



An
Bord
Pleanála

Inspector's Report

ABP-311878-21

Development	PROTECTED STRUCTURE: Retention for demolition of garage wall and permission to construct wall and gates
Location	45 Belgrave Square West, Dublin 6, D06 X0X7
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	3368/21
Applicant	Aidan Williamson
Type of Application	Planning Permission
Planning Authority Decision	Split Decision
Type of Appeal	First Party
Appellant	Aidan Williamson
Observers	<ol style="list-style-type: none">1. Colm Walsh2. John Lynch3. Paul Kelly4. Shane Boyd

Date of Site Inspection

6th April 2022

Inspector

Margaret Commane

1.0 Site Location and Description

- 1.1. The area surrounding the site, at No. 46 Belgrave Square West, Rathmines, Dublin 6, is a mature residential area and there is a mix of two and three storey dwellings and single and two storey mews dwellings/garages in the vicinity of the site.
- 1.2. The subject site comprises a 367sqm parcel of land on the western side of Belgrave Square West. It contains a mid-terrace, Victorian, two storey over basement dwelling, featuring an original two storey return and a single storey conservatory to the rear of the dwelling, which is a Protected Structure (RPS No. 599). The site backs onto Cambridge Road with vehicular access provided from the road across a small lane. The western part of the site comprises a gravelled car parking area. The site's rear boundary features a rubble wall and a timber fence.
- 1.3. There are two large established street trees in the footpath located immediately adjacent to the site's rear (western) boundary and one large established street tree in the footpath further south of the subject site. In the intervening space between the two street trees immediately adjacent to the site's rear boundary, the area of footpath is dished. Double yellow road markings feature on the eastern side of Cambridge Road and on-street parking is provided along part of the western side of Cambridge Road. A number of properties fronting Belgrave Square West appear to have rear vehicular access, some with separate vehicular entrances off Cambridge Road but the majority appear to be accessed via a historic lane to the east of Cambridge Road accessible via a dished footpath to the rear of No. 42 Belgrave Square West.
- 1.4. To the immediate north of the subject site, at No. 45 Belgrave Square West, is a mid-terrace, Victorian, two storey over basement dwelling, which is a Protected Structure. More specifically, the part of this neighbouring site immediately adjacent to the area where the subject development is proposed features a single storey garage and a timber fence. To the immediate south of the subject site, at No. 47 Belgrave Square West, is a mid-terrace, Victorian, two storey over basement dwelling, which is also a Protected Structure. More specifically, the part of this neighbouring site immediately adjacent to the area where the subject development is proposed features part of this site's rear garden.

2.0 Proposed Development

2.1. Planning Permission and Retention Permission is sought for alterations to No. 45 Belgrave Square West, Dublin 6, a Protected Structure (RPS No. 599), incorporating the following:

- Retention for demolition of modern rear garage wall, carried out on foot of planning application Reg. Ref. 2070/19.
- Planning permission to construct a wall and 2.8 metre wide gates along the historical rear boundary line and the removal of an encroaching council owned tree inhibiting existing vehicular access from Cambridge Road.

2.2. The subject application relates to external alterations only, and does not propose any internal amendments to the dwelling on site.

3.0 Planning Authority Decision

3.1. Decision

On 11th October 2021, the Planning Authority issued a split decision. It decided to grant retention permission for demolition of modern rear garage wall subject to 2 no. standard conditions. It decided to refuse permission for construction of a wall and gates along the historical rear boundary line of a protected structure and the removal of an encroaching council owned tree inhibiting existing vehicular access from Cambridge Road, for the following reasons:

1. *The proposed development would require the removal of a mature lime tree and is likely to have a negative impact on the root system of another mature lime tree. Both trees are essential elements of an historic 19th century tree alignment along Cambridge Road. The proposed development would, therefore, conflict with Section 16.3.3 and Policy GI28 of the Dublin City Development Plan 2016-2022 and the Dublin City Council Tree Strategy (2016- 2021) which seek to protect and retain street trees where possible. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *The development, through closing off of a historic laneway and its inclusion in the rear garden of the application site, would extinguish access by neighbouring*

properties to this section of the laneway. Pedestrian and vehicular access would be obstructed and would set an undesirable precedent. The development is, therefore, contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

- There have been 2 no. recent refusals for the subject site, under Reg. Refs. 2707/20 and 2814/21, involving proposals for the provision of vehicular access off Cambridge Road.
- The Transport Planning and Parks and Landscape Services Departments have recommended refusal for the application on the grounds that the proposal would result in the loss of the laneway, loss of a mature street tree and set an undesirable precedent for other sites along the lane.
- The Council's Parks and Landscape Services Department have reviewed the submitted Arboricultural Impact Assessment and raise concerns with its conclusions. They observe, based on measurement on site, reference to historic maps and comparison with other similar street trees in the City, that the trees are older in age than the AIA suggests, estimated at being between 80-100 years old. They also note that it is incorrect to describe T2 as a stump, observing that the tree is 6metres tall and is not dead. They further state that the tree is safe and is being monitored. In relation to T1 to be retained, they note that, as the root protection area of the tree was not calculated correctly, the two proposed concrete gate piers are likely to be located within the root protection area of the tree. They conclude that the AIA has not demonstrated that tree T1 will not be negatively affected by the proposal. As such, the proposed development would require the removal of a mature lime tree and is likely to have a negative impact on the root system of another mature lime tree. Both trees are essential elements of an historic 19th century tree alignment along Cambridge Road.
- The formalisation and/or creation of a vehicular entrance on Cambridge Road to the rear of No. 45 Belgrave Square West would not be in accordance with

the Development Plan Standards 16.3.3. The submitted details indicates that the width of the proposed vehicular entrance at dishing would not be in accordance with the Development Plan standards.

- It is noted that the laneway has been retained in the development of the rear of other sites, e.g. No. 44, as shown in the planning history above. Transport Planning Division also note the absorption of the laneway into the site of No. 46, as shown in the planning history above. They consider, and it is agreed, that this is a precedent which should not be followed and that the laneway should remain open.
- Transport Planning Division also note that the applicant makes the argument that car parking is not possible to the front of the property on Belgrave Square West due to a number of issues. Permit Parking and Pay & Display parking controls are in place on the road as a means to regulate the on-street parking so as to provide parking for residents. DCC Parking Enforcement have confirmed that a number of parking permits are available for the application property in order to allow them to park on street to the front of the property.
- It is considered that the demolition of the modern garage rear boundary wall is acceptable, subject to the construction of a replacement boundary treatment in keeping with the character of the protected structure and conservation area. While there is no objection in principle to the provision of a vehicular entrance to the historic laneway, it is considered that this should be set back to the existing boundary delineated by the previous garage wall and in line with the rear boundaries of other properties along this stretch of Belgrave Square West, subject to safe access and egress. However, a new vehicular entrance at this location would require the removal of at least one mature lime tree and potentially damage another, which would conflict with Section 16.3.3 and Policy GI28 of the Dublin City Development Plan 2016-2022 and the Dublin City Council Tree Strategy (2016- 2021) which seek to protect and retain street trees where possible. The proposed development would, therefore, be unacceptable and would be contrary to the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Drainage Division (06/09/2021): No objection, subject to conditions.

Roads Streets & Traffic Department (24/09/2021): Raised concerns regarding the resulting subsuming of the historic laneway which is shown on historic mapping to extend to the rear of Nos. 33 to 46 Belgrave Square West, the precedent it would set for other sites along the lane and the width of the proposed vehicular entrance, and recommended refusal for the following reasons:

- 1. The development in closing off of a historic laneway and its inclusion in the rear garden of the application site, would extinguish access by neighbouring properties to this section of the laneway. Pedestrian and vehicular access would be obstructed and would set an undesirable precedent. The development is therefore, contrary to the proper planning and sustainable development of the area.*
- 2. The development would result in the loss of one street tree and would impact on a second street tree to the rear of the property and would seriously injure the residential amenities of property in the vicinity. The proposed development is contrary to the Section 16.3.3 of the Dublin City Development Plan 2016-2022 and the Dublin Tree Strategy, and Appendix 5, Parking Cars in Front Gardens. The development would set an undesirable precedent and would, therefore, be contrary to the proper planning and sustainable development of the area.*

Parks, Biodiversity and Landscape Services Section: Raised concerns regarding inaccuracies in the Arboricultural Impact Assessment submitted (in relation to trunk diameters, tree age and descriptions of Tree 2 provided), works proposed within T1's root protection area and a lack of detail regarding the proposed works; and recommended refusal for the following reasons:

- 1. The development would result in the loss of one street tree and would negatively impact on a second street tree, possibly leading to its loss in the near future. This would seriously injure the residential amenities of property in the vicinity. These two trees are elements of a tree line well documented since the early half of the 19th century. This is in itself remarkable and demonstrate that this tree line was protected and preserved in a constantly evolving urban*

landscape for nearly 200 years. The fact that the two trees T1 and T2 are replacement planting from the early 20th century, does not alter their importance as part of the tree lin. In contrary, it demonstrate that this line of trees was important enough in the landscape that, as trees failed, they were replaced, ensuring the preservation of this important element of the local environment.

- 2. The proposed development is contrary to the Section 16.3.3 of the Dublin City Development Plan 2016-2022 and the Dublin Tree Strategy, and Appendix 5, Parking Cars in Front Gardens. The development would set an undesirable precedent and would, therefore, be contrary to the proper planning and sustainable development of the area.*

Archaeology, Conservation & Heritage Section: No report received.

3.3. Prescribed Bodies

An Taisce (23/09/2021): Raised concerns regarding the required tree removal and recommend refusal due to significant adverse impact on environment arising from removal of existing mature tree.

3.4. Third Party Observations

8 no. third party observations were submitted to the Planning Authority. The main issues raised therein are as follows:

- Closing off of a right of way to other residents on Belgrave Square outrageous and creates a dangerous precedent.
- Loss of a mature lime tree. Although damaged, will grow back.
- Important line of lime trees in ownership of DCC on Cambridge Road which should be protected.
- Applicant does not own a section of the lane.
- Previous applications refused and this is not substantially different.

- Proposed boundary wall extends beyond the existing established built boundary line on Cambridge Road encroaching on a publicly accessible mews lane.
- There should be no alterations to the rear boundary wall and extant access.
- Insufficient detail to allow for an informed decision to be made on the merits of the scheme within the curtilage of a protected structure.
- Removal of tree to facilitate an enlarge vehicular entrance detrimental to character of the area.
- Vehicular entrance to this property was in use successfully, prior to the recent works.
- Trees are older than 50-60 years.
- Dishing of the path undertaken in the 1990s.
- Disregard for planning process.
- Proposed development has created a concealed space where antisocial behaviour takes place.
- The development changes the historic character of Cambridge Road through the erection of a fence using a material not in keeping with the context.
- Fence is supported off the tree in a crude manner that takes no account of the health of the tree on public land.
- Tree has been purposely damaged.
- Any additional egress at this point on the road unwelcome as it would cross a pedestrian path
- The proposal is in breach of Policy GI29 and Objective GIO27 of the Development Plan.

4.0 Planning History

4.1. Subject Site

4.1.1. The following previous applications pertaining to the subject site are of relevance:

PA Reg. Ref. 2814/21

Retention and permission was refused by Dublin City Council in July 2021 for an application for the following: - retention for demolition of modern rear garage wall and permission to construct a wall and gates along the historical rear boundary line of a protected structure, carried out on foot of planning application Reg. Ref. 2707/20, and the removal of an encroaching council owned tree inhibiting existing vehicular access from Cambridge Road, for the following reasons:

- 1. The proposed development would require the removal of a mature lime tree and is likely to have a negative impact on the root system of another mature lime tree. Both trees are essential elements of an historic 19th century tree alignment along Cambridge Road. The proposed development would, therefore, conflict with Section 16.3.3 and Policy GI28 of the Dublin City Development Plan 2016-2022 and the Dublin City Council Tree Strategy (2016- 2021) which seek to protect and retain street trees where possible. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. The development in closing off of a historic laneway and its inclusion in the rear garden of the application site, would extinguish access by neighbouring properties to this section of the laneway. Pedestrian and vehicular access would be obstructed and would set an undesirable precedent. The development is therefore, contrary to the proper planning and sustainable development of the area.*

PA Reg. Ref. 2707/20

Retention and permission was refused by Dublin City Council in June 2020 for an application for the following: - retention for demolition of modern rear garage wall, and for the erection and repositioning of timber fence and vehicular entrance along the historical rear boundary line of a protected structure, carried out on foot of permission Reg. Ref. 2070/19, and permission to dish footpath for vehicular entrance for access to existing rear parking area from Cambridge Road, for the following reasons:

- 1. The development is located within the curtilage of a Protected Structure and an area zoned Z2 with a stated zoning objective - to protect and/or improve the amenities of residential conservation areas. Having regard to the established pattern of development in the area, it is considered that the fence and gateway*

development, by reason of their timber construction, form and overall design, are visually incongruous, out of character for the existing development along this laneway and contrary to the visual amenities of the area. The development are therefore, seriously injurious to the residential and visual amenities of this residential conservation area and contrary to the proper planning and sustainable development of the area.

PA Reg. Ref. 2070/19

Permission was granted by Dublin City Council in March 2019 to return the existing 3 storey house, a protected structure, from its current use as multi-occupancy dwelling to its original use as a single family home, exempted development under Class 14 (E) of the Development Regulations, 2001. This involved works consisting of: a) Demolition of modern conservatory and the construction of a single storey flat-roofed extension to the rear involving the enlarging of existing window opening on lower ground floor, staircase access from upper ground floor rear return, two new openings and one new window to return; b) Repairs to entire building, removal of half landing partitions to rear return room and new opening to existing first floor bathroom; c) The replacement of the existing double-glazed aluminium windows with double glazed painted traditional sash windows; d) Demolition of single storey garage to rear garden; and e) and all associated site development works.

4.2. Adjacent Sites

4.2.1. There have been 3 no. recent applications on the sites immediately adjacent to the subject site that are pertinent to the current proposal. This is summarised overleaf:

No. 44 Belgrave Square West (fronting onto Cambridge Road), Rathmines, Dublin 6

PA Reg. Ref. 4099/18 (parent permission)

Permission was granted by Dublin City Council in June 2019 for demolition of the rear garden wall and vehicular access gate and the construction of a 2 storey 2-bedroom single detached mews dwelling, within the curtilage of a Protected Structure, incorporating a car space within the site accessed from Cambridge Road with a terrace to first floor level to the front. The ground floor to be partially sunken below ground level with access to private open space to the rear and associated site works. This permission has not yet been acted upon.

PA Reg. Ref. 2405/21 (Appeal Ref. ABP-310444-21)

This application related to a proposal for alterations to the design of the permitted two-bedroom house fronting Cambridge Road (Reg. Ref. 4099/18) at the rear of and within the curtilage of 44 Belgrave Square, a Protected Structure, Rathmines, Dublin 6. The proposed redesigned house is to accommodate three bedrooms and to be three storey, including a developed attic storey under a partly pitched roof. The proposed development incorporated solar panels, velux roof lights, balconies, a side passageway and a car port accessed via a slight widening of the existing vehicular gates on Cambridge Road, as well as associated site works.

Permission was refused by Dublin City Council in May 2021. The Planning Authorities decision was appealed to An Bord Pleanála by the applicant (Appeal Reference ABP-310444-21). The Board refused permission in February 2022 for the following reason:

'Having regard to the planning history of the site, to the location of the proposed mews development within the curtilage of a Protected Structure and within a residential Conservation Area, it is considered that the proposed development, by reason of its height, roof form and design quality, and to its siting in a prominent location on Cambridge Road, would adversely affect the character and setting of the Protected Structure at 44 Belgrave Square and the adjoining Protected Structures in the area, and would not contribute positively to the character and distinctiveness of the Conservation Area. The proposed development would, therefore, both by itself and by the precedent it would set for similar type development, seriously injure the amenities of the area contrary to Policies CHC1, CHC2 and CHC4 of the Development Plan 2016-2022, as well as Section 16.10.16 of the Plan as relates to Mews Dwellings and would, therefore, be contrary to the proper planning and sustainable development of the area.'

No. 46 Belgrave Square West (fronting onto Cambridge Road), Rathmines, Dublin 6

PA Reg. Ref. 3147/18 (Appeal Ref. ABP-302974-18)

This application related to a proposal for demolition of existing single storey garage to the rear of the property facing onto Cambridge Road, Rathmines. The proposed development will face and be accessed from Cambridge Road and will be for a 99m², 2 storey, 2 bedroom mews house, with a single car parking space to the front, a first floor terrace to the front and small garden to the rear with a pedestrian gate linking the

new garden to the existing garden of No. 46 Belgrave Square West. The development will also consist of a new 2.2m high wall to be built behind existing historic stone wall on Cambridge Road, a new 2.1m high vehicular timber gate, a new separate connection to public sewer on Cambridge Road and all associated site works.

Permission was granted permission by Dublin City Council in October 2018. The Planning Authorities decision was appealed to An Bord Pleanala by a third party (Appeal Reference ABP-302974-18). The Board granted permission in March 2019. This permission has not yet been acted upon.

5.0 Policy Context

5.1. Dublin City Development Plan 2016-2022

5.1.1. Land Use Zoning

The site is zoned 'Z2' - Residential Neighbourhoods (Conservation Areas) in the Dublin City Development Plan 2016-2022 with a stated objective '*protect and/or improve the amenities of residential conservation areas*'.

5.1.2. Other Relevant Sections/ Policies

The subject site is occupied by a mid-terrace, Victorian, two storey over basement dwelling which is a Protected Structure (RPS No. 599).

The following policies are considered relevant to the consideration of the subject proposal:

Section 11.1.5 Policy CHC1:

'To seek the preservation of the built heritage of the city that makes a positive contribution to the character, appearance and quality of local streetscapes and the sustainable development of the city.'

Section 11.1.5.1 The Record of Protected Structures Policy CHC2:

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

- (a) *Protect or, where appropriate, restore form, features and fabric which contribute to the special interest;*
- (b) *Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances;*
- (c) *Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials;*
- (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;*
- (e) *Protect architectural items of interest from damage or theft while buildings are empty or during course of works....'*

**Section 11.1.5.4 Architectural Conservation Areas and Conservation Areas:
Policy CHC4**

'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.

.....

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.'*

Section 16.3.3 Existing trees and their protection

'The design of vehicular entrances that impact on adjacent trees will need to be considered to avoid conflicts with street trees. Where a conflict is unavoidable and where a tree, located on-street, requires removal to facilitate a new or widened vehicular entrance and cannot be conveniently relocated within the public domain, then a financial contribution will be required in lieu.'

Section 10.5.7 Trees: Policy GI28

'To support the implementation of the Dublin City Tree Strategy, which provides the vision for the long-term planting, protection and maintenance of trees, hedgerows and woodlands within Dublin City'.

Section 10.5.7 Trees: Policy GI29

'To adopt a pro-active and systematic good practice approach to tree management with the aim of promoting good tree health, condition, diversity, public amenity and a balanced age-profile.'

Section 10.5.7 Trees: Objective GIO27

'To protect trees, hedgerows or groups of trees which function as wildlife corridors or 'stepping stones' in accordance with Article 10 of the EU Habitats Directive'.

Appendix 5 - Road Standards for Various Classes of Development

Vehicular openings proposed shall be at least 2.5 metres or at most 3.6 metres in width and shall not have outward opening gates.

5.2. Dublin City Development Plan 2022-2028

- 5.2.1. Dublin City Council has started the preparation of a new Dublin City Development Plan for the period 2022 to 2028. It is understood that Stage 2 of public consultation on the draft Development Plan concluded on 14th February 2022.

5.3. Architectural Heritage Protection Guidelines for Planning Authorities (2011)

- 5.3.1. The subject site features a Protected Structure (RPS. No. 599). Therefore, the 'Architectural Heritage Protection, Guidelines for Planning Authorities' are considered relevant. These guidelines are issued under Section 28 and Section 52 of the Planning and Development Act 2000. Under Section 52 (1), the Minister is obliged to issue

guidelines to planning authorities concerning development objectives: a) for protecting structures, or parts of structures, which are of special architectural, historical, archaeological, artistic, cultural, scientific, social, or technical interest, and b) for preserving the character of architectural conservation areas.

5.3.2. The guidelines provide guidance in respect of the criteria and other considerations to be taken into account in the assessment of proposals affecting protected structures or within an Architectural Conservation Area. The guidelines seek to encourage the sympathetic maintenance, adaption and reuse of buildings of architectural heritage. Section 13.4 of the Guidelines relates to development involving features within the Curtilage of a Protected Structure or its Attendant Grounds. More specifically, Section 13.4.3 deals with alterations to boundary features.

5.4. Natural Heritage Designations

5.4.1. The proposed development is not located within or immediately adjacent to any European site. The nearest European sites are South Dublin Bay SAC (Site Code: 000210) and the South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024) located approximately 3.6km to the east of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- The availability of parking on Belgrave Square is limited with spaces occupied throughout the day.
- Planning application Reg. Ref. 2070/19 sought to partly demolish the single storey garage and retain the rear portion of the garage wall. During construction, the existing rear garage entrance was determined to be inaccessible after attempts were made to gain access from the side lane and from the existing dished kerb located between the trees. Both approaches were considered to be impractical for daily use and would result in damage to vehicles. Subsequently, the rear garage wall was demolished and a timber

fence erected along the historical boundary line to provide temporary access and security for the site.

- Vehicular access to the site from the laneway is reduced to 2.1 metres at its narrowest point due to obstacles (lamp posts, tree growth and protruding stones from the foundations of the historical wall). Manoeuvring within these tight perimeters is not feasible to navigate on a regular basis.
- In 2021, Tree T2 was cultivated by the Council and all that remains is a stump.
- Prior to this submission, attempts were made formally to remedy access to the property, in application Reg. Ref. 2707/20, to avoid removal of either tree. This application sought permission to dish the kerb in front of No. 44 Belgrave Square to gain adequate access to the gates set at a diagonal to the land and Cambridge Road, as an alternative location to accessing the residence between the trees. Following objections regarding ownership from the owners of this property, this application was withdrawn.
- The 2 no. trees adjacent to No. 45 Belgrave Square's rear boundary are in close proximity to one another in comparison to other trees along the road which are spaced 5-8 metres apart.
- The removal of Tree T2 is proposed as it currently impedes access and egress to the rear of the property due to its close proximity to Tree T1. Evidence of an existing vehicular access between these trees is visible in the form of a dished kerb along the path directly outside the rear of the property.
- Tree T2 causes a safety hazard to the residents of No. 45 Belgrave Square.
- An Arboricultural Impact Assessment carried out deemed the 3 no. trees to be between 40-60 years old and Tree T2 (proposed for removal) to be in poor condition, recent remedial works having damaged the integrity and health of the tree. The safety of the tree was also found to have been compromised as a result of it being partially cut through the main stem. They concluded there was no evidence of live tissue and are of the view that the remaining tree stump will continue to decline, and due to its high target location, should be removed in the interest of health and safety regardless of the proposed development.

- In the context of Tree T1, a range of works are required within or close to its root protection area which will require specialist working methods to ensure it is not subject to a negative impact.
- With regards to the supposed enclosure of the laneway, the appeal includes a copy of the original 1881 deeds and map inclusive of the subject property. The application included a plan (Drawing No. 350) transcribing the applicable dimensions onto a current OSI map. This clearly illustrates that the applicable part of the lane forms part of the subject site.
- Prior to any works taking place at No. 45 Belgrave Square, the lane terminated between Nos. 45 and 46 Belgrave Square with a fence. Therefore, the development would not extinguish access by neighbouring properties to this section of the laneway.
- Planning permission was granted to No. 46 Belgrave Square, under Reg. Ref. 3147/18, to subsume the laneway into the property and construct a 99sqm, 2 storey, 2 bedroom mews house accessed from Cambridge Road. In this instance, the Planning Authority made no reference to this issue. The subject refusal is inconsistent with the permissions recently granted on the neighbouring site and the subject application has been assessed in an inconsistent manner.

As part of the applicant's appeal, they have submitted a personal letter from the applicant outlining his family's personal circumstances and revised drawings (Drawings No. 310 and 311, prepared by Delahunty & Harley Architects/Designers) which take into consideration the recommendations of the Arboricultural Impact Assessment and those made by DCC's Parks, Biodiversity and Landscape Services Section. More specifically, the revised drawings seek to limit the impact the proposed development will have on retained Tree T1 by increasing the width of the prestressed concrete lintel being used to bridge between the concrete piers of the proposed rear wall to reduce the area in which foundations are to be built within the root protection area. They also provide details on how excavation will be carried out within Tree T1's root protection area.

The applicants ask that they be read in conjunction with the original material submitted with the planning application. Accordingly, this assessment is based on the plans and

information received by Dublin City Council on 20th August 2021 as amended by further plans and particulars received by the Board on 5th November 2021.

6.2. Planning Authority Response

The Planning Authority, in a letter dated 6th December 2021, provided the following response (in summary):

- In the context of refusal reason 1: - The revised drawings submitted seek to limit the impact on the RPA of retained Tree T1, however, these new proposals have not been subject to an Arboricultural Impact Assessment. Therefore, it has not been demonstrated that they will not have a negative impact on this mature street tree. The proposals and submitted AIA were reviewed in detail by the Parks, Biodiversity and Landscape Services Section who noted serious errors in the AIA and had serious concerns in relation to the potential harm to existing street trees adjacent to the site.
- In the context of refusal reason 2: - no further comments are made in this regard.

6.3. Observations

Observations on the first party appeal were lodged from the following parties:

- Colm Walsh, 22 Belgrave Road, Rathmines, Dublin 6.
- Shane Boyd, 3 Stable Lane, Cambridge Road, Rathmines, Dublin 6.
- John Lynch, 12 Cambridge Road, Rathmines, Dublin 6.
- Paul Kelly, 1 Stable Lane, Cambridge Road, Rathmines, Dublin 6.

The issues raised can be summarised as follows:

- The proposal is in breach of the Dublin City Development Plan 2016-2022 which seeks to 'green the City', in particular Policy GI29 and Objective GIO27.
- While the applicable tree has been damaged in the past, it now appears to be capable of renewing itself.
- The proposal should be refused as it would result in a significant adverse impact on the environment and public amenity of the locality.

- The proposal is contrary to the previous commentary of the Conservation Officer, under Reg. Ref. 2070/19, which stated that '*there shall be no alterations to the rear boundary wall and extant access arrangements to the site*'.
- The tree in question has been brutally vandalised (by way of circular incision and poison insertion in the trunk) to facilitate the access applied for. The row of trees adorning Cambridge Road are being destroyed and the tree being retained adjacent to the rear boundary is now in danger of the same fate.
- The proposed development curtails an established right of way.
- The proposed development has created a concealed space where antisocial behaviour takes place.
- The development changes the historic character of Cambridge Road through the erection of a fence in a material not in keeping with the context.
- The fence uses the street tree for support and takes no account of the health of the tree.
- The application seeks permission for removal of a tree that is outside the boundary of the applicant's site which is not allowed.

6.4. Further Responses

None.

7.0 Assessment

As part of the grounds of appeal, the applicant submitted a personal letter from the applicant outlining his family's personal circumstances and revised drawings (Drawings No. 310 and 311, prepared by Delahunty & Harley Architects/Designers) which take into consideration the recommendations of the Arboricultural Impact Assessment and those made by DCC's Parks, Biodiversity and Landscape Services Section. These revised drawings included the following amendments:

- An increase in the width of the prestressed concrete lintel being used to bridge between the concrete piers of the proposed rear wall to reduce the area in which foundations are to be built within the root protection area with the aim of limiting the impact the proposed development will have on retained Tree T1; and

- Details how excavation will be carried out within Tree T1's root protection area.

The applicants ask that they be read in conjunction with the original material submitted with the planning application. It is noted that the revised plans submitted with the appeal introduce no new elements or issues which may be of concern to third parties in the context of the proposed development. Accordingly, this assessment is based on the plans received by Dublin City Council on 20th August 2021 as amended by further plans and particulars received by the Board on 5th November 2021.

I consider the substantive issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Demolition of Rear Garage Wall.
- Construction of a Wall/Gates.
- Removal of Street Tree/Impact on Retained Street Tree.
- Other Matters.
- Appropriate Assessment.

7.1. Demolition of Rear Garage Wall

7.1.1. The subject application seeks retention permission for demolition of the modern rear garage wall associated with the garage previously featuring to the rear of the subject site. Permission was previously granted, under Reg. Ref. 2070/19, for the demolition of the majority of the garage structure, with only the rear wall maintained for vehicular access/security. The applicant's state that they have demolished this wall as after attempts were made to gain vehicular access from the side lane and from the existing dished kerb located between the applicable street trees, it was found that the existing entrance featuring in the rear garage wall was inaccessible. In place of the rear garage wall, a timber fence has been erected along the site's Cambridge Road/laneway frontage to provide temporary access/security the site, according to the applicant.

7.1.2. The Planning Authority, in deciding to issue a split decision, deemed the demolition of the modern garage rear boundary wall to be acceptable, subject to the construction of a replacement boundary treatment in keeping with the character of the protected structure and conservation area. Given the non-original nature of the rear garage wall and its positioning to the rear of the protected structure, I would share the same view

of the Planning Authority in relation to this aspect of the proposed development. This aspect of the proposed development would not detrimentally impact on the architectural heritage of the area including the character or setting of Protected Structure featuring on the subject site, Protected Structures featuring on adjacent sites or the Conservation Area the subject site sits within. Therefore, it is recommended that the Board see fit to grant retention permission for this aspect of the proposed development.

- 7.1.3. The appropriateness of the replacement boundary treatment proposed is considered in the subsequent section.

7.2. Construction of a Wall/Gates

- 7.2.1. The subject application seeks planning permission to construct a 2 metre high rubble wall and 2 metre high 3.2 metre wide powder coated metal swing gates to the rear of the site, immediately adjacent to Cambridge Road and encapsulating part of the historic laneway (2.5-2.74 metres in width) featuring in the intervening space between Cambridge Road and the rear car parking area serving the subject site.

- 7.2.2. The Planning Authority's second reason for refusal to grant planning permission refers to the proposed closing off of this historic laneway and its inclusion in the rear garden of the application site and concludes that this would extinguish access by neighbouring properties to this section of the laneway. Further to this, they contend this obstruction to pedestrian and vehicular access would set an undesirable precedent and would therefore, contrary to the proper planning and sustainable development of the area. The observers to the appeal contend that the section of laneway is not owned by the applicant/the subject proposal will curtail an established right of way (however, it is noted that no further details of this alleged right-of-way have been submitted) and the proposal will change the historic character of Cambridge Road as the materials proposed are not in keeping with the context. The applicant contends that the applicable section of the lane is in their ownership. In this regard, the applicant's appeal response is accompanied by a copy of the deeds of property which they contend indicates that they are the owner of the rear laneway and confirms that the stone wall to the rear of the site is the original wall associated with the property. This is in addition to a drawing included with the application (Drawing No. 350, prepared by Delahunty & Harley Architects/Designers) which overlays the lots included on the

deeds on current OSI maps. They also note that No. 47 Belgrave Square West has constructed a single storey building along the site boundary onto Cambridge Road and a similar proposal was recently approved in the context of No. 46 Belgrave Square West to the immediate north, under Reg. Ref. 3147/18.

7.2.3. Turning my attention firstly to the land ownership/rights of way issues raised. I note that it is not within the remit of the Board to adjudicate on land ownership/rights of way issues and this is a matter for the Courts, as confirmed in Section 5.13 of the Development Management Guidelines for Planning Authorities. However, I do note the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended), which state that a person shall not be entitled solely by reason of a permission to carry out any development. Therefore, should the Board be minded to grant permission, the developers must be certain under civil law that they have all necessary rights in the land to execute the grant of permission. I recommend that a note be attached to any grant of planning permission that might issue from the Board alerting the parties to the provisions of Section 34(13) of the Planning & Development Act, 2000 (as amended).

7.2.4. I now turn my attention to the appropriateness of the proposed wall/gates and resultant subsumption of the laneway in the context of the area's character/architectural heritage. Historically, Cambridge Road would have been used to provide vehicular/service access to the properties fronting Belgrave Square and reduce use of the front of the site for such purposes. As discussed previously, rear vehicular access off Cambridge Road was previously provided to the subject site and the majority of properties along Belgrave Square West feature rear vehicular accesses. With regards to the materiality, the proposed walls will be of limestone rubble construct and the proposed gates are powder coated metal. The proposed wall will sit behind the historic rubble wall featuring along the street edge. Due to its positioning, materiality and height, the proposed wall will sit comfortably in the context of the historic rubble wall as well as the Cambridge Road streetscape which features boundary walls/vehicular access gates in a variety of materials/finishes. Therefore, the installation of the proposed wall/gates providing vehicular access is considered appropriate having regard to the historic context/character of this site/the Cambridge Road streetscape. I am also satisfied that the proposed entrance complies with all applicable

standards/guidelines and that it would not conflict with traffic or pedestrian movements in the immediate area.

- 7.2.5. The resultant subsumption of the laneway is also considered appropriate in this instance as currently the applicable section of the laneway leads to a dead end, the laneways role regarding access having changed over time. A timber fence has been introduced along the southern boundary of No. 46 Belgrave Square West and planning permission has also been granted at No. 46 Belgrave Square West, under Appeal Ref. ABP-302974-18, for the construction of a mews house and a 2.2 metre high wall behind existing historic stone wall on Cambridge Road which results in a similar subsumption. Further to this, similar subsumption has also occurred in the context of No. 47 Belgrave Square West further north.

7.3. Removal of Street Tree/Impact on Retained Street Tree

- 7.3.1. The proposed development also includes the removal of a mature lime tree, one of a pair featuring along the subject site's Cambridge Road frontage, to facilitate vehicular access to the aforementioned wall/gate proposed off Cambridge Road. The Planning Authority's first reason for refusal to grant planning permission states that the proposed development would require the removal of a mature lime tree and is likely to have a negative impact on the root system of another mature lime tree, contrary to Section 16.3.3 and Policy GI28 of the Dublin City Development Plan 2016-2022 and the Dublin City Council Tree Strategy (2016- 2021). They deem both trees to be essential elements of an historic 19th century tree alignment along Cambridge Road. The Planning Authority's Parks, Biodiversity and Landscape Services Section, having inspected the site, found the trunk diameter measurements/the description of Tree T2 (as dead) included in the Arboricultural Impact Assessment to be incorrect. The measurements taken during their site inspection were much larger suggesting the trees are in fact much older (80-100 years) than stated in the application material (40-60 years). In addition, they contend trees such as these have been a feature of this area for a considerable amount of time, based on the Ordnance Survey Maps from 1838-1843 and 1878. Further to this, they deemed the Arboricultural Impact Assessment and Architects Report contained insufficient information to substantiate their claim that Tree T1 will not be negatively affected by the proposed work. In particular, they found that arboricultural method statement to be lacking in a clear method on how the roots system of the retained Tree T1 will be protected during the

construction of the new wall, which involves the introduction of 2 no. piers within this tree's root protection area. Having regard to the foregoing, they recommended that permission be refused in this instance. In regard to this aspect of the development proposal, observers argue that the proposal is in breach of the Dublin City Development Plan 2016-2022 which seeks to 'green the City', in particular Policy GI29 and Objective GIO27. They note that while the applicable tree has been purposely damaged in the past, it now appears to be capable of renewing itself with new foliage visible.

7.3.2. The applicant notes that the existing vehicular entrance off Cambridge Road, to the rear of No. 45 Belgrave Square West, has been made unusable because of the growth of the trees featuring on either side. In response to this aspect of the Council's refusal and the commentary of the Parks, Biodiversity and Landscape Services Section, the applicant submitted a revised drawings (Drawings No. 310 and 311, prepared by Delahunty & Harley Architects/Designers) as part of the grounds of appeal. These revised drawings, included the following amendments/information:

- An increase in the width of the prestressed concrete lintel being used to bridge between the concrete piers of the proposed rear wall to reduce the area in which foundations are to be built within the root protection area with the aim of limiting the impact the proposed development will have on retained Tree T1; and
- Details how excavation will be carried out within Tree T1's root protection area.

7.3.3. Having visited the subject site and reviewed historic google streetview images, it would appear that the two street trees featuring on Cambridge Road immediately adjacent to the subject site have become considerably overgrown over time. This has led to their root systems causing considerable damage to the applicable section of pedestrian footpath and an impediment to pedestrians traversing this section of footpath/vehicular accessing the rear of the subject site. The overgrown/damaging nature of the applicable street trees has undoubtedly diminished their contribution to the Cambridge Road streetscape and has also created public safety issues. Therefore, the removal of Tree T2 is considered appropriate in this instance. It is considered that the removal of Tree T2 will have limited impact on Cambridge Road's character given this section of the streetscape features two other street trees (identified as Trees T1 and T3 in the application material) in close proximity to the tree proposed for removal

and given the state of poor health this tree is currently in. Pursuant to the requirements of Section 16.3.3 of the Dublin City Development Plan 2016-2022, it is recommended that a condition be included requiring a financial contribution be required in lieu of the Tree T2's removal.

- 7.3.4. With regards to the potential impact on the root protection area of retained Tree T1, it is noted that construction the proposed wall involves some work within the root protection area of this tree. However, upon review of the revised plans/information submitted with the applicant's grounds of appeal, I am satisfied that the level of work proposed within the root protection area has been kept to a minimum and subject to care being taken during construction, the proposed wall/gates can be successfully introduced without Tree T1 being negatively impacted upon. To ensure construction is completed in an appropriate manner having regard to the applicable root protection zone, it is recommended that a condition be included requiring that the proposed works are carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained. It is also recommended that a condition requiring that a cash deposit/bond be paid to the planning authority to secure the protection of adjacent street trees/make good any damage caused by construction.

7.4. Other Matters

- 7.4.1. *Antisocial behaviour* – observers contend that the proposed development has created a concealed space where antisocial behaviour takes place. I witnessed no evidence of anti social behaviour at the time of my site visit nor has evidence been provided substantiating such claims. I consider that the control of antisocial behaviour is not within the ambit of planning and is more a matter for other authorities, such as the Garda Síochána. Notwithstanding this, having regard to the fact that the laneway which finishes at the south-western corner of the site is both visually and functionally accessible and overlooked from Cambridge Road, which is a busy road providing access to multiple properties, I do not consider that the development will significantly alter the character of the area or result in a significant rise in antisocial behaviour.

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and scale of the proposed development, the availability of public services, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

8.1. Following the assessments above, I recommend that retention and planning permission for the proposed development should be granted, subject to conditions, for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2016-2022, the existing and historic pattern of development in the area, the limited nature and scale of the proposed development and the poor health/overgrown nature of Tree T2, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure or detract from the architectural heritage or amenities of the Protected Structures on site/in the vicinity or the conservation area more broadly nor would it obstruct pedestrian and vehicular access. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the plans and particulars received by An Bord Pleanála on 5 th November, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the
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	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) Excavations and proposed works within the root protection area of Tree T1 on Drawings No. 310 and 311, prepared by Delahunty & Harley Architects/Designers, as submitted to the An Bord Pleanála on 5th November, 2021, shall be carried out under the supervision of a specialist arborist, in a manner that will ensure that all major roots are protected and all branches are retained.</p> <p>(b) No works shall take place on site until a construction management plan specifying measures to be taken for the protection and retention of Tree T1, together with proposals to prevent compaction of the ground over the roots of the trees, has been submitted to, and been agreed in writing with, the planning authority. Any excavation within the tree protection areas shall be carried out using non-mechanised hand tools only.</p> <p>Reason: To ensure that adjacent street tree (Tree T1) is not damaged or otherwise adversely affected by the proposed development.</p>
3.	<p>Prior to commencement of development, the applicant shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted by the planning authority to secure the protection of adjacent street trees and to make good any damage caused by construction, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with others of similar size and species. The amount of the security shall be determined by the Helliwell or Cavat method by the developer's arboriculturist. The form and amount of the security shall be as agreed between the planning authority</p>

	<p>and the developer or, in default of an agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To secure the retention of existing street trees.</p>
4.	<p>The developer shall pay to the planning authority a financial contribution in lieu of the street tree being removed to facilitate the proposed development. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of Section 16.3.3 of the Dublin City Development Plan 2016-2022, that a condition requiring a contribution in lieu of the street tree being removed be applied to the permission.</p>
5.	<p>Gates to the vehicular accesses shall be inward opening.</p> <p>Reason: In the interest of pedestrian safety.</p>
6.	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining street(s) are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developers expense.</p> <p>Reason: To ensure that the adjoining roadways are kept in a clean and safe condition</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity</p>

Note: *The applicant is advised of the provision under Section 34(13) of the Planning and Development Act, 2000 (as amended) which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development.*

Margaret Commane
Planning Inspector

26th April 2022