



An
Bord
Pleanála

Inspector's Report 313697-22

Development	Part 2, part 3-storey mews house including demolition of existing single-storey shop structure.
Location	18a Fitzgibbon Street, Dublin 1
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3905/21
Applicant(s)	Rachel Keane
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party v. Decision
Appellant(s)	Brendan Gaffney & Valerie Smith
Observer(s)	None
Date of Site Inspection	20 th January 2023
Inspector	Louise Treacy

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 84.3 m² and is located at No. 18a Fitzgibbon Street, Dublin 1. The site is occupied by a vacant, single-storey commercial premises which fronts directly onto Fitzgibbon Street. The adjoining site immediately to the east (18b Fitzgibbon Street) is also characterised by a single-storey commercial premises which is in use as a massage parlour. The site is bounded to the west by the rear of 18 Mountjoy Square East, a 4-storey over basement Protected Structure which appears to be in residential use. The rear elevation of this property is blank facing towards the subject site.
- 1.2. Fitzgibbon Lane extends in a north-west/south-east direction beyond 18b Fitzgibbon Street to the north-east of the appeal site and is generally characterised by single-storey garage structures and rear vehicular entrances along its western side. A 3-storey mews structure was noted to be under construction on this side of the laneway at the time of the site inspection. A 5-storey flat complex (Fitzgibbon Court) is located on the eastern side of Fitzgibbon Lane, proximate to its junction with Fitzgibbon Street.
- 1.3. Mountjoy Square Park is located approximately 60 m to the west of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development consists of the demolition of the existing single-storey shop structure and the construction of a part two, part three-storey mews house. It includes entrance, storage, ground floor w.c., a home office, and a bedroom at ground floor; open plan kitchen-dining and living area at 1st floor; a bedroom, a bathroom at 2nd floor, all measuring 120 m². It includes an accessible roof terrace measuring 18 m² at roof level, incorporating renewable technology, as well as a front garden measuring 13 m². It will include all associated ancillary works and services.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission for the proposed development subject to 13 no. conditions issued on 6th May 2022.
- 3.1.2. Condition no. 3 requires the payment of a development contribution in respect of the Luas Cross City Scheme.
- 3.1.3. Condition no. 4 (a) requires the private amenity space (front garden) to be omitted and the public footpath and cobble entrance to be retained.
- 3.1.4. Condition no. 4 (b) requires a revised site layout map to be submitted for the written agreement of the Planning Authority demonstrating the location of refuse storage and bicycle parking behind the front building line.
- 3.1.5. All other conditions are generally standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports (21st January 2022 and 6th May 2022)

- 3.2.2. Following an initial assessment of the planning application, Dublin City Council's Planning Officer recommended that **Further Information** be requested in relation to 7 no. items as summarised below:

(1) It is considered that sufficient detail has not been submitted in relation to the age of the building, its condition and relationship to the Protected Structure at 18 Mountjoy Square East. Further details are requested to provide a more robust justification for the demolition of the building.

(2) The applicant is requested to submit a justification for the loss of the ground floor commercial unit and its replacement with a residential unit having regard to the site's Z3 land use zoning.

(3) The applicant is requested to clarify if the lands to the front of the site (proposed front garden) are within their ownership.

(4) The applicant is requested to submit documentary evidence of their ownership of the site showing the location of the boundary between the site and 18b Fitzgibbon Street.

(5) Demonstrate the provision of onsite bicycle and refuse storage on a site plan.

(6) In order to minimise overlooking of adjoining residential units and rear gardens, the applicant is requested to submit details of (a) screening to the proposed roof terrace, and (b) the kitchen window to the west facing window to the second bedroom should be either high level or obscure glazed.

(7) The applicant is requested to submit a shadow analysis showing the impact of the proposed 3-storey house on adjoining residential units and open spaces.

3.2.3. The applicant submitted a Response to the Request for Further Information on 11th April 2022 which can be summarised as follows:

3.2.4. **Item No. 1:** An Architectural Heritage Impact Statement has been submitted. It is concluded that the existing buildings are of limited architectural merit, are not primary elements of the Mountjoy Square ACA and do not form part of key views within the ACA. It is considered that the proposed contemporary building would not detrimentally impact on the architectural heritage of the area given its context, scale and design and would be subservient to No. 18 Mountjoy Square East (Protected Structure).

3.2.5. **Item No. 2:** The existing structure was last used as a delicatessen over a decade ago. It has been shut since then and is not viable for a neighbourhood retail premises, as is evidenced by the adjoining premises at 18b Fitzgibbon Street which is used as a massage parlour. Residential use is permissible under the zoning. The dwelling has a home office fronting onto the street, incorporating a use that is economically sustainable and will contribute to the neighbourhood function in the context of the regeneration of this area of the city.

3.2.6. **Item No. 3:** A Land Registry map has been provided demonstrating the applicant's land ownership, which includes the ground floor area to the front of the site / footpath area.

3.2.7. **Item No. 4:** The applicant's legal interest to carry out the development is demonstrated by the enclosed Land Registry map. The applicant does not dispute

the 18a / 18b Fitzgibbon Street boundary ownership line as submitted with the third-party observation. The planning drawings have been updated to reflect the light well between the two properties.

- 3.2.8. **Item No. 5:** Revised drawings have been submitted demonstrating bike and bin stores within the applicant's ownership boundary.
- 3.2.9. **Item No. 6:** Revised drawings have been submitted demonstrating: (1) the raising of the roof parapet by 600 mm to a height of 1800 mm above the level of the roof terrace to minimise overlooking towards Nos. 17 and 18 Mountjoy Square and their rear gardens, and (2) the provision of obscure glazing to the kitchen and bedroom windows.
- 3.2.10. **Item No. 7:** A Daylight and Overshadowing Analysis has been submitted which demonstrates that the proposed development will have no material impact on adjoining residential units and associated open spaces.
- 3.2.11. Following an assessment of the applicant's Further Information submission, the Planning Officer considered that the proposed development would be acceptable at this location and that planning permission could be granted subject to the omission of the private area to the front of the site and an alternative location being agreed for bicycle parking.
- 3.2.12. **Other Technical Reports**
- 3.2.13. **Engineering Department – Drainage Division (2nd December 2021 and 20th April 2022):** No objection to the proposed development subject to conditions.
- 3.2.14. **Transportation Planning Division (10th January 2022 and 4th May 2022):** Initial recommendation that Further Information be requested as follows: (1) the applicant is requested to clarify if the land of the proposed front garden is within their ownership, and if not, to omit the front garden from any revised site plans, (2) a site layout plan demonstrating the provision of bicycle storage and refuse storage onsite, with the permanent storage of refuse bins on the public pavement being unacceptable.
- 3.2.15. Following the applicant's Further Information submission, it was recommended that planning permission be refused for the proposed development based on the maintenance of the area to the front of the site by Dublin City Council, with the

proposal to privatise this area considered unacceptable. Suitable planning conditions are identified in the event planning permission is granted for the proposed development.

3.3. Prescribed Bodies

- 3.3.1. **Transport Infrastructure Ireland (6th December 2021):** Recommends that a S. 49 supplementary development contribution condition regarding Luas Cross City be attached in the event planning permission is granted.
- 3.3.2. **National Transport Authority:** None received.
- 3.3.3. **Irish Rail:** None received.
- 3.3.4. **Fáilte Ireland:** None received.
- 3.3.5. **An Chomhairle Ealaíon:** None received.
- 3.3.6. **The Heritage Council:** None received.
- 3.3.7. **An Taisce:** None received.
- 3.3.8. **Minister for the Arts, Heritage & the Gaeltacht:** None received.
- 3.3.9. **Irish Water:** None received.

3.4. Third Party Observations

- 3.4.1. A third-party observation was made on the application by John Henry Architect on behalf of Brendan Gaffney and Valerie Smith, the owners of 18b Fitzgibbon Street, Dublin 1. The issues which are raised can be summarised as follows: (1) overbearing impact and structural implications for 18b Fitzgibbon Street, (2) overdevelopment, (3) excessive site coverage, (4) insufficient open space, (5) reduced availability of light, (6) overlooking, (7) depreciation in value of adjoining properties, (8) shadow assessment required, (9) excessive building height, (10) consent required for any development which undersails or physically impinges on adjoining properties, (11) 1 no. underground car parking space required, (12) nuisance and disturbance during construction works, (13) site ownership requires clarification, (14) site forms part of a Protected Structure

4.0 Planning History

4.1. None.

4.2. Planning History - Neighbouring Sites

- 4.2.1. **Planning Authority Reg. Ref. 3904/21:** Planning permission granted on 16th June 2022 for the conversion of the existing single-storey storage building and the construction of an additional two storeys to give a three-storey mews house and accessible roof terrace at No. 1 Fitzgibbon Lane, Dublin 1.
- 4.2.2. **Planning Authority Reg. Ref. WEB1360/15:** Planning permission granted on 27th April 2016 for the demolition of the existing single-storey garage structure with mezzanine and the construction of a 3-storey mews house with roof terrace at No. 3 Fitzgibbon Lane, Dublin 1.

5.0 Policy and Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. While the Dublin City Development Plan 2016-2022 was in force at the time the planning application was lodged, the 2022-2028 development plan has since been adopted and is the relevant local planning policy document for the purposes of adjudicating this appeal case.

5.2. Land Use Zoning

- 5.2.1. The site is subject to land use zoning Z3 (Neighbourhood Centres) which has the objective “to provide for and improve neighbourhood facilities”. Section 14.7.3 of the plan notes that these centres provide local facilities and range from the traditional parade of shops to larger neighbourhood centres. They provide an essential and sustainable amenity for residential areas, and it is important that they should be maintained and strengthened, where appropriate. Neighbourhood centres may include an element of housing, particularly at higher densities, and above ground floor level.
- 5.2.2. Residential land uses are permissible under this zoning objective.

5.3. Conservation

5.3.1. The site is located within the Mountjoy Square Architectural Conservation Area (ACA).

5.3.2. **Policy BHA 7 (Architectural Conservation Areas)** – It is the policy of Dublin City Council to:

(a) To protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA 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 shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

(b) Ensure that all development proposals within an ACA contribute positively to the character and distinctiveness of the area and have full regard to the guidance set out in the Character Appraisals and Framework for each ACA.

(c) Ensure that any new development or alteration of a building within an ACA, or immediately adjoining an ACA, is complementary and/or sympathetic to their context, sensitively designed and appropriate in terms of scale, height, mass, density, building lines and materials, and that it protects and enhances the ACA.

Contemporary design which is in harmony with the area will be encouraged.

(d) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

(e) Promote sensitive hard and soft landscaping works that contribute to the character and quality of the ACA.

(f) Promote best conservation practice and encourage the use of appropriately qualified professional advisors, tradesmen and craftsmen, with recognised conservation expertise, for works to buildings of historic significance within ACAs.

5.3.3. **Policy BHA 8 (Demolition in an ACA)** - There is a presumption against the demolition or substantial loss of a structure that positively contributes to the

character of the ACA except in exceptional circumstances where such loss would also contribute to a significant public benefit.

- 5.3.4. **Policy BHA 14 (Mews)** - To promote the redevelopment and regeneration of mews lanes, including those in the north and south Georgian core, for sensitively designed, appropriately scaled, infill residential development, that restores historic fabric where possible, and that removes inappropriate backland car parking areas.

5.4. **House Developments**

- 5.4.1. Floor areas shall comply with the standards outlined in Section 5.3 of the “Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities” (2007). Private open space is usually provided by way of private gardens to the rear, with a standard of 5-8 m² per bedspace normally applied within the inner city. These standards may be relaxed on a case-by-case basis subject to a qualitative analysis of the development.
- 5.4.2. Where dwellings have little or no front gardens in urban settings, it is important that ‘defensible space’ is created behind the public footpath and the design of ground floor windows will need to be carefully considered.
- 5.4.3. The site is located in Zone 1 of the city with respect to car parking provision, and within which, a maximum standard of 0.5 space per dwelling applies. Cycle parking is required at a rate of 1 space per dwelling.

5.5. **Infill Housing**

- 5.5.1. The planning authority will favourably consider the development of infill housing on appropriate sites, to facilitate the most sustainable use of land and existing urban infrastructure. Infill housing should comply with all relevant development plan standards for residential development including unit sizes, dual aspect requirements, internal amenity standards and open space requirements. In certain limited circumstances, the planning authority may relax the normal planning standards to ensure that vacant, derelict and under-utilised land is developed.

5.6. Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)

- 5.6.1. The Guidelines do not identify a target gross floor area for 2-bedroom, 4-person, 3-storey dwellings. A target of 80 m² is identified for 2-bedroom, 4-person, 2-storey dwellings. The area of a double bedroom shall be at least 11.4 m² and of the main bedroom shall be at least 13 m² in a dwelling designed to accommodate 3 or more persons.

5.7. Natural Heritage Designations

- 5.7.1. None.

5.8. EIA Screening

- 5.8.1. Having regard to the nature and scale of the proposed development, comprising 1 no. dwelling in an established urban area, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment 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. A third-party appeal against the Planning Authority's Notification of the Decision to Grant Permission for the proposed development has been lodged by John Henry Architect on behalf of Brendan Gaffney and Valerie Smith, who own 18b Fitzgibbon Street, Dublin 1 adjoining the appeal site. The grounds of appeal can be summarised as follows:

- The development will cause serious disruption to the occupying tenants of 18b Fitzgibbon Street.
- The proposed side walls will undermine the structural integrity of the party wall which supports the roof of 18b Fitzgibbon Street.
- The Irish Water drinking water supply and foul sewer runs underground through 18a Fitzgibbon Street.

- The proposed development would have a serious overbearing impact and structural implications for 18b Fitzgibbon Street.
- The proposal represents overdevelopment, with an excessive site coverage (100%) and no room for proper communal open space.
- Reduced availability of light to appellants' property.
- Overlooking of Nos. 17 and 18 Mountjoy Square East from the habitable rooms above ground floor level (bedroom no. 2 and kitchen).
- Inadequate separation distances above 1st floor level.
- Overbearing impacts due to building height and overlooking from roof terrace.
- Loss of light, privacy and amenity would result in depreciation of value of appellants' property as well as possible loss of income.
- Shadow diagrams should be submitted.
- A reduced maximum building height of 2-storeys should apply, with 1 storey appropriate adjacent to the appellants' property and an overall reduced building massing.
- The development could potentially undermine the existing party structures, such as undersailing of existing foundations as well as possible damage to the existing party boundary walling structures. Written consent will be required from the appellants if any works are proposed.
- Screening should be provided to the terrace to prevent overlooking.
- An underground car parking space should be provided to serve the development.
- Nuisance and disturbance during construction works – site and building works should only be carried during the week.
- Rainwater from the roof will have to outfall onto the appellants' land – this will have to be agreed prior to the commencement of construction.
- The ownership of the site requires clarification.
- The site forms part of a Protected Structure – a conservation impact report and 10 copies of the planning drawings are required.

6.2. Applicant's Response

6.2.1. A response to the appeal was submitted by MacCabe Durney Barnes on behalf of the applicant on 27th June 2022 which can be summarised as follows:

- The appeal is invalid as it did not state the appellants' address, with 18b Fitzgibbon Street being occupied by a commercial tenant.
- Planning permission has been granted for a contemporary, 3-storey residential development at 1 Fitzgibbon Lane.
- The proposed development is not overbearing and does not constitute overdevelopment – it is a vacant, city centre plot close to all modes of public transport, it is partially located on an infill / former mews site which is vacant, underutilised and unattractive in an ACA. The site currently has 100% site coverage, as does the appellants' premises.
- The building is stepped, reducing the mass of the building and is subservient to No. 18 Mountjoy Square, with an elegant profile on a compact site.
- The applicant's daylight and sunlight analysis illustrated that there is no negative impact on 18b Fitzgibbon Street, the front window of which is almost entirely blocked by an advertising panel which prevents the entry of sunlight/daylight. The glazing panels of this property's front door are also blocked. In this context, it is disingenuous to state that the proposed development will impact on daylight.
- The proposed development will cast a shadow on the existing massage premises, but this will have no negative impact on this structure as there are no windows on the roof and no upper floors with windows.
- The appeal has provided no evidence of why the proposed development would depreciate the value of the massage premises.
- The proposed development will enhance this section of the streetscape and set an example of a well-designed infill house on a compact site.
- There can be no overlooking of the massage premises as both properties are located on the same building line.

- No windows are proposed on the eastern elevation, allowing for a development opportunity on the adjacent site.
- Design measures were proposed at Further Information stage to address potential overlooking of 17 and 18 Mountjoy Square East.
- There is no rationale to maintain a single or 2-storey building height in a central location, surrounded by higher buildings. The proposed building height is lower than those on Mountjoy Square and the apartments on Fitzgibbon Street.
- The proposed development does not include a basement and would not potentially undermine the existing party structures.
- Minor revisions are proposed at roof level to increase the open space from 17.2 m² to 21 m².
- The proposed development comprises a single house and communal open space is not required.
- Car parking is not required in this central location.
- All proper processes in relation to foul and water connections will be carried out and the drainage requirements of Dublin City Council will be fully complied with.
- The applicant is the owner of the subject site.
- The proposed development has a contemporary design which is best practice for new development in a historical area. A conservation assessment of the proposal has been undertaken.
- The proposed front garden area is in the ownership of the applicant and should be retained. A 2 m footpath would be retained in accordance with DMURS. The proposed front amenity space reflects the southern boundary of 18 Mountjoy Square East and other properties on the opposite side of the street.
- The proposed front garden would provide a much higher quality of residential amenity and would provide defensible space in accordance with the residential quality standards of the development plan.

6.2.2. The response includes correspondence from a conservation architect which supports the proposals for the front garden area. A drawing of the enlarged roof terrace is also enclosed (Drawing No. 2013A P 114 Rev. 2), together with email correspondence from a solicitor which states that the applicant has good title to the site within the application boundary (as illustrated on 2 no. accompanying maps).

6.3. **Planning Authority Response**

6.3.1. None received.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. The appellants' agent made a further submission on 20th July 2022 clarifying that the appellants are the owners of 18b Fitzgibbon Street, Dublin 1 but do not live at this property.

7.0 **Assessment**

7.1. I am satisfied that the main issues for consideration in this case include:

- Building Height
- Overlooking, Overbearing and Overshadowing Impacts
- Compliance with Development Plan Standards / Private Amenity Space
- Construction Impacts
- Appropriate Assessment

7.2. Each of these issues is addressed in turn below.

7.3. **Building Height**

7.3.1. The appellants submit that the proposed building height is excessive and that a maximum height of 2-storeys would be more appropriate on the subject site, reducing to 1-storey adjacent to the appellants' property. In response to the foregoing, the applicant's agent submits that there is no rationale to maintain a single

or 2-storey building height in a central location, surrounded by higher buildings. It is noted that the proposed building height is lower than those on Mountjoy Square and the apartments on Fitzgibbon Street. It is also highlighted that the building profile is stepped.

7.3.2. In considering the foregoing, I note that the height of the proposed development increases from 2-storeys adjacent to the boundary with 18 Mountjoy Square East to 3-storeys adjacent to 18b Fitzgibbon Street. In my opinion, this building height range would not be inappropriate in this inner-city context. In reaching this conclusion I also note that planning permission has recently been granted for a 3-storey mews dwelling at No. 1 Fitzgibbon Lane (planning reg. ref. 3904/21 refers) adjoining 18b Fitzgibbon Street to the north, while a 3-storey mews dwelling is under construction further north along this laneway as granted under planning reg. ref. WEB1360/15. While I acknowledge that 18b Fitzgibbon Street is single-storey in height, I note that the pre-existing building heights in this area are largely higher, including the 4-storey over basement Protected Structures at Mountjoy Square East / Belvedere Place and the 5-storey flat complex at Fitzgibbon Court. I further note that the height of the existing buildings on the opposite side of Fitzgibbon Street generally ranges from 2-4 storeys.

7.3.3. Thus, having regard to the established and emerging building heights at this location, I consider that a mews dwelling of 2-3 storeys would be acceptable on the subject site. I further note that the appellants' property is commercial in nature, and as such, I consider that the height of the proposed development would have no undue negative impact in this context.

7.4. Overlooking, Overbearing and Overshadowing Impacts

7.4.1. The appellants submit that the proposed development would have a serious overbearing impact on their property, would reduce the availability of light to their property, and that overlooking would occur from the proposed roof terrace. It is also submitted that overlooking of Nos. 17 and 18 Mountjoy Square would occur from the habitable rooms above ground floor level.

7.4.2. In response to the foregoing, the applicant's agent submits that the proposed development is not overbearing and notes that the subject site and the appellants' site, are both characterised by 100% site coverage. It is also submitted that the

applicant's daylight / sunlight analysis confirms there is no negative impact on 18b Fitzgibbon Street and while it will cast a shadow on this adjoining premises, no negative impact will arise given the absence of windows at roof level. It is noted that there are no windows on the eastern elevation of the proposed building and that no overlooking can occur, as both properties are located on the same building line.

- 7.4.3. Having undertaken an inspection of the subject site, I am satisfied that no undue overbearing, overshadowing or overlooking impacts would occur to the appellants' property having regard to its design/layout and its commercial nature. While the height of the proposed development will exceed that of No. 18b Fitzgibbon Street, I do not consider that any significant overbearing impacts would arise on foot of the foregoing. I also note that planning permission has been granted for a 3-storey mews dwelling on the adjoining site to the north of the appellants' property at No. 1 Fitzgibbon Lane. As such, should planning permission be granted in this instance, I consider that these infill developments would serve to improve the existing character of these streets and may inform any future redevelopment proposals on the adjoining sites.
- 7.4.4. I note the contents of the applicant's Daylight Analysis and Overshadowing Assessment which confirms that some overshadowing of the appellants' property will occur. However, given that the appellants' property has no windows at upper floor level / fronting onto the appeal site, I consider that no significant impacts would arise. Similarly, I consider that no overlooking impacts can arise in this context. As such, I am satisfied that the concerns which have been raised by the appellants with respect to their property are without substance.
- 7.4.5. In considering the potential for the proposed development to result in the overlooking of Nos. 17 and 18 Mountjoy Square East, I note that obscure glazing is proposed to the rear 1st and 2nd floor windows directed towards No. 17 Mountjoy Square East, while obscure glazing is proposed to the 2nd floor window on the gable elevation facing towards the rear of No. 18 Mountjoy East. I also note that an 1800 mm parapet is proposed around the roof terrace. I am satisfied that these design measures will ensure that no undue overlooking of these properties will occur on foot of the proposed development.

7.5. Compliance with Development Plan Standards / Private Amenity Space

- 7.5.1. While the “Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities” (2007) do not identify a gross floor space target for a 2-bedroom, 4-person, 3-storey dwelling as proposed in this instance, by way of reference I note that the floor area of the dwelling (120 m²) exceeds the standard for a 2-bedroom, 4-person, 2-storey dwelling by 40 m². As such, I am satisfied that the proposed development would provide an acceptable level of internal accommodation for future occupants. Given the location of the site within the Mountjoy Square ACA, I consider it reasonable that final details of the proposed materials and finishes be agreed in writing with the Planning Authority prior to the commencement of development. This matter can be addressed by planning condition should the Board decide to grant planning permission in this instance.
- 7.5.2. The private amenity space to serve the dwelling comprises a terrace at roof level, the area of which has increased from 17.2 m² to 21 m² on foot of minor revisions proposed to its configuration by way of the applicant’s appeal response (Drawing No. 2013A P 114 Rev. 2 refers). I am satisfied that the revisions are not material and can be considered as part of this appeal case. The development plan requires that private open space for developments within the inner city be provided at a rate of 5-8 m² resulting in a requirement for 20 m² in this instance. As such, I am satisfied that the roof terrace (as amended) would provide an acceptable level of amenity for future occupants. In this regard I note that the Planning Authority had no objection to the roof terrace configuration as proposed at planning application stage. I also note that the proposed roof terrace generally reflects the private amenity space arrangements of the permitted mews developments at No. 1 Fitzgibbon Lane and No. 3 Fitzgibbon Lane.
- 7.5.3. In responding to the third-party appeal, the applicant’s agent has provided arguments in support of retaining the proposed ground floor amenity space to the front of the property. It is submitted that this area is in the ownership of the applicant and should be retained, reflecting the southern boundary of 18 Mountjoy Square East and other properties on the opposite side of the street. It is also submitted that the proposed front garden would provide a much higher quality of residential amenity and would provide defensible space in accordance with the residential quality standards of the development plan.

- 7.5.4. In considering this issue, I note that the applicant was requested to demonstrate legal title to these lands under Item No. 3 of the Request for Further Information. In response, the applicant submitted an annotated Land Registry Map to demonstrate the extent of the applicant's land ownership, which includes the adjoining parcel of land to the front of the site. In assessing the foregoing, the Transportation Planning Division has stated that this area is maintained by Dublin City Council, and as such, functions as a public footpath. It was considered that the proposal to use this area as private amenity space and to accommodate bin and bicycle storage was unacceptable and would set an undesirable precedent for other similar developments.
- 7.5.5. While I acknowledge that the applicant's appeal response includes correspondence from a solicitor which states that the applicant has good title to the site within the application boundary, I further note the commentary of Dublin City Council regarding the maintenance of this space. I also note that the proposed development already allows for bin storage within the building footprint and that parking for 1 no. bicycle (as required under the development plan) could reasonably be accommodated within the ground floor storage room (6 m²).
- 7.5.6. While I acknowledge the applicant's commentary in relation to the provision of defensible space at ground floor level, I consider that the proposed building line would not be unusual in an inner city, infill context. I also note that the proposed roof terrace will deliver the required private amenity space for the proposed development, and in my opinion, the ground floor space would have limited amenity value given its location directly adjacent to the footpath.
- 7.5.7. On balance, I consider that the ground floor amenity space should be omitted, and bin and bicycle storage should be facilitated within the building footprint. These matters can be addressed by planning condition in the event the Board decides to grant planning permission for the proposed development.

7.6. Construction Impacts

- 7.6.1. The appellants have raised a number of concerns regarding disturbance impacts which would arise to the occupier of their commercial premises on foot of the proposed development and the potential for damage to party boundaries.
- 7.6.2. I acknowledge that the development of the subject site would result in some disturbance impacts to adjoining properties. However, such impacts would be temporary in nature and would be typical of the development of any similar inner urban site. The potential for damage to arise to shared party boundaries is not a matter which is open for adjudication under this appeal case. In this regard, I would draw the Board's attention to the provisions of S. 34 (13) of the Planning and Development Act, 2000 (as amended) which states that "a person shall not be entitled solely by reason of a permission under this section to carry out any development".

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development, comprising 1 no. infill dwelling on a zoned, inner-city site, and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be granted for the proposed development.

9.0 Reasons and Considerations

- 9.1. Having regard to the site's location on serviced land within the inner city, the nature and scale of the proposed development, and the pattern of recently permitted infill residential developments in the immediate vicinity of the appeal site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or depreciate the value of property in the vicinity. The proposed development would,

therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 11th April 2022 and by the further plans and particulars received by An Bord Pleanála on 27th June 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 3 months of the date of this Order 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 the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of Luas Cross City (St. Stephen's Green to Broombridge) in accordance with the terms of the Supplementary Development Contribution Scheme made by the planning authority under section 49 of the Planning and Development Act 2000, as amended. The contribution shall be paid within 3 months of the date of this Order 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 the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Supplementary Development Contribution Scheme made under section 49 of the Act be applied to the permission.</p>
4.	<p>The external finishes of the proposed development shall be agreed in writing with the Planning Authority prior to the commencement of development.</p> <p>Reason: In the interests of visual amenity.</p>
5.	<p>The private amenity space at ground floor level to the front of the proposed development on Fitzgibbon Street shall be omitted.</p> <p>Reason: In the interests of the proper planning and sustainable development of the area.</p>
6.	<p>Bin and bicycle storage shall be accommodated within the building footprint at ground floor level.</p> <p>Reason: To ensure an appropriate standard of development and to retain the footpath clear from clutter.</p>

7.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
8.	<p>Site development and building works shall be carried out only between the hours of 0700 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>

Louise Treacy
Senior Planning Inspector

23rd January 2023