



An
Bord
Pleanála

Inspector's Report ABP315550-23

Development	Protected Structure - provide for part removal of non-original roof structure and provision of 4 th floor set back extension of 27 sq m and associated roof terrace of 11 sq m.
Location	38 Fenian Street, Dublin 2
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	5077/22
Applicant(s)	Royal Irish Academy of Music
Type of Application	Permission for amendment to planning application 4085/22
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Royal Irish Academy of Music
Observer(s)	Philip O'Reilly, 18 Grosvenor Place, Rathmines, Dublin 6
Date of Site Inspection	15/16 October 2023
Inspector	Vanessa Langheld

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1.0 Site Location and Description

- 1.1. No. 38 Fenian Street is a terraced two-bay four-storey over basement mid Georgian townhouse on the northside of Fenian Street. The total floor area of the existing building is stated to be 237 sq m on a site of 67 sq m. With a stated internal width of some 5.125 m it is narrower than the adjoining buildings and includes an integral carriageway on its eastern side leading to Harcourt Row to the rear. It is adjoined to the east by The Gingerman Pub, which is located in a wider, but similar type building.
- 1.2. There is some disagreement as to the age of the building: The Planning Authority's Conservation Officer estimates it to have been constructed as early as 1750; while the Applicant's Architect has used the National Inventory of Architectural Heritage assessment of the building's construction date to have been c. 1820-1840. The property is a Protected Structure (Ref. No. 8743) with regional significance (Ref. 50100308).
- 1.3. The property is flanked on either side by different type buildings of varying proportions. The appeal building is lower than the building on its western elevation. The site is bounded to the front (south) by Fenian Street and to the rear (north) by Harcourt Row, a narrow, cul-de-sac service laneway. The building includes an outshot toilet structure to the rear between first and second floor level. There is a mixture of backland mews buildings located along Harcourt Row and the redeveloped back of The Royal Irish Academy of Music building, the front of which is located on Westland Row. The back of the Royal Irish Academy of Music is two / three storey, with a brick finish and glazed finish. It is finished to a very high standard. The Royal Irish Academy of Music lands are outlined in blue on the Planning Application, Site Location Map.
- 1.4. The appeal building's front façade is brick with flat red brick arches over the windows. The architectural expression of the front façade is gable fronted with a raised triangular gable. Concrete coping finishes the triangular brick gable at roof level. The adjoining buildings are wider and have flat gabled street frontage.
- 1.5. The entrance threshold to the building consists of a single step, which divides the upper and basement levels.

- 1.6. The roof was viewed from street level only as it is not possible to gain access to the roof. It is noted, however, that the application documentation includes an Historic Appraisal of the building, which includes considerable information about the roof, including photographs. In addition, the Application documentation includes an illustrated Engineers' Structural Condition Report.
- 1.7. Overall, whilst the appeal building is a very attractive historical property, it is in poor repair, particularly at the back and at basement level. It is currently in use as offices. It has very little presence on the street due in part to its relatively narrowness in comparison to the adjoining buildings and also because of its current, relatively run down condition. The front façade appears to retain its original features and with upgrading has the potential to be very attractive building on the street.
- 1.8. The appeal site is minutes' walk from the Davenport Hotel, the Alex Hotel, the Mont Clare Hotel, the back entrance to Trinity College and The Royal Irish Academy of Music, the current applicants' / appellants' premises. I would consider Fenian Street to be located in an area of transition. I visited the site on a Sunday afternoon and the area is quiet for an inner city street so close to the city centre. There is a number disused and run-down buildings, and there are also new infill developments, including the modern Tang Café, Note Café and the Merrion Square Studios (aparthotel).

2.0 Proposed Development

- 2.1. A recent planning application (Parent Application Ref 4085/22) was granted permission for this site to change the use of the building from office to student accommodation (6 No. single bed units), including a new three level cantilever structure to accommodate new bathroom ensuites to each of the first to third level rear bathrooms. (The permitted student accommodation is intended for music students of the Royal Irish Academy of Music on Westland Row i.e. the applicants' / appellants'.)
- 2.2. The current application / appeal provides for an amendment to Condition No. 2 of the 2022 permission, which required the omission of the 4th floor extension and terrace. The Applicant did not appeal the Condition at that time. The current application / appeal now relates to the provision of that 4th floor extension / terrace (penthouse). It

has been reduced by 0.4m in height and is flush with the height of the adjoining building on its western elevation. It will provide a living room (of 27 sq m) and an outdoor terrace (of 11 sq m) for the permitted 6 No. student rooms. It is set back from the front of the building by 3 m. It extends to the rear of the building.

- 2.3. The finish of the extension (penthouse) is contemporary. It comprises a light-weight metal clad structure with a metal roof, floor-to-ceiling steel-framed windows / door to its front (to Fenian Street), and a glass balustrade set behind the existing gable, triangulated from the front of the building, following the line of the triangular gable frontage.
- 2.4. The glass balustrade is set at a triangulated angle from the centre of the triangular gable to minimise visibility from the street and to enhance safety for the students.
- 2.5. The development also provides for the replacement of the concrete coping with granite coping to the existing brick gable frontage, and the provision of a new stairs to access the proposed 4th floor.

3.0 Planning Authority Decision

3.1 Decision

Dublin City Council issued a Notification to Decision to Refuse Permission on 8 December 2022 for the following reason:

'The proposed removal of the roof structure and the addition of a fourth floor setback extension with associated roof terrace contravenes Policy CHC2 and Policy CHC4 of the Dublin City Council Development Plan 2016-2022 and Sections 7.8.1 and 7.8.2 of the Department of Housing, Local Government and Heritage's Architectural Heritage Protection Guidelines for Planning Authorities. The proposed works would injure the special architectural character of the Protected Structure and would detract from the front elevation and the streetscape.

The works would set an undesirable precedent for similar type undesirable development, would have a detrimental impact on the value of property in the area and is contrary to the proper planning and sustainable development of the area.'

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main point of the Planning Authority Report was that this application seeks to address the element omitted by Condition No. 2 of the Parent Permission, but that fundamentally the survival of the historic roof form (albeit not original) is an important contributor to the Protected Structure's Special Character and the streetscape of Fenian Street.

Furthermore, as stated in the Department of Housing, Local Government and Heritage's Architectural Heritage Protection Guidelines for Planning Authorities, the roof is a major element, that gives a building a distinctive profile. The Planning Authority Report concludes that the proposal would detract from the front elevation and the streetscape, and the Conservation Department's concerns in this regard are considered reasonable.

The Planning Authority Report sums up with a statement that *'it is regrettable that this will reduce the quantum of shared living space for the students however it is considered that it will still provide an adequate standard of accommodation for future occupants'*.

3.2.2. Other Technical Reports

Drainage division – no objection.

Conservation – refusal recommended.

3.3.3 Prescribed Bodies

Irish Water Irish Rail, NTA, Transport Infrastructure Ireland (TII), The Heritage Council, An Tasic, Department of Housing, Local Government and Heritage, Failte Ireland and An Chomhairle Ealaion. One observation from TII was received regarding a Section 49 Levy on works on or near the LUAS.

4.0 Planning History

Register Reference 4085/22 – Planning permission was granted for a change of use from office to Student Accommodation. The proposal included a roof extension (4th floor) which was omitted by a Condition attaching to the permission for the development. Condition No. 2 of that permission states:

‘Development shall not commence until revised plans, drawings and particulars showing the following amendments have been submitted to and agreed in writing by the Planning Authority:

- a) *The proposed intervention at roof level, described as ‘addition of fourth floor set-back extension at roof terrace to south’, and all associated internal revisions to the existing staircase described as ‘provision of new hardwood timber stairs to fourth floor’ shall be omitted.*

Reason: To protect the fabric, character and integrity of this protected structure.’

The Applicant did not appeal the decision.

Register Reference 3845/10 – Permission granted for works to the entrance canopy, railings, and stub wall.

5.0 Policy and Context

5.1. Development Plan

The Dublin City Development Plan, 2016-2022 was in place when the application was assessed by the Planning Authority. That Plan is now superseded by the 2022-2028 Dublin City Development Plan, which came into effect on 14 December 2022. Under both Plans, the site is zoned Z8. That zone is defined as ‘Georgian Conservation Area’ in the 2022-2028 Development Plan, wherein the objective is ‘to protect the existing and civic design character, and to allow for limited expansion consistent with the conservation objective’.

Regarding development within this zone, the 2022-2028 Development Plan states:

'Lands zoned Z8 incorporate the main conservation areas in the city, primarily the Georgian squares and streets. The aim is to protect the architectural character/design and overall setting of such areas while facilitating regeneration, cultural uses and encouraging appropriate residential development (such as well-designed mews) in the Georgian areas of the city. Insensitive or inappropriate backland development in Z8 areas will be strongly discouraged.' (My underlining.)

Student Accommodation is 'Open for Consideration' within this zone.

The Planning Authority's Refusal reasons refers to Policy CHC2 and CHC4 of the former 2016-2022 Development Plan and Sections 7.8.1 and 7.8.2 of the Department of Housing, Local Government and Heritage's Architectural Heritage Protection Guidelines for Planning Authorities, 2011 (which are still in force). The former policies from the 2016-2022 Development Plan are replaced by the following policies of the current Development Plan, namely BHA2, BHA11 and BHA15 which state:

'BHA2

It is the policy of the Dublin City Council

Development of Protected Structures

That development will conserve and enhance protected structures and their curtilage and will:

(a) Ensure that any development proposals to protected structures, their curtilage and setting shall have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011) published by the Department of Culture, Heritage and the Gaeltacht.

(b) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(c) Ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.

(d) Ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and

designed, and is appropriate in terms of the proposed scale, mass, height, density, layout and materials.

(c) Ensure that the form and structural integrity of the protected structure is retained in any redevelopment and ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

(d) Respect the historic fabric and the special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.

(e) Ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

(f) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.

(g) Ensure historic landscapes, gardens and trees (in good condition) associated with protected structures are protected from inappropriate development.

(h) Have regard to ecological considerations for example, protection of species such as bats.'

(My underlining.)

'BHA11

It is the Policy of Dublin City Council:

Rehabilitation and Reuse of existing Older Buildings:

(a) To retain, where appropriate, and encourage the rehabilitation and suitable adaptive use of existing older buildings / structures / features which make a positive contribution to the character and appearance of the area and streetscape, in preference to their demolition and redevelopment.

- (b) *Encourage the retention and / or reinstatement of original fabric of our historic building stock such as windows, doors, roof coverings, shopfronts (including signage and associated features), pub fronts and other significant features.*
- (c) *Ensure the appropriate materials are used to carry out any repairs to the historic fabric.’ (My underlining.)*

As regards the ‘Built Heritage Assets of the City’, the Development Plan states the following regarding the Z8 zoning:

‘Z2 and Z8 Zonings and Red-Hatched Conservation Areas

The Z8 Georgian Conservation Areas, Z2 Residential Conservation Areas and red-lined Conservation Areas are extensive throughout the city. Whilst these areas do not have a statutory basis in the same manner as protected structures or ACAs, they are recognised as areas that have conservation merit and importance and warrant protection through zoning and policy application. Designated Conservation Areas include extensive groupings of buildings, streetscapes and associated open spaces and include (parts of) the medieval/walled city, the Georgian Core, the 19th and 20th century city, and the city quays, rivers and canals. The special interest/value of Conservation Areas lies in the historic and architectural interest and the design and scale of these areas. Therefore, all of these areas require special care in terms of development proposals. The City Council will encourage development which enhances the setting and character of Conservation Areas. As with Architectural Conservation Areas, there is a general presumption against development which would involve the loss of a building of conservation or historic merit within the Conservation Areas or that contributes to the overall setting, character and streetscape of the Conservation Area. Such proposals will require detailed justification from a viability, heritage, and sustainability perspective.’ (My underlining.)

5.2 Architectural Heritage Protection, Guidelines for Planning Authorities, 2011

Chapter 6 relates to Development Control. The following extract is considered important:

'6.8.2 If planning permission is to be granted for an extension, the new work should involve the smallest possible loss of historic fabric and ensure that important features are not obscured, damaged or destroyed. In general, principal elevations of a protected structure (not necessarily just the façade) should not be adversely affected by new extensions. The design of symmetrical buildings or elevations should not be compromised by additions that would disrupt the symmetry or be detrimental to the design of the protected structure. (My underlining.)

Chapter 7 relates to Conservation Principles. The following extracts are considered important.

7.8 Respecting Earlier Alterations of Interest

7.8.1 Alterations and additions to a structure can themselves be an irreplaceable part of a unique history. Different periods of alteration can inform the social and architectural history of the built heritage. For example, the subsequent addition of porches, balconies, shopfronts and returns can say much about changing fashions in architectural design and social aspiration, as can alterations or embellishments such as the addition of bargeboards, window and door surrounds or dormer windows.

7.8.2 In order to appreciate the integrity of a structure, it is important to respect the contribution of different stages of its historical development. Concentration on whether or not various parts of a building are 'original' can obscure the fact that later alterations and additions may also contribute to the special interest of the structure. Of course there may be alterations or additions which have not contributed to the special interest of the building, and which may in fact have damaged it.

7.8.3 Where new alterations and additions are proposed to a protected structure, it should be remembered that these will, in their turn, become

part of the structure's history and so it is important that these make their own positive contribution by being well designed and constructed'

7.13.2 In an ACA, this principle can apply to a street or area where a precedent becomes established for the removal of architectural features or the addition of extensions. For example, the proposed alteration of the external railings of an individual house and the conversion of its front garden to accommodate car parking may at first appear minor and acceptable. However, the planning authority must consider the effect on the character of an ACA and the setting of other protected structures should substantial numbers of properties also alter historic railings and lose their gardens. Similarly, proposals to demolish existing returns to replace them with larger extensions should be treated with caution. (My underlining.)

5.3 Old House New Home, Royal Institute of Architects supported by the Department of Housing, Local Government and Heritage, 2017-2022

The RIAI published a Report 'Old House New Home' supported by the Department of Housing, Local Government and Heritage, 2017-2022:

'This Report is about the reuse and repair of existing buildings and the opportunities these buildings, including Protected Structures provide to be adapted creatively for residential use. In the introduction it is stated that the demands of modern lifestyle often demand the remodelling and reimagining of a home, while retaining its key characteristics. The approach to a development of an old building is a three part process of understanding, reimagining and conserving. Areas of previous alterations or loss in a historic building are also gathered as they may suggest locations of future intervention or where best to locate an extension.' (My underlining.)

The Report further states that:

'designs to reimagine an historic home should be based on conservation principles such as minimal intervention, reversibility,

respectful alteration and repair. Importantly in the case of a protected structure, it should determine a suitable approach to upgrading, extending and conserving the historic fabric.....

Respect for the original structure, its plan and setting, architectural character and the nature of its construction must be central to the design process to avoid undermining its authenticity and significance.’ (My underlining.)

The Guiding Principles are taken from the Architectural Heritage Protection Guidelines as follows:

‘Conservation is the process of caring for buildings and places and managing change to them in such a way as to retain their character and special interest. Historic structures are a unique resource. Once lost, they cannot be replaced. If their special qualities are degraded, these can rarely be recaptured. Damage can be caused to the character of a historic structure as much by over attention as by neglect.’ (My underlining.)

5.2. **Natural Heritage Designations**

The appeal site is neither located in nor immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

5.3 **EIA Screening**

Having regard to the nature and scale of the development proposed, the site’s location within an established built-up urban area, which is served by public infrastructure, the nature of the receiving environment and the existing pattern of development in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The First Party Appeal is submitted by Manahan Planners on behalf of the Royal Irish Academy of Music, and is summarised as follows:

- The application and appeal address that element of the development that was omitted by Condition No. 2 of the Parent Permission for the change of use of the building from office to student accommodation (i.e. the roof level living room accommodation).
- The Application seeks permission for a roof extension of 27 sq m, with an outdoor terrace of 11 sq m (a penthouse).
- It also provides for replacement of the concrete coping to the brick gable to the street with granite coping, and for the provision of new internal stairs to access the roof extension.
- It is proposed to replace the metal railing originally proposed with a glazed balustrade.
- The Applicant's Agent states that the benefits to the building of this additional level outweigh the policy of retention of rooftops.
- This living space is considered essential to the development of the building as the basement kitchen / dining does not provide adequate residential amenity for the future residents.
- Rather than being contrary to the conservation of the building, this development is the next stage in the evolution of the building and is of its time.
- The refurbishment / change of use and extensive refurbishment of the building will be hugely expensive and the proposed roof level living room space is essential to the development.

As regards the specifics of the Dublin City Council's Reasons for Refusal, the Agent states as follows:

- The building was constructed 1830 and underwent major change in 1880 with the formation of the ground level carriageway and consequential removal of the chimney breasts and chimney above. In 1965 there were further changes, and at that stage it is likely that the triangular gable to the front was added as it has a different brick and that was when the roof was rebuilt. The gabled parapet is likely non-original as the roof is finished using modern cement based tiles with lead ridges and flashings. Neither the form nor the fabric of the existing roof can be considered historical or original.
- It is considered that the communal space at fourth floor is critical to sustain the proposed use of this building. The basement alone is not sufficient as there is no natural light. The Development Plan requires 5-7 sq m of adequate communal indoor and outdoor space for students, and without the roof level living space this cannot be met.
- Because the building is lower and set back from the adjoining building on the west, and because Fenian Street is narrow, there will be no noticeable visual impact on its surroundings. The roof extension is also set back 3.2 m from the front of the existing building. The proposal to replace the metal with a clear balustrade would further reduce this impact.
- The appeal incorporates models of the building from the adjoining street showing the minimal visual impact of the development.
- The Dublin City Council Conservation Officer relies on the fact that the form of the roof is original. This is disputed by the Applicant. The need to maintain the roof form and structure is overly restrictive and does not outweigh the need to provide residential accommodation in the city centre, in particular the Georgian Core. The Appeal is illustrated with a number of Dublin schemes in which modern extensions are provided at roof level, including the Dental Hospital at Trinity College, Lincoln Place, Dublin 2.
- Rooftop extensions are not unusual in this area. In this case the proposed extension will contribute to and support the use of the building and at the same time it is largely hidden from the viewing street.
- This development accords with the objectives of Dublin City Council's 'Living City Initiative' and the overall aim to increase the number of people living in

the City, in particular in the Georgian Core. This aim is stated throughout the Development Plan and also in newspaper articles about the growth of Dublin, which have been published in recent years. In this regard, it is noted that the biggest threat to historic buildings is vacancy. It is suggested that this is the backdrop against which this appeal be assessed i.e. the need to replace office use with residential use in this area should be thwarted by a need to keep a roof which is neither original in fabric nor form.

6.2. Planning Authority Response

The Planning Authority did not respond to the Board on this appeal.

6.3. Observations

An Observation was received from Philip O'Reilly, 18 Grosvenor Place, Rathmines. His concerns are summarised as follows:

- The Planning Authority decision is correct and should be upheld.
- The proposal represents the mutilation of a most important building in the historic core of the Georgian City.
- The building is a Protected Structure in a Z8 zone.
- The proposal will destroy the character of the building and it would lead to further destructive proposals.
- Every element of these buildings is important and should not be destroyed or interfered with.
- This will result in a catastrophic change to the roof profile and although not largely visible should not be allowed.

7.0 Assessment

7.1 I have read the documentation attached to this file including the Appeal, the report of the Planning Authority and the Observations. In addition, I have visited the site. The appeal relates to the single issue of the provision of a roof extension of 27 sq m (a

penthouse) and an outdoor terrace of 11 sq m (to the front of the proposed living room extension), at roof level of the Protected Structure, No. 38 Fenian Street.

7.2 This is considered under the following headings:

- Principle of the development and planning policy.
- The impact of the proposed extension on the roof of the Protected Structure and on the streetscape of Fenian Street.
- The need for the extension, the refurbishment / upgrading of the Protected Structure and the viability of the redevelopment of the building without the roof extension.
- The precedent for other similar type developments.

Principle of the development and planning policy

7.3 The site is zoned Z8 'Georgian Conservation Area'. This zoning is defined in the 2022-2028 Development Plan as follows:

'Land Use Zoning Objective Z8: To protect the architectural and civic design character, and to allow only for limited expansion consistent with the conservation objective.'

7.4 The proposed development of the 4th floor roof extension (penthouse living room and terrace) is part of the overall reinstatement and upgrading of this important historic house for modern high quality student accommodation. The building is to be restored, will meet current Building Regulations and will provide a high standard of student accommodation with quality shared internal and external residential amenity space.

7.5 Policy BHA2 requires that development protects structures from any works that would negatively impact their special character and appearance. As stated above, the proposed development, coupled with the Parent Permission will provide for the full upgrading and protection of the building, while restoring it to residential use. Accordingly, it is considered in compliance with the Z8 zoning.

7.6 There will be no damage to any original features (the findings of the National Inventory Architectural Heritage Assessment, supplemented by the Engineer's

Report are that the roof is not original) and the proposed roof structure will be largely not visible from Fenian Street due to its design and siting (set back by 3 m from the raised gable). This is helped also by the fact that the appeal building, No. 38, is both narrower and lower than the adjoining property and is located on a narrow section of Fenian Street with limited visibility from adjoining streets.

7.7 Accordingly it is considered that the proposal taken its totality i.e. current appeal and its Parent Permission does not conflict with Policy BHA2 of the current Dublin City Development Plan. Similarly, although Policy BHA11 encourages the retention of original roof structures, in this case, it is considered acceptable to replace the roof (which is not part of the original structure) with a new roof and small penthouses extension while maintaining the triangular raised gable. The roof will appear the same when viewed from the street and there will be such an overall benefit to the future users of the building that the small penthouse extension set back and partly screened by the existing raised triangular gable is considered acceptable in this case.

7.8 The Planning Authority's decision to refuse permission refers also to conflict with Section 7.1.1 and 7.8.3 of the National Architectural Heritage Guidelines. It refers to the fact that in order to appreciate the integrity of a building, it is important to respect the contribution of different stages of its historical development. *'Concentration on whether or not various parts of a building are 'original' can obscure the fact that later alterations and additions may also contribute to the special interest of the structure. meaning that the alterations to the roof need to be respected and that they are an integral part of the building's development'*. This Section of the Guidelines also states, however, that current work will in time will also become part of the history and character of the building. The Guidelines state that *'it should be remembered that these will, in their turn, become part of the structure's history and so it is important that these make their own positive contribution by being well designed and constructed'*. Therefore, I contend that the current proposal does not conflict with this Section of the Guidelines.

7.9 The RIAI Report on Old Houses New Homes (supported by the Department of Housing, Local Government and Heritage, 2017-2022) highlights many examples of the redevelopment of old buildings. The value of conserving old buildings is clear but the value of conserving a building is also about the evolving life of the building. In

the case of the nearby Dental Hospital on Lincoln Place / Trinity College, five contiguous Protected Structures are converted to new uses for the Dental School and Hospital, combining conservation with strong modern intervention into the fabric of the buildings. Dublin City Council granted permission (2010) for five zinc pods transforming the roof top to a library and linking the houses laterally. A radical design to reimagining these buildings was permitted and has resulted in the protection of these houses and for their revitalisation for future generations. This was an award-winning scheme. It won the RIAI Silver Medal award for Conservation in 2019, awarded for a project of exceptional merit. The scheme was an innovative way of developing and conserving these important buildings, including interventions at roof level. I believe this sets a precedent for other similar sensitively designed projects, such as the subject of this current appeal.

The impact of the proposed extension on the roof of the Protected Structure and on the streetscape of Fenian Street

- 7.10 The application documentation includes an Historic Appraisal of the building including detailed information on the roof. The findings indicate that the existing roof is not original. The integral carriageway inserted post 1870 involved the removal of the chimney breast and was probably the first change to the roof. Further works were carried out in the 1960s, and as stated above the current roof is finished using modern cement-based tiles with lead ridges and flashings. The Engineers' Report attaching to the Application includes photographs of the roof. The findings of the site observations and opening up works show that very little of the original roof remains, with predominantly replacement timber seen in the attic and fibre slates to the roof slopes.
- 7.11 Permission has already been granted to change the use of the building to six small student bedrooms, two per floor with a rear extension containing ensuite facilities for the back bedrooms. The style of this development is contemporary, detailed to be subservient to the original building. This permitted development is also designed to be reversible (as stated in the Architect's Report accompanying the Planning Application).

- 7.12 The works now proposed will replace the roof, consisting of non-original timber and cement slates. The brick gable to the front will be retained, cleaned and repointed. The primary addition is a set-back penthouse. It is noted that when one reads the proposed front elevation (Drawing PP04) of the roof extension (penthouse) it appears more prominent than it would be in reality as the elevation reads flush with the gable where as in fact it is set back by 3 m from the gable. A more useful analysis is provided by the Section shown in (Drawing PP06).
- 7.13 The proposed roof structure is designed so that it will not be very visible from street level, being set back 3 m from the brick gable. The set-back, coupled with retention of the existing raised triangular gable, reduces its visibility while also retaining the form of the building when viewed from the street. The design is such so as to retain the building's character. The intention of the proposed works are to enable this Protected Structure to be used as modern accommodation, complying with modern Building Standards, while at the same time preserving the character and integrity of the building both internally and externally.
- 7.14 Internally the addition of a new staircase will provide access to the proposed new penthouse living room. The historic chinois balustrade will be repositioned and refitted at the new top landing to the stairs at fourth floor level. (It is noted that the Architect's Report states that the balustrade is also non-original and appears to have been repositioned from another building.)
- 7.15 As regards the streetscape of Fenian Street, it was noted during the site visits that from Fenian Street itself this additional penthouse level would not be visible, largely because of the height of the buildings but also because of the proposed set back design. There would be limited views of the penthouse extension from the front of the Mont Clare Hotel (on Merrion Street Lower), from Denzille Lane to the east and from Harcourt Row to the rear. The back of the appeal building is, however, in very poor condition so the overall tidying up of the building and the metal penthouse would be a welcome addition to the streetscape when viewed from the rear. The appeal document illustrates, using models, the limited visibility of the proposed extension when viewed from nearby streets. Having walked the surrounding streets as part of the site visits, I would concur that the proposal would not unduly impact on the character of the streetscape along this section of Fenian Street and the surrounding area.

The need for the extension, the refurbishment / upgrading of the Protected Structure and the viability of the redevelopment of the building without the extension.

- 7.16 The proposed addition of a penthouse level will considerably enhance the useability and quality of the experience for the future occupants of the building. This will be a high quality space with natural light and it will hugely enhance the functionality of the whole house as a student residence. The permitted layout provides 6 No. high quality student bedrooms, all single. Kitchen, kitchen storage and dining facilities will be located in the basement, where there is little or no daylight. Without the proposed roof top extension (penthouse) there will be no shared living space for its occupants which is not ideal for residential accommodation.
- 7.17 The Architects have gone to considerable lengths to design a scheme for this building that incorporates the preservation / conservation of all the notable elements of the existing building, and with a considered approach to make sensible interventions that vastly improve the building, without damaging it. The existing building has a difficult layout, with two small rooms off the stairs at each level and a dark basement. The Architects, Lawrence and Long have considerable experience working with historic buildings and have won many awards and are highly regarded for their designs. The Application documentation states that all works will be carried out by specialist contractors, with highly skilled craftsmen with a proven record in the trade of working with historic buildings. I consider this a huge opportunity for this building and one which should not be lost.
- 7.18 In the context of the above, if the building is to be substantially upgraded and restored, and in so doing protected for future generations there is no compelling reason to maintain the existing roof behind the extended triangular gable as it is not part of the original roof.

The precedent for other similar type developments

- 7.19 The Planning Authority' refusal reason specifically states that permission for this development would set an undesirable precedent for other similar developments. As noted above, there are some fundamental differences that pertain to this building than other similar buildings in this area. No. 38 Fenian Street is lower than the

adjoining building and is narrower than the other buildings on this section of the street. It has no outdoor space. The integral carriageway was inserted to provide access to lands to its rear in c. 1880 and this resulted in the backland area being fully developed over time.

7.20 In addition, the basement level is largely without natural light. Without the proposed roof level living space / and terrace it would be difficult for this building to be brought to a comfortable level of modern living for the permitted student units. This is not the case with all surrounding buildings. In addition, the penthouse extension (27 sq m) plus terrace (11 sq m) is set back behind a triangular gable so that it will be largely invisible from surrounding streets. This is made possible by its unique location, lower than its adjoining building, behind a raised triangular gable and at a location, on a narrow section of Fenian Street not particularly visible from surrounding streets. It is also a unique opportunity for a relatively neglected building to be redeveloped to a very high standard and to the designs of an award-winning Architectural Practice. All these factors, mitigate against it setting a precedent for other similar roof top extensions on historical buildings in the area.

8.0 Recommendation

8.1. I recommend a grant of permission for the reasons and considerations and subject to the Conditions set out below.

9.0 Reasons and Considerations

9.1 Having regard to the design and nature of the proposed development, the overall upgrading of the building and its change to residential use as permitted in the parent permission for this development (Reg. Ref. 4085/22), its unique location on this narrow section of Fenian Street, it is considered that subject to compliance with the conditions set out below, the proposed development is compatible with the Z8 zoning of the Dublin City Development Plan 2022-2028 and would not seriously injure the Protected Structure status of the building itself, the streetscape along this section of Fenian Street or of the surrounding Georgian Conservation Area generally. 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, 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 living room and terrace shall be used solely for that purpose shown on the plans and ancillary to the student accommodation at No. 38 Fenian Street. It shall not be let or rented separately.</p> <p>Reason: To protect the amenities of the student accommodation and in order to comply with the Objectives of the current Development Plan for the area.</p>
3.	<p>No additional development shall take place at roof level, including air handling equipment, storage tanks, ducts or other external plant, telecommunications aerials, antennas or equipment.</p> <p>Reason: To protect the visual amenities of the Georgian Conservation Area.</p>
4.	<p>This development shall take place only with the parent permission which was issued under Reg. Ref. 4085/22. The terms and conditions of that permission shall be fully complied with, except where modified by this permission.</p> <p>Reason: To provide for an acceptable standard of development.</p>
5.	<p>A development contribution shall be paid to the Planning Authority in respect of the LUAS Cross City Scheme. The amount shall be agreed with the Planning Authority and the contribution paid prior to the commencement of development or in such a manner as may otherwise be</p>

	<p>agreed in writing with the Planning Authority. The amount due is payable on commencement of development. Phased payment of the contribution will be considered only with the agreement of Dublin City Council Planning Department. Applicants are advised that any phasing agreement must be finalised and signed prior to the commencement of development.</p> <p>Reason: It is considered reasonable that the payment of a development contribution in respect of the public infrastructure and facilities benefitting development in the Luas Cross City area as provided for on the Supplementary Development Contribution Scheme made for the area of the proposed under Section 49 of the Planning & Development Act 2000 (as amended).</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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 agreed with 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. The application of any indexation required by this condition 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.</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 Development Contribution Scheme made under section 48 of the Act be applied to the permission</p>

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.

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. Vanessa Langheld
Planning Inspector

18 October 2023