



An
Bord
Pleanála

Inspector's Report ABP 314738-22

Development	Demolition of Extensions, internal modifications, construction of sunroom and all associated site works.
Location	No 28 Fitzwilliam Square South and No 28 Kingram Place, Dublin 2
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3892/22
Applicant	Paul Gannon
Type of Application	Permission
Planning Authority Decision	Permission
Type of Appeal	First Party
Appellant	Paul Gannon
Inspector	Jane Dennehy
Date of Inspection	7 th September, 2023.

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1.0 Site Location and Description

1.1. The application site is that of No 28 Fitzwilliam Square South which is a Georgian two bay, four storey over basement level townhouse with a return and extensions at the rear overlooking the area of the original garden in which there is a mature tree. At the southern end of the gardens within the site there is a coach house/mews, setback behind a rubblestone wall and entrance and off Kingram Place a former rear services lane providing access to the stables at the rear of the plots of the Georgian townhouses. Unlike many of the original historic plots of the Georgian houses at Fitzwilliam and in the South Georgian Core of the city the original historic plot which incorporates the main house, gardens and former stable building and rear access has not been subdivided or altered.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for major external and internal works which include demolition of ground and first floor extensions, internal alterations, mechanical and electrical services and construction of a sunroom at the rear with a balcony at the first floor return level. Also included are, works to a mews to include a change of use to a one bed apartment for residential use ancillary to the main dwelling. Works on foot of the grant of permission has been taken up at the time of inspection.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 2nd September, 2022, the planning authority decided to grant permission for the proposed development subject to conditions of a planning and technical nature and two development contribution conditions are included:

Condition No 2 is a development contribution condition according to which €6,933.69 (subject to indexation) is payable towards public infrastructure and facilities

benefiting development in the administrative area of the City Council in accordance with its Section 48 Development Contributions Scheme.

Condition No 3 is a development contribution condition according to which €2,000,00 (subject to indexation) is payable towards the cost public infrastructure and facilities benefiting development in the LUAS Cross City Scheme in accordance with its Section 49 Supplementary Development Contributions Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer, in his original report having taken the recommendations in the conservation officer's report recommended a request for additional information in respect of proposed mechanical and electrical services and service runs proposed, ventilation, a heating system appropriate for use in historic buildings, lighting, ceiling plaster, joinery and ironwork in respect of the main townhouse and with regard to conservation methodology and works specification for the mews (stable/coach house building.).

Further to receipt and review of the further information submission lodged on 9th August 2023 the planning officer, having taken into account the recommendations in the final report of the Conservation Officer recommended that permission be granted subject to conditions.

3.2.2. Other Technical Reports

3.2.3. The initial reports of the Conservation Officer indicated a recommendation for an additional information request and the final report indicated a recommendation for a grant of permission subject to outstanding matters being addressed by compliance with conditions.

3.2.4. The Drainage Division indicates no objection subject to standard conditions.

A submission from Transportation Infrastructure Ireland (TII) Indicates a recommendation for inclusion of a Section 49 Supplementary Development Contribution Condition.

4.0 Planning History

There is no record of planning history for the application site.

5.0 Policy and Context

5.1. Development Plan

The decision on the application was determined by the planning authority having regard to the now superseded Dublin City Development Plan, 2026-2022.

The operative development plan is the Dublin City Development Plan, 2022-2028 which came into effect on 14th December, 2023 according to which the site is within an area subject to the zoning Objective “ Z8 “Georgian Conservation Areas”.

Chapter 11 provides guidance, policies and objectives for Built Heritage and Archaeology.

No 28 Fitzwilliam Square is included on the record of protected structures. (Item Ref 2823)

The location is also within the (statutory) Fitzwilliam Square Architectural Conservation area and South Georgian Core.

5.2. EIA Screening

5.3. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

An appeal was received from the applicant on his own behalf on 3rd October, 2023. The appeal is against the imposition of Condition No 2 according to which a Section 48 Development Contribution in the amount of €6,559.49 (subject to indexation, is

payable and Condition No 3 according to which Section 49 Supplementary Development Contribution in the amount of €2,000.00. According to the appeal:-

- It is not proposed to subdivide the coach house from the main house. It is not a separate dwelling and is an integral and ancillary part of the main house. No new residential component is proposed. The upper floor was in residential use and this use has not ceased so there is no proposal for a “new” dwelling on the upper floor.
- The building did fall into disrepair leading to an endangerment notice being served in 2019. It is to be repaired and refurbished with no change to the residential use for the upper floor in that it is to be refurbished to modern residential use.
- This upper floor in which there are some nineteenth/twentieth century stoves has remained unchanged since circa 1922 when it and the main house were sold to the Meenan family who resided there until its sale in 2021. The ground floor stables and cobble floor are intact on one side whereas double doors were installed on the other side to facilitate garage use. Refurbishment with retention of original features at ground level is proposed.
- With regard to the “extension” to the main house, there is to be no net increase in floor space. As shown on the plans that the proposal in the application is for demolition of a modern extension. A small conservatory is to be added to the historical footprint of the main house. As a result there is to be a reduction in the overall footprint of 1450 mm in length (from 13760 to 12310) and a reduction in width by 50 (from 4065 to 4015).

6.1. Planning Authority Response

A submission was received from the planning authority on 3rd November, 2023 according to which:

- The planning authority incorrectly include requirements for development contributions in respect of the “extension” to the main dwelling was because there is an exemption for extensions up to a limit of forty square metres on floor area.

- The payment of development contributions is required for the conversion of the stable building to a one bed apartment. The stable building is a separate unit. It is not ancillary to the main house or attached to it and it has a separate address. There is no statement as to the last established use of the stables. It is therefore considered that Section 48 and Section 49 development contributions are payable and the Board is requested to uphold the decision of the planning authority in this regard.

6.2. Applicant Response

A further submission was received from the applicant on 22nd November, 2022 attached to which are photographs of the interior of the coach house. According to the submission:

- The planning authority in its response to the appeal has not taken into consideration the original relationship between the main house and the stables at which the upper floor was in established residential use in the twentieth century.
- The original curtilage includes the main house and the stables and back entrance to the property. The stables and coach house being built as ancillary to the main house and remained unchanged and census returns for the stable buildings were not separate to those of the main house in the 1911 census.
- In the first half of the twentieth century the upper floor which initially would have served as a hayloft and accommodation for a coachman became a staff apartment with furnishings, a stove and fireplace installed as shown in photos attached.
- The City Council may have given the stables a separate address because other coach houses had been separated from the main houses on Fitzwilliam Square. There has never been and there is no separation between the main house and stables which continue to be ancillary to the main house at No 28 Fitzwilliam Square.
- The vehicular entrance onto Kingram Lane can only be opened from the inside, there is no letter box or other access except from Fitzwilliam Square.

It is the applicant's intention to continue the part ground level stable use, for storage and the upper floor as part residential use, as occasional guest accommodation in an ancillary relationship to the main house.

- It is the applicant's understanding that a separate planning application would be required if it is intended to separate the stables building from the main house with there being additional requirements such as provision for external space.

7.0 Assessment

- 7.1. The Section 48 Development Contributions Schemes for both 2020-2023 and 2023 – 2026 Adopted by the Council have both been reviewed. It is noted that the terms and conditions of the scheme applicable at the time of lodgement of the application and in this instance the Section 48 Development Contributions Scheme 2020-2023 applies. However, it is noted that the relevant terms and conditions and exemptions and reductions with regard to the current application and appeal are the same in both the current 2023-2026 and 2020-2023 Section 48 Development Contributions Schemes.
- 7.2. The terms and conditions and exemptions and reductions are also the same within the adopted Section 49 Supplementary Development Contribution Scheme, in respect of the LUAS Cross City Project – (Stephen's Green-Broombridge).
- 7.3. With regard to the demolition of the existing extensions and the addition of a new conservatory, the planning authority's statement in the response to the appeal in which it is stated that contributions are not payable on the basis that the floor area of the space to be demolished exceeds that of the proposed conservatory is noted. The net floor area does not exceed forty square metres as provided for the Section 48 Development Contribution Scheme and the Section 49 Supplementary Development Contribution Scheme. To this end, the dispute has been resolved between the parties and it can be concluded that no contributions are payable in respect of extensions to the main house.
- 7.4. With regard the structure at the end of the site known as 28 Kingram Place, it is noted that the terms. "mews" "stables" and "coach house" have been used in the documentation in available in connection with the application and the appeal The

structure appears to have been originally constructed as stables at ground level with fodder storage and coachman accommodation at the loft level overhead and access from the rear service lane. These arrangements would have been similar and common to the nineteenth century for the Georgian houses around Fitzwilliam Square.

- 7.5. The case made as to part residential use and part use as a garage following acquisition of the property circa 1922 by the Meenan family is accepted. While the residential use may not have been continuous, there is no confirmatory evidence that that would support any claim that the use has lapsed, and the case made by the applicant as to an existing fit out' for residential use on the upper floor is of note in this regard. Unlike most properties on Fitzwilliam Square, the historic plot of No 28 was not severed so as to provide for two separate properties on individual sites, irrespective of whether any material change of use, has taken place. As such therefore, the coach house/stables/mews structure comes within the historic and unchanged curtilage of No 28 Fitzwilliam Square, which as a protected structure is subject to statutory protection. .
- 7.6. It has been concluded that the plot for No 28 Fitzwilliam Square has not been severed as a result of which the coach house/stables/mews is within the same plot and curtilage, that there has been no material change of use to it involved,(other than the part adaptation from stables for horses to garage space. It has been and, is to continue to be in residential use, (albeit refurbished) which is ancillary to the residential use of the main building, with no additions to the existing floor area
- 7.7. The applicant in the appeal has clearly pointed out that subdivision of the original plot to provide for a separate independent dwelling unit has not been proposed in the application. In the absence of a grant of planning permission, subdivision of the plot and use as a separate independent dwelling unit would constitute unauthorised development.
- 7.8. Given the foregoing it is considered that the planning authority did not correctly apply the terms and conditions of the Section 48 Development Contribution Scheme, 2020-2023 when it determined its decision and that it should be directed to delete Condition No 2.

7.9. With regard to Condition No 3 there is a requirement for payment of a supplementary development contribution in accordance with the terms of the section 49 Supplementary Development Contribution Scheme, in respect of the LUAS Cross City Project – (Stephen’s Green-Broombridge). The amount payable is two thousand euro which is the amount payable in respect of a residential unit. If it is agreed that the use of the upper floor of the coach house is not a new independent dwelling unit, that residential use is not lapsed, and that it is a proposal for refurbished upper floor residential use ancillary to the residential use of the main dwelling, and the existing historic plot is not to be subdivided to allow for formation of a separate site, and, that no additional floor area is involved, as discussed above it can also be determined that a Section 49 supplementary development contribution is not payable having regard to the terms and conditions of the adopted Section 49 Supplementary Development Contribution Scheme, in respect of the LUAS Cross City Project – (Stephen’s Green-Broombridge).

7.10. Given the foregoing it is considered that the planning authority did not correctly apply the terms and conditions of the Section 49 Supplementary Development Contribution Scheme, when it determined its decision and that it should be directed to delete Condition No 3.

7.11. **Appropriate Assessment Screening**

7.12. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 **Recommendation**

8.1. It is recommended that the planning authority be directed to delete Condition Nos 2 and 2 based on the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to:-

- the Section 48 Development Contributions Scheme, 2020-2023 Section 49 Supplementary Development Contributions Scheme, (LUAS Cross City – St Stephens Green- Broombridge) adopted by Dublin City Council,
- to the original single historic plot of No 28 Fitzwilliam Square which extends from the frontage onto Fitzwilliam Square South of the south side of the coach house building to the frontage onto the rear service lane (Kingram Place) which is to remain unaltered.
- to the use of the coach house, with no increase in floor area, for storage at ground level and residential use at upper floor level which has not lapsed, and which is ancillary the residential use of the main dwelling
- to the demolition of the existing extension and the addition of a new conservatory to the main house which results in a reduction in the total floor area for extensions and additions and which does not exceed forty square metres,

It is considered that the planning authority did not correctly apply the terms and conditions of the Section 48 Development Contributions Scheme, 2020-2023 and the Section 49 Supplementary Development Contributions Scheme, (LUAS Cross City – St Stephens Green- Broombridge) in attaching Condition Nos 2 and 3 to the grant of permission.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Jane Dennehy
Inspector
12th September, 2023.