland, Dublin, 2005:

The courtyard first appears on the 1838 Ordnance Survey map published in 1847 and the outline of the mews to nos. 71-73 can be seen, set back from Herbert Lane to form the present private courtyard. By the time of the 1889-93 Ordnance Survey, the original mews to No. 73 had been demolished and its garden extended to the rear, and the courtyard was reduced and accordingly gated. The original carriage house to No. 73 remains intact as do the original gate piers, brick arch and brick capped limestone boundary wall to the subject site. This courtyard forms an integral part of the historic curtilage of both 73 Baggot Street Lower and 57 Herbert Lane.

- Referring item by item, to policy CHC4 - drawings which show the proposed block in context, by Clodagh Nolan Architect, submitted in an observation to the PA, are included (pages 9 and 10 of the submission).

- Re. minimum distances between windows in residential mews development, the applicant refers only to the distance between the two residential units proposed. Appellants take exception to the fact that no acknowledgement has been made of the impact on the existing mews dwellings. Nos. 57& 59 Herbert Lane are located only 6m from the proposed mews. The 5 storey 18.6m high office block will surround No. 57. At the L shape location, the 18.6m high block is only 4m from no. 57 and 8m from the mews to the rear of No. 71 and 72 Baggot St.

- They point out that 8 windows will be directly affected at 57 Herbert Lane by overshadowing: ground floor - utility garage, kitchen (2 windows), living room (2 windows); first floor – bedroom/study, bedroom, and bathroom. All except the living room are single aspect.

- Responding to the first party, appellant submits details of her qualifications as a Grade 1 conservation architect.

- Responding to other's appeals, including:

- Quoting from 4156/18 re 13a Herbert Lane, from the Planner's reporting of the Conservation Officers report, that Herbert Lane is one of the few architecturally significant Coach/Mews lands that has survived. It retains a unique mews lane character largely due to the number of surviving mews structures and because of the overall integrity and coherence of the historic boundary of the laneway comprising of masonry walls and ordered openings/entrance arches constructed of brick and stone.
- Appellants consider that the proposed flat roofed apartments will diminish the integrity of Herbert Lane. The insertion of so many interventions in the original stone walls will remove the coherence of the historic boundary masonry walls and ordered openings.
- Full consideration of the impact of the proposed development on the protected structure 73 Baggot St Lower, 4 Herbert Place, the adjacent mews dwellings and the ACA of the South Georgian Core in compliance with the Architectural Heritage Protection Guidelines, was below the standard required.
- Extracts from OS mapping for 1838 and 1889 are provided.

6.4.12. A response from Mark Harty SC, includes:

- First party has completely ignored each and every concern raised on their behalf.
- The Metec report ignores the living room window to their mews, less than 10m from the boundary wall and within 90° of due south.
- Conservation status – appellant's previous assertion that the site formed part of the curtilage of No. 73 Baggot St, appears to be accepted, except for a period up to the middle of the 19<sup>th</sup> century. Mr Foley did not seek or consider the actual maps and deeds of the property. The site formed part of No. 73 at the date of registration in 1971 and thus formed part of the curtilage under the 2000 Act. On this basis alone, as a matter of law, the Board must refuse permission.

6.5. The Carroll response by Conor Sheehan Planning Consultant was circulated, 14<sup>th</sup> October 2021.

6.6. Further Responses:

6.6.1. A response from Kathy McGuinness and Felim Dunne, agreeing with specific points made in that submission.

6.6.2. A response from Marion and Adrian Masterson, includes:

- The discrepancies in site areas identified in the Carroll appeal throws into question all measurements in the documentation.
- The site map for the second application is out of OSI copyright and should not have been accepted.
- The site is part of the curtilage of the protected structure no. 73 Baggot St.
- Despite the concerns listed by the planner, it was granted permission. The conservation officer was not consulted; the decision is flawed.
- They support the reports of the Carrolls consultants BPG3 and Transport Insights.
- In the hasty response to a request for additional information, it is proposed by the applicant to place bins at the end of Herbert Lane, no clarity or detail, no conservation investigation of the Stone Piers with brick arch with blind stone wall at this location which matches the piers and arch to the adjacent courtyard. This may have been an architectural feature terminating the view from Herbert Lane. It is also shown on the 1847 OS map by W Singleton but not mentioned in the applicant's Conservation Impact Assessment.

6.6.3. A response from Philip O'Reilly, reiterating points previously made.

6.6.4. A response from John Spain Associates on behalf of the applicant, includes:

- Reiterating that the site does not form part of the curtilage of No. 73 Baggot St. the definition of forming the curtilage is not ownership (or it would transfer with ownership to the applicant) but qualitative and the professional opinion of the Grade 1 Conservation Architect is that the subject site does not form part of the curtilage.
- A letter from an operator of a waste servicing operation, servicing properties along Herbert Lane is attached, confirming that they could service the development.
- Re. sunlight and daylight – an attached report addresses mislabelling two assessed rooms and the addition of an assessment of the mews to no. 72 Baggot St.

- The building height guidelines refer to compensatory design solutions. The NPF is also referenced. There is clear policy basis for the development of inner city, brownfield, underutilised sites, and the subject development achieves the wider planning objectives referenced in guidelines.
- The proposal represents an effective urban design and streetscape solution.
- Letters are attached from Smith + Kennedy Architects, DBFL Consulting Engineers and Metec Consulting Engineers.

6.6.5. Smith + Kennedy Architects, letter with rebuttal to many issues, includes:

- The car park is hidden behind a stone wall from the mews lane side but is fully visible from Herbert Place and is an eyesore.
- Re. the colonnade – the new ESB building on Fitzwilliam St has a series of dramatic recessed courtyards set back from the street line, providing openings in the brick façade, creating a depth to the street and a 3-dimensional treatment and visual interest along the street, in a successful contemporary treatment, within a Georgian context.
- Re. curtilage as the lands were unconnected for 60 years the site cannot be regarded as constituting an essential part of the historical significance of no. 73.

6.6.6. DBFL Consulting Engineers letter with rebuttal to many issues, includes:

- A wall ring type bike stand will be provided in the apartments. While not wheel and frame attachment, as recommended, it is deemed appropriate from a security standpoint.
- The office cycle parking is convenient. Bike stations in the vicinity are listed. All approach roads to the cycle parking access are less than 5.5m however at the cul-de-sac area where cyclists are preparing to stop and dismount, in preparation for accessing the cycle parking, the width increases to 6m.
- Pedestrians will not access via Herbert Lane, this access will only be available to cyclists.
- Only pedestrians associated with the apartments will travel along the east-west section of Herbert Lane; some cyclists will use it and per National Cycle Manual it is suitable for such use.

- Re. servicing strategy – waste collection will utilise same manoeuvres as existing. A letter from KeyWaste is provided.
- Re. condition 11 (b) the existing practice will be followed. There are no width or height restrictions on the lane. The waste storage is on the perimeter of the site, RCV's can easily reverse to this location.
- They reiterate the quantum of cycle parking required and state that a refused planning application is not a viable comparison for staffing levels.
- In relation to modal split, quantum of traffic and car parking, similar points to their previous report are made. The existing car park for 25+ spaces would be expected to generate higher vehicular traffic on Herbert Lane than the proposed use.
- Re construction traffic management, the CTMP notes the constrained nature of Herbert Lane, and the requirement to mitigate the potential impact on surrounding receptors.

6.6.7. Metec Consulting Engineers letter with rebuttal to many issues, includes:

- Analysis of rear mews to 72 Baggot St (ref 14): window 1 VSC reduction 39.11% to 22.51% needing further analysis; window 2, a circulation area, no further analysis for the 39.72% reduction in VSC; window 3, VSC reduction 39.24% to 22.09%, needing further analysis. The further analysis is an examination of the APSH, existing and proposed, for winter and annual measurements. The reduction in APSH set out in table 11.0.2 is dismissed, either due to the function of the room or because it is not a main living room facing within 90° of due south.

## 7.0 **Assessment**

- 7.1. The issues which arise in relation to this appeal are: appropriate assessment, the principle of the development, impact on protected structures and the conservation area, traffic and parking, overshadowing, metrics, use, and other issues and the following assessment is dealt with under those headings.

## **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **7.3. Principle of Development**

- 7.3.1. The subject site is zoned Z8: to protect the existing architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.
- 7.3.2. The site is located within a conservation area; objective CHC4 applies: to protect the special interest and character of all Dublin's Conservation Areas. Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible.
- 7.3.3. Although the site is within a zoned and serviced area, the zoning and objectives for this area are restrictive and therefore the principle of any development on this site is highly qualified.

## **7.4. Impact on Protected Structures and the Conservation Area.**

### **7.5. Protected Structure**

- 7.5.1. The status of the site, vis a vis the protected structure no. 73 Baggot Street Lower, is a matter on which there is disagreement between the first party and the other parties.
- 7.5.2. (389) RPS Ref No 384 gives the details: 73 Baggot Street Lower, Dublin 2, a house. The NIAH gives more information in relation to 73 Baggot St Lower where Reg. No. 50100136 is the house, and Reg. No. 50100135 is the former carriage-arch, designed in the form of a triumphal arch, now infilled.
- 7.5.3. The applicant and appellants / observers disagree in relation to the curtilage of No. 73. To be part of the curtilage of the protected structure confers protection to the land and structures.

- 7.5.4. The applicant states that in the professional opinion of the grade 1 conservation architect who has provided advice on their behalf, the site is not part of the protected structure. It is the professional opinion of the grade 1 conservation architect, Marion Masterson, who has appealed the decision, that it is within the curtilage of the protected structure.
- 7.5.5. It may or may not have been part of the lands associated with No. 73 when lands in the area were originally laid out for development, but the appellants make a convincing argument that it was part of the lands associated with No. 73 when it was listed on the record of protected structures. A functional relationship with the main building, now used as an office, at No. 73, formerly existed, but that functional relationship has ceased and the properties are now in separate ownership.
- 7.5.6. As part of the curtilage of a protected structure there would be a requirement that reference to the protected structure be included in the application description and notifications. There would also be a requirement that impact on the protected structure be specified in the application documentation. Failure to include reference to the protected structure in the application would, in such circumstances, invalidate the application. The fact of being within the curtilage of a protected structure would mean that greater consideration should be given to the impact on the protected structure in the application documents and in the assessment of the application.
- 7.5.7. Although it is my opinion the site of the proposed development is within the curtilage of the protected structure, No. 73 Baggot St, the planning authority did not invalidate the application and I do not recommend that the Board should request revised submissions to validate the application at this stage, having regard to my assessment of other issues.
- 7.5.8. Some of the issues which are contested in the submissions, such as what the function of this part of the curtilage was and to what extent a meaningful relationship now exists between this area and other parts of the protected structure including the main house, the carriage archway, the coach house, walls and railings, would need to be addressed by the applicant in greater detail to allow for considered assessment.

## 7.6. Conservation Area

- 7.6.1. As pointed out by the applicant, this site is not within an Architectural Conservation

Area (ACA) and therefore the legislative provisions relevant to ACAs do not arise. Significant policy provisions in the Dublin City Development Plan 2016-2022 refer to Conservation Areas. These are referenced in the appeals and observations and are set out in Chapter 12 of the development plan. Of note in relation to the subject application:

Development will not:

1. Harm buildings, spaces, original street patterns or other features which contribute positively to the special interest of the Conservation Area
2. Involve the loss of traditional, historic or important building forms, features, and detailing including roof-scapes, shop-fronts, doors, windows and other decorative detail
3. Introduce design details and materials, such as uPVC, aluminium and inappropriately designed or dimensioned timber windows and doors
4. Harm the setting of a Conservation Area
5. Constitute a visually obtrusive or dominant form.

It is not only visual elements that contribute to the character of a Conservation Area, land-uses and activities are fundamental to the character and appearance of Dublin's Conservation Areas.

Changes of use will be acceptable where, in compliance with the zoning objective, they make a positive contribution to the character, function and appearance of Conservation Areas and their settings. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications and will promote compatible uses which ensure future long-term viability.

Development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. Enhancement opportunities may include: contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area.

New development should have a positive impact on local character. In seeking exemplary design standards, the planning authority will require

development in Conservation Areas to take opportunities to enhance the area where they arise.

Any development which adversely affects the setting of a Conservation Area will be refused planning permission.

- 7.6.2. The policy protection for trees in Architectural Conservation Areas does not extend to Conservation Areas, nevertheless it should be noted that the trees on this site contribute to the character of the Conservation Area. If any development is to occur on this site, it is likely to require the removal of some trees. In my opinion the application does not meet a standard to justify the removal of the trees as proposed.
- 7.6.3. Regarding the requirement for contemporary architecture of exceptional design quality, which is in harmony with the Conservation Area. In my opinion the design would likely be acceptable in many contexts, but at this location, on this site, it does not meet the policy requirement.
- 7.6.4. Regarding the requirement that it should not constitute a visually obtrusive or dominant form. The appearance of the development in the surrounding context can be seen from the photomontages supplied in response to the further information request. The appearance is particularly problematic viewed from the areas to the east and south, ie. in the context of the conservation area at Baggot Street Lower and Herbert Place/Grand Canal. The proposed development is taller than the adjoining terrace at Herbert Place, and is forward of the building line of the terrace. Despite improvements, in response to the further information request, in its relation to the Georgian terrace adjoining, it remains a relatively monolithic structure. In my opinion it would draw attention to itself and have an overbearing relationship with the Herbert Place terrace. I note also the concerns expressed in relation to the relationship with the coach house within the grounds of the protected structure at no. 73 Baggot St, although that is not as readily apparent in public views. In my opinion the relationship with the terrace would have a significant adverse impact on the character of the conservation area.
- 7.6.5. Regarding the requirement that development within or affecting a conservation area must contribute positively to its character and distinctiveness, and take opportunities to protect and enhance the character and appearance of the area and its setting, wherever possible. In my opinion the proposed development does not contribute

positively to the character and distinctiveness of the Conservation Area or enhance the character and appearance of the area and its setting.

- 7.6.6. The adverse impact on the protected structure and the conservation area are reasons to refuse permission.

## **7.7. Traffic and Parking**

- 7.7.1. The site is accessible by vehicles from Herbert Lane and by pedestrians from Herbert Place. The section of Herbert Lane from which vehicles currently enter, is a long, one-way westwards, street with no footpath and with direct access to mews type properties on either side, to the rear of Herbert Street and Herbert Place. At the site location, the one-way Herbert Lane, forms a T junction with a two-way, north south section. The southern end is located at the boundary wall of the site (western end) and the northern end joins Herbert Street. Along the latter section there is a narrow footpath along the western side. Mews buildings to the rear of Baggot St Lower, access along the western side of the street.
- 7.7.2. The existing pedestrian access to the site from Herbert Place is via a metal gate, which matches the railings above the granite plinth boundary. There are steps down to the site, which is over a metre below footpath level. Cycle parking occupies the strip of road adjoining the front of the site. To the east there is roadside parking for vehicles.
- 7.7.3. The proposed development provides on-site cycle parking. No on-site car parking is provided.
- 7.7.4. The applicant's traffic consultant has provided a breakdown of likely modes of transport and volumes. The appellant's traffic consultant contests the sources used and the numbers arrived at in the projections. In agreeing that the lack of on-site parking will suppress the number of car trips and parking demand, appellants consider that the figures understate office capacity, the number of trips by drivers and passengers, and parking demand for both vehicles and bicycles. In addition, they disagree that pedestrians will chose to enter from Herbert Place, stating that they will prefer the shorter journey via Herbert Lane, with knock-on impacts for safety.
- 7.7.5. Condition 11 (b) of the decision is referred to as being incapable of being complied

with without significant re-design.

- 7.7.6. In my opinion the central location, availability of public transport and the potential for active modes - cycling and walking, should be given substantial weight, as offering more desirable and more sustainable modes of transport.
- 7.7.7. Condition 11 (b) of the decision is capable of being mis-interpreted and is unnecessary. Should the Board be minded to grant permission it should not be included.
- 7.7.8. The argument that the mobility management plan should have been developed in tandem with the overall design has merit and would likely have led to access requirements being dealt with in a more sitespecific, integrated way.
- 7.7.9. At least one bookable car parking space (with electric charging point) and at least one drop-off space, to facilitate servicing and trips which require private car use, would be required, even for an otherwise car-free development. The cycle parking appears to be grossly under provided, for both the apartments and offices. An integrated treatment of this issue in the design would have included considerably more spaces, and would also have included electric bicycle and electric scooter charging points and spaces for cargo bikes.
- 7.7.10. I disagree with the appellants that the conditions on Herbert Lane make it unsuitable for additional pedestrian / bicycle use or for servicing. The limitations of the road moderate traffic speeds, such as to provide an adequate level of safety for pedestrians and cyclists. A small amount of inconvenience, from servicing the site, for drivers accessing existing properties in the vicinity should not be a barrier to the development of the subject site.

## **7.8. Overshadowing**

- 7.8.1. Daylight and sunlight impacts from the proposed development are, not surprisingly, of concern to appellants and observers. Expert reports have been prepared on behalf of the applicant and on behalf of one of the appellants. The appellants submissions have led to a revised expert report from the applicant, which includes in its impact assessment an additional residential building, in close proximity to the proposed development, unaccountably omitted from the earlier report.

7.8.2. Areas of dispute, between the expert reports, include:

- whether it is reasonable to discount significant impact to windows, on the basis that the current use is office, notwithstanding the planning objective that the use revert to residential;
- why the most affected windows on identified buildings were not selected for study;
- whether it is reasonable to interpret certain results as minor/moderate when they show breaches of guidelines;
- whether or not there is any basis for offering as mitigation, a comparison between a hypothetical situation in which the existing terrace form (of Herbert Place) was extended across the frontage, in lieu of the block proposed;
- whether or not the measured results, of differences in impacts, derived from this latter exercise, could be interpreted as insignificant; and
- the accuracy of the representation of impact on outdoor spaces, regarding whether direct solar access on the 21<sup>st</sup> March, is either 50% of the total area or greater than 0.8 times its former value, since no numeric data is provided.

7.8.3. The applicant's report moves from estimating loss of VSC to estimating ADF for significantly affected rooms. ADF is normally used to check if a design proposed would provide residential development with minimum residential amenity. VSC has measured the loss of daylight currently enjoyed. Although it is of some interest to know whether or not a minimum level of light remains for interior activities, it is not a measure of the significance of light loss experienced by persons in the affected properties. Daylight loss appears to be significant in the case of some windows. Loss of sunlight also appears to be significant for some windows. Loss of sunlight to outdoor spaces is difficult to assess based on the details submitted, since sunlight hours is shown only in grids; with no numeric data and minimal explanation, and the drawings of the pre and post development situations are difficult to reconcile.

7.8.4. The applicant refers to planning guidelines, and the BRE guidelines themselves, which address the difficulty of achieving the BRE guideline standards. In some circumstances, in constrained urban situations, balancing assessment of daylight / sunlight loss against the desirability of achieving wider planning objectives, such as

securing comprehensive urban regeneration and or an effective urban design and streetscape solution, is advocated.

- 7.8.5. In any assessment of overshadowing, it is first of all appropriate to fully acknowledge the impact on adjacent properties. The appellant's advisor has contributed in significant measure to this information gathering process. It appears to me that the impact on adjoining properties is not fully represented or given the weight it deserves by the applicant and that the applicant's submissions are not as clear as is required.
- 7.8.6. If it were the case that the proposed development otherwise benefitted the area, for reasons such as that it would secure comprehensive urban regeneration, or offered an effective urban design / streetscape solution, that could be taken into account as mitigation. This is not such a case. The proposed development offers an opportunity for development in a central area, but the site is not calling out for urban regeneration. In its current state it is not in any sense an eyesore or a blight on the area. As set out under previous headings, the proposed development does not provide an improved streetscape, on the contrary it would diminish the streetscape. In the context of the subject development therefore, there are no counterbalancing arguments for accepting the sunlight and daylight impacts. They may be regarded as indicative of unacceptable overdevelopment of this very sensitive site.

## **7.9. Metrics**

- 7.9.1. The applicant response to the appeals, confirms that the site size is 887 sq m. The proposed development represents a site coverage of 60% and a plot ratio of 2. Those recommended for this zoning are: site coverage of 50% and a plot ratio of 1.5.
- 7.9.2. The applicant points out that exceptions are provided for in the plan:
- adjoining major public transport termini and corridors, where an appropriate mix of residential and commercial uses is proposed,
  - to facilitate comprehensive redevelopment in areas in need of urban renewal,
  - to maintain existing streetscape profiles,
  - where a site already has the benefit of a higher plot ratio.

The applicant states that the site is in close proximity to DART and Luas, and makes a claim of comparison with two other properties in the area, given as having similar

site coverage and less plot ratio.

- 7.9.3. In my opinion there is at least an arguable case for an exemption in this location. In and of themselves the breach of these standards would not be fatal to the applicant's proposal. In the context of the other considerations referred to earlier under separate headings, it is indicative of the overdevelopment of this very sensitive site.

#### **7.10. Use**

- 7.10.1. The proposed use is mainly office with a small proportion of residential.
- 7.10.2. The appellants state that a bespoke, large-format, office development as proposed in the subject application does not already exist on this relatively quiet street and is not an appropriate use.
- 7.10.3. The Dublin City Development Plan states:

it is not only visual elements that contribute to the character of a Conservation Area, land-uses and activities are fundamental to the character and appearance of Dublin's Conservation Areas.

The land-use zoning objective Z8, states that:

the aim is to maintain and enhance these areas as active residential streets and squares during the day and at night-time. Offices may be permitted where they do not impact negatively on the architectural character and setting of the area and do not result in an over-concentration of offices. In the south Georgian core where residential levels are low, it is the aim to encourage more residential use in the area.

Office is listed as a permissible use in this zoning, (excluding retail branch bank/building society).

- 7.10.4. In the applicant's overshadowing assessment, impacts on many of the adjoining premises are discounted due to their non-residential use.
- 7.10.5. It is evident, from a site visit, that most of the buildings at Herbert Place are in office use, although associated signage is restrained. The information available on google maps show that the buildings at Herbert Place are largely in office use. Unlike Wilton Terrace, to the west, where large modern office buildings provide the office

accommodation, offices at Herbert Place are located within the Georgian buildings.

- 7.10.6. From the information available on this file, and from a site visit, it is reasonable to reach the conclusion that there is an over-concentration of offices in this area. A development such as is proposed: a bespoke, large-format, office development with a limited residential component, does not, in my opinion, achieve the aims of the Z8 zoning; and this is a reason to refuse permission.

#### **7.11. Other**

- 7.11.1. The appellants claim that the OSI number is the same as in a former application, and that the use of these maps 12 months apart, is in breach of copyright. In my opinion the Board does not have before it sufficient information to make any assessment of this issue.
- 7.11.2. Structural Impact – the impact on the structural stability of the terrace of buildings at Herbert Place, which the proposed development abuts, is a concern of appellants/ observers. Impacts from construction and placement of the building and the potential for impact from the removal of a structure of the type proposed, at the end of a short life, are raised as concerns. A set-back of at least 5m from the terrace is suggested.
- 7.11.3. The existing buildings comprising the terrace have not been shown to be at exceptional risk, and it does not seem reasonable to refuse or modify the proposed development based on the information submitted.
- 7.11.4. No Conservation Officer input - failure of the planning authority to consult its Conservation Officer has been raised as a concern. It is a matter for Dublin City Council to determine the best manner in which to assess any application.
- 7.1. Amenity – one concern in relation to the amenity of adjoining residential property, is that first floor terraces should not be permitted, because of sound. In such a central urban context, it seems an unreasonable expectation, not to be impacted to some degree by the sound of use of an adjoining residential outdoor space.

## **8.0 Recommendation**

- 8.1. In accordance with the foregoing I recommend that permission should be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

1 Having regard to its bulk, height, siting and design, the proposed development would undermine the historic relationship between the terraces at Herbert Place and Baggot Street Lower and the traditional proportionate relationship in scale between these significant buildings and backland development to the rear of Baggot Street Lower and at Herbert Lane and would accordingly be contrary to the proper planning and sustainable development of the area.

2 The proposed development, within the curtilage of a protected structure, would unduly impact on the setting of the structure and involve excessive demolition/removal of associated structures, it would accordingly detract from the conservation of the built heritage of the area.

3 The proposed development of a bespoke, large-format, office development with a limited residential component, would fail to secure the aim of the Z8 zoning, to encourage more residential use in the area, and would accordingly be contrary to the proper planning and sustainable development of the area.

4 Having regard to the siting and excessive scale, and the associated loss of trees, the proposed development would detract from the character and appearance of the conservation area and its setting.

---

Planning Inspector

18<sup>th</sup> July 2022

## Appendices

Appendix 1 Photographs.

Appendix 2 Dublin City Development Plan 2016 – 2022 extracts

Appendix 3 National Inventory of Architectural Heritage extracts