



An
Bord
Pleanála

Inspector's Report

ABP-318409-23

Development	Protected structure. Change of use to residential units together with associated site works.		
Location	16 Herbert Street Dublin 2.		
Planning Authority Ref.	Dublin City Council 4340/23.		
Applicant(s)	Highgate Design Limited.		
Type of Application	Permission.	PA Decision	Refuse.
Type of Appeal	First party	Appellant	Highgate Design Limited
Observer(s)	Katy McGuinness & Felim Dunne		
Date of Site Inspection	21 st February 2024	Inspector	Philip Green

1.0 Context

1. Site Location/ and Description. The site of the appeal is located on Herbert Street which is located within an urban block in the heart of the Georgian core and is bounded by Mount Street Lower to the north and Baggot Street Lower to the south, the Grand Canal to the east and Fitzwilliam Square to the west in Dublin 2. Herbert Street links Lower Baggot Street with Upper Mount Street and terminates adjacent to St Stephens Church.

The appeal premises is a currently vacant (previous most recent use as offices) terraced two bay four storey over basement protected structure with access from

Herbert Street via steps. Access can be also gained to the basement level of the building via steel framed concrete stairs from Herbert Street via a gate in its front railings. To the rear covering most of the rear yard there is a two storey rear return, single storey modern extension and steel stairs structure serving Nos 15 and 16. A rear mews building facing on to Herbert Lane (No. 32) does not form part of the current appeal site and would now appear to be in separate ownership.

The Georgian terrace of properties on the south eastern side of Herbert Street would appear to be in a mix of uses including offices, community, commercial services, educational and residential. There are larger blocks of more recent commercial properties and residential uses along with parking areas on the opposite side of the road.

There is on street pay and display and permit parking available along the road.

2. Description of development. Change of use from office to residential and sub-division of residential units, including 2 x 1 bed units (measuring 47 sq.m. and 52 sq.m.) and 9 studio units with an average area of 29 sq.m. The proposed works extend to an overall site area of circa. 210 sq.m. and comprise the following:

(1) removal of non-original elements to the rear. This includes (i) the modern L-shaped basement structure at basement level; (ii) the modern plant room structure at ground floor level and brick flue enclosure to above eaves level; (iii) the modern steel deck which extends across the rear facade of no. 16 at first, second and third floor level; (iv) the toilet block constructed on the roof of the original 2-storey return structure; (v) the 2 no. projecting bay windows to the north and east elevations of the original 2-storey return; (vi) the single storey flat roofed modern extension to the rear at the former garden level;

(2) new construction works to the former garden level, comprising a new 40 sq. single storey structure at basement level with a green roof (to provide a 1 bed apartment unit) to replace a non-original 50 sq.m. office structure constructed at ground floor level;

(3) new construction works to the original 2-storey return at the rear, comprising a 3.6 sq.m. semi-circular extension to the original gable to include a new stair, the

reinstatement of the original mansard type roof structure (following the removal of the modern toilet block) and new window opening to the north facade,

(4) general external upgrade works and construction repairs to the building envelope to include (i) replacing the finishes to the historic double pitch roof and valley gutter, (ii) installing a new automatic openable roof vent over the stair, (iii) replacement of existing front UPVC rainwater goods to the front elevation; (iv) replacement of the non-original external steel access stair to front lightwell; (v) cleaning of all original brickwork;

(vi) repair of the original windows;

(vii) new services/plant to replace existing in the existing cellar / front lightwell;

(5) various internal upgrade works and conservation repairs; incorporating works required to achieve compliance with current building regulations, including : (i) removing the non-original lift; (ii) removing the non-original steel stair from ground floor level to basement, (iii) damp proofing works to the basement; (iv) internal dry lining works to the basement; (v) upgrade of existing timber floors to meet fire and acoustic performance requirements; (vi) new concrete floor construction to the basement; (vii) new electrical and mechanical services installations to serve the residential units; (viii) historic plasterwork repairs.

3. Planning History. No relevant planning history relating to the site has been brought to my attention. The property would appear however to have been the subject of incremental additions and extensions to the rear and internal alteration including service installations and partitions reflecting its former office use.

4. National/Local Planning Policy

Ministerial Guidelines

Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities 2024

- Section 3.3.1 of these Guidelines refers to the National Planning Framework and states ‘The strategy for all cities is to support consolidation and intensification within and close to the existing built up footprint of the city ‘ and
• The key priorities for city and metropolitan growth in order of priority are to:

(a) strengthen city, town and village centres, (b) protect, restore and enhance historic fabric, character, amenity, natural heritage, biodiversity and environmental quality, (c) realise opportunities for adaptation, reuse and intensification of existing buildings and for incremental brownfield and infill development, (d) deliver brownfield and infill development at scale at suitable strategic and sustainable development locations within the existing built up footprint of the city and suburbs area or metropolitan towns, (e) deliver sustainable and compact urban extension at scale at suitable strategic and sustainable development locations that are close to the existing built-up footprint of the city and suburbs area or a metropolitan town and served by existing or proposed high-capacity public transport, and (f) deliver sequential and sustainable urban extension at suitable locations that are closest to the urban core and are integrated into, or can be integrated into, the existing built-up footprint of the city and suburbs area or a metropolitan town.'

Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2022

- These Guidelines apply to all housing developments that include apartments that may be made available for sale, whether for owner occupation or for individual lease. They also apply to housing developments that include apartments that are built specifically for rental purposes. They also provide a target standard where existing buildings are to be wholly or partly redeveloped or refurbished for residential use. In particular it sets apartment design parameters in regard to location, apartment mix, internal space standards, dual aspect ratio, floor to ceiling height, storage spaces, amenity space including balconies, car parking and room dimensions.
- These parameters are set out in the document which refers to seven Specific Planning Policy Requirements (SPPR) and other matters such as communal facilities, waste storage and bicycle parking. Of note is that the document states that the standards apply to refurbishment schemes however there may be scope for discretion for planning authorities on a case by case basis in respect of certain of these standards having regard to the overall quality of the proposed development.

- The document also sets out requirements for the content of planning applications including provision of details such as schedule of apartment sizes and floor areas, individual storage areas, amenity space, sunlight/daylight assessments, details of operation and management of the apartments including provision of a Building Lifecycle report etc.
- Section 6.9 states 'Planning authorities are also requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings, some urban townscapes and 'over the shop' type or other existing building conversion projects, where property owners must work with existing building fabric and dimensions. Ultimately, building standards provide a key reference point and planning authorities must prioritise the objective of more effective usage of existing underutilised accommodation, including empty buildings and vacant upper floors commensurate with these building standard requirements.'

Architectural Heritage Protection Guidelines for Planning Authorities (2011)

- This document recognises the importance of the protection of the architectural heritage of the State setting out the purpose, legal and administrative basis for such protection. It also offers detail guidance for protecting protected structures when works and changes of use are proposed. This Guidance is seen as being relevant for both planning authorities and for owners.
- In Section 6 of the Guidelines reference is made to development control matters including handling and content of pre planning meetings, enforcement and retention permissions. Part 2 of the Guidelines sets out the overriding conservation principles that should be applied when dealing with protected structures and then in subsequent Chapters provides detailed guidance in relation to specific features of such buildings.
- In relation to general approach to protected structures it is stated 'Conservation is the process of caring for buildings and places and of 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. Over-restoration can harm the special qualities of a building with the loss of details, materials and craftsmanship which, while sometimes seeming of little significance in themselves, can contribute to the character of the building and make it special. For this reason, it is vitally important that proposals for works to protected structures... be examined at a detailed level. It is intended these detailed guidance notes will draw attention to the importance of the seemingly minor details of a historic building that nonetheless play an important part in establishing its character.'

- Conservation principles relating to protected structures are set out. This includes keeping a building in use, researching and analysing the building, using expert conservation advice, protecting the building's special interest, promoting minimum intervention (including reference to damaging over restoration and uninformed conjectural restoration), respecting earlier alterations of interest, repairing rather than replacing, promoting honesty of repairs and alterations, use of appropriate materials and methods, ensuring for reversibility of alterations, avoiding incremental damage (including avoiding small scale damaging changes to external features such as gardens), discouraging architectural salvage and compliance with Building Regulations (noting that approaches other than those contained in the TGDs may be appropriate in order to ensure compliance while protecting the character of protected structures).
- In regard to material changes of use it is stated in 6.8.8 'On the whole, the best way to prolong the life of a protected structure is to keep it in active use, ideally in its original use. Where this is not possible, there is a need for flexibility within development plan policies to be responsive to appropriate, alternative uses for a structure. A planning authority should carefully consider any proposed change of use and its implications for the fabric and character of the structure. A new use may have many implications for the structure which may not be immediately obvious, for example with regard to compliance with the Building Regulations; .In 6.8.9 it states 'In considering

an application for the material change of use of a protected structure, the planning authority will have to balance its continuing economic viability if the change is not permitted, with the effect on the character and special interest of its fabric of any consequent works if permission is granted. Where, having considered these issues, a planning authority considers that the alterations required to achieve a proposed change of use will not have an undue adverse effect on the special interest of the structure, the proposals may be granted subject to conditions as appropriate'. Section 6.8.10 states 'Changes of use may lead to subsequent incremental proposals to change subsidiary features such as shopfronts, external signs, requirements for enhanced fire safety and the like. Impacts may arise to the curtilage of a protected structure from a change of use proposal, such as creating or increasing the need for car parking, creating or altering gateways or entrance arches for vehicular access. As many of these potential impacts as are foreseeable should be included as part of the planning application. If clarification is required of the implications of a change of use, this should be ascertained by way of a request for further information.'

Development Plan

Dublin City Development Plan 2022-2028

- On the **Zoning Map** of the current Development Plan the site lies within an area zoned Z8 – 'Georgian Conservation Areas'. The site also lies within a separately designated Conservation Area. The building is identified as a Protected Structure Ref No 3744 (House) on the RPS. On the NIAH it is Building Reg No 50100659 with original use described as house, given a 'Regional' rating and being of 'Architectural and Artistic' special interest. All the other buildings in this terrace are designated separately and in their own right as protected structures and are also described in the NIAH.
- Land-Use Zoning Objective Z8 is 'to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective.' Lands zoned Z8 incorporate the main conservation areas in the city, primarily the Georgian squares and streets. The aim is to

protect the architectural character/design and overall setting of such areas while facilitating regeneration, cultural uses and encouraging appropriate residential development (such as well-designed mews) in the Georgian areas of the city.... A range of uses are permitted in such zones, as the aim is to maintain and enhance these areas as active residential streets and squares during the day and at night-time. Offices or the expansion of existing office use may be permitted where they do not impact negatively on the architectural character and setting of the area, and do not result in an overconcentration of offices within a Z8 zoned area. Where residential levels are low, it is the aim to encourage more residential use in the area, to include support for sub-division and universal access that do not impact negatively on the architectural character and setting of the area (for example in line with the South Georgian Townhouse Re-Use Guidance Document commissioned by Dublin City Council in March 2019). Chapter 11: Built Heritage and Archaeology, and Chapter 15: Development Standards, should be consulted to inform any proposed development, as these detail policies/objectives for conservation and heritage and also set out standards’.

- Residential is considered a permissible use in such areas, a permissible use being one which is generally acceptable in principle in the relevant zone, but which is subject to normal planning considerations, including the policies and objectives outlined in the plan.
- Policy BHA2 in relation to **protected structures** reflects these objectives. This seeks to conserve and enhance protected structures, their curtilage and setting. Amongst other matters it states that regard must be had to the Architectural Heritage Guidelines and to protect structures included on the RPS from any works that would negatively impact their special character and appearance, ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation. 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 and 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 and ensure that new and adapted uses are compatible with the architectural character and special interest(s) of the protected structure.

- Chapter 15.15.2.3 Protected Structures further states all planning applications for development/works to Protected Structures must provide the appropriate level of documentation, including an Architectural Heritage Impact Assessment, in accordance with Article 23 (2) of the Planning and Development Regulations, 2001 (as amended) and chapter 6 and appendix B of the 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011). To assist in the assessment of proposals they should outline the significance of the building(s) or structure(s) and their settings and an assessment of how the proposed works would impact on that significance, include a detailed drawn survey of the building/structure identifying all surviving original/early and later features that may contribute to its significance and associated photographic survey, include a conservation focused method statement and specification of works, details of proposed works should be clearly identified on the accompanying survey drawings by way of colour coding and/or annotated notes to distinguish clearly between the existing structure, the proposed works including demolition of existing fabric and/or features. The colour coding should also show the provenance of the historic building, including identification of the various stages of its development, identifying original, historic and later intervention. The detail required to be submitted will be dependent on the significance of the building and the nature and extent of works proposed. It may be of benefit to discuss specific Development Standards requirements, with an Architectural Conservation Officer, prior to making a planning application; through the pre-planning consultation process.
- Under Policy BHA9 the Council seeks to protect the special interest and character of all Dublin's **Conservation Areas** – identified under Z8 and Z2 zoning objectives and those denoted by red line conservation hatching on the zoning maps. Development within or affecting a Conservation Area must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and its

setting, wherever possible. Changes of use will be acceptable where in compliance with the zoning objectives and where they make a positive contribution to the character, function and appearance of the Conservation Area and its setting. The Council will consider the contribution of existing uses to the special interest of an area when assessing change of use applications, and will promote compatible uses which ensure future long-term viability. Chapter 15.15.2.2 Conservation Areas requires all planning applications for development in Conservation Areas to respect the existing setting and character of the surrounding area, be cognisant and/ or complementary to the existing scale, building height and massing of the surrounding context, to protect the amenities of the surrounding properties and spaces, to provide for an assessment of the visual impact of the development in the surrounding context, to ensure materials and finishes are in keeping with the existing built environment and to positively contribute to the existing streetscape.

- Chapter 5 : **Quality Housing and Sustainable Neighbourhoods** and Chapter 15 (**Development Plan Standards**) and Section 15.9 (**Apartment Standards**) and 15.10 (**Build to Rent Residential Developments**) of the Plan are relevant. Section 15.9 in particular refers to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities.
- It is the policy of the Council QHSN6 (Urban Consolidation) to promote and support residential consolidation and sustainable intensification through the consideration of applications for infill development, backland development, mews development, re-use/adaption of existing housing stock and use of upper floors, subject to the provision of good quality accommodation.
- It is policy of Council QHNS7 (Upper Floors) to resist and where the opportunity arises, to reverse the loss of residential use on upper floors and actively support proposals that retain or bring upper floors into residential use and under QHSN8 (Reduction of Vacancy) to promote measures to reduce vacancy and underuse of existing building stock and to support the refurbishment and retrofitting of existing buildings. Under QHSN10 (urban Density) it is policy to promote residential development at sustainable densities throughout the city in accordance with the core strategy, particularly on vacant and/or underutilised sites, having regard to the need for high standards of urban design and

architecture and to successfully integrate with the character of the surrounding area.

- Under Section 5.5.3 (Healthy Placemaking and the 15-Minute City) the concept of the 15 minute city is promoted. Policy QHSN12 (Neighbourhood Development) encourages neighbourhood development which protects and enhances the quality of the built environment and supports public health and community wellbeing and promotes developments which would... build on local character as expressed in historic activities, buildings, materials, housing types or local landscape in order to harmonise with and further develop the unique character of these places

5. Natural Heritage Designations

- None relevant to proposed development

Development, Decision and Grounds of Appeal

6. PA Report/Decision. The Planners report summarises third party submissions opposing the proposed development, as follows:

- The type of residential is not clear – report states serviced apartments
- Proposal is not consistent with minimum intervention to a protected structure
- Proposal does not provide an appropriate mix of units
- Exceeds ratio of studio apartments
- The area of the studio type units is below the minimum standards
- Only one unit out of eleven units is dual aspect
- 10 out of 11 units have no private open space
- Poor design quality of proposed units
- No information submitted in relation to daylight and sunlight of proposed units
- Serviced residential is proposed
- The proposal does not comply with the Apartment Guidelines 2022

It also sets out policy context with reference to policies and criteria contained in the Dublin City Development Plan 2022-2028 and Sustainable Urban Housing – Standards for New Apartment Guidelines for Planning Authorities (as updated).

The report carries out **Appropriate Assessment screening** and concludes that having regard to the nature and scale of development that no appropriate assessment issue arise and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site within the 15km sphere of influence and does not require appropriate assessment.

In regard to **Environmental Impact Assessment** the report states that having regard to the nature of development in an urban area there is no real likelihood of significant effects on the environment arising and the need for an environmental impact assessment can be excluded at preliminary examination stage and a screening determination is not required.

DECISION: The report concludes that the principle of the residential development within a Z8 zoned area was acceptable however recommends refusal as the proposed development was considered an overdevelopment of the building which would not meet minimum standards set out in the Sustainable Housing Standards for new Apartments Guidelines 2023, in regard to minimum floor areas, dual aspect, mix of units and open space and would seriously injure the amenities of future residents and negatively impact on the special character of the protected structure. A Notification of Decision to Refuse Permission was issued to this effect **citing a material contravention of the Z8 zoning objective** to protect the exiting architectural and civic design character and to allow for only limited expansion consistent with the conservation objective and setting an undesirable precedent.

The initial application was accompanied by separate Engineering, Architectural Design, and Conservation and Impact Assessment Reports.

Inspectors Note: Board to note that although there is an internal report on file from the DCC Transportation Planning Division recommending no objection subject to conditions, there is no internal report from the DCC Conservation Officer on file and no reference to such is made in the Planner's report.

7. First Party Appeal

- Permission should be granted to comply with various objectives seeking to encourage greater population in to the city centre and need to respond sensitively to constraints of historic fabric; and ability to relax apartment standards in such circumstances;
- Applicant has a portfolio of over 70 rental units in Ireland and have track record in refurbishment of historic buildings. Properties are managed by specialists who ensure properties are managed and maintained appropriately and offered on minimum leases of one year;
- Whilst refusal cites conflict with apartment guidelines there are other policies supporting development encouraging residential living in the city centre, reuse of under utilised properties, counter urban sprawl, provide for 15 minute neighbourhoods and addressing climate change;
- Reference is made to policy context including National Planning Framework, Climate Action Plan 2024 and Draft Compact Settlement Guidelines;
- Applicant recognises importance of protecting heritage of building. Architects produced a comprehensive conservation report and impact assessment. Approach follows best practice as set out in Architectural Heritage Guidelines and concludes that removal of modern elements, alterations and new additions will maintain integrity of building and retain character and significance of building. Proposals follow good conservation practice and principles;
- No DCC Conservation Officer report on file countering Applicants conclusions nor any acknowledgement of repair and enhancements that would result to fabric of protected structure;

- The Apartment Guidelines paragraph 1.10 indicate that standards are target standards in situations where existing buildings are being refurbished and where in these circumstances a different approach may be warranted;
- Compliance with Dublin City Development Core Strategy seeking urban consolidation. Residential use is permissible and acceptable in principle in Z8 zoned areas;
- Street is now predominantly in commercial use and provision of residential accommodation consistent with vision for Z8 zoning;
- Nothing in Development Plan which limits number of units which can be inserted in to a protected structure. Rather proposals should not adversely impact on its character and the setting of area. This will not happen in this instance;
- Proposed development complies with Policies QHNS7 and 8 and Chapter 11 Policy BHA24 of Development Plan encouraging residential use of upper floors, reduce vacancy and use of existing buildings and reuse and refurbishment of historic buildings,
- Applicant has used wide ranging design team including conservation specialists. Nothing to suggest No 16 is a 'historic site' although it is a protected structure. Conservation report and assessment provided concludes that development can be accommodated without significant adverse impact to historic fabric or character of the building. Sub-division of property is accommodated retaining legibility of plan layout and spatial simplicity of existing rooms and new elements such as bathrooms and kitchens are designed as contemporary pods and further repairs will be carried out to building envelope including defective roof finish and internal repairs including remediation of damp and removal of damaging modern insertions that have caused substantial loss of historic fabric;
- The DCC view that the development constitutes overdevelopment is unsubstantiated and without foundation. Proposed plot ratio is 1.52 and site coverage 60%. Both of these are in accordance with or exceed development management standards in a Z8 zoned area in Table 2 of Appendix 3 of Development Plan and should not be considered as overdevelopment as a result;

- In regard to Apartment Guidelines and unit mix (SPPR1/SPPR2) it is concluded that there is discretion on a case by case basis when dealing with refurbishment schemes having regard to the overall quality of the development;
- In regard to Apartment Guidelines and floor area the requirements of SPPR3 are noted. Floor areas largely determined by constraints of existing building fabric and sensitive approach to conservation of building (see conservation report and impact assessment). Important to note that it would not be economically viable to provide 4-5 residential units and proposal represents limit of what can be considered viable. It is intended that applicant will provide homes for their tenants and will have significant financial outlay;
- Policy BHA24 of Development Plan encourages careful refurbishment of historic built environment for sustainable and economically viable uses;
- Each of units proposed are discrete units and cannot be described as bedsits where facilities are often shared. Units proposed are in accordance with proper planning and sustainable development;
- (table provided) shows 3 units comply with SPPR3, whilst the studio apartments fall below however they significantly exceed single bedroom size and as result they will provide viable urban living and bring the building back to use and enhancing the city centre;
- Board invited to exercise its discretion in assessing the overall quality and benefits of the scheme and constraints imposed by the building;
- In regard to Apartment Guidelines and Dual aspect requirements (SPPR4) (table provided) notes 27% of units being dual aspect. Unit 3 benefits from dual aspect to the external courtyard and also to the private courtyard. 33% of 11 units requires 3.6 units to be dual aspect. Scheme proposes 3 dual aspect units and thus is substantially in compliance. Noted again proposed design which sought to work with fabric and historic interest of building;
- Not possible to provide balconies as open space as this is a protected structure and note Planner's report refers to proximity to Merrion Square and Grand Canal. Site close to other city centre amenities and thus consistent with proper planning and sustainable development.

- There are examples of where DCC have exercised discretion in applying apartment standards to existing buildings and in addition scheme stands on its own merits;
- Drawing lodged with appeal show revisions so that bin storage now proposed in basement vault at front of premises and sprinkler tank and heat pump plant relocated to central courtyard. Collection of waste would be a matter for the management company;
- Given constraints of building simply not possible to provide cycle parking however there is a Dublin Bikes station on Herbert Street and property is in close proximity to city centre amenities and public transport. This situation would pertain to any lesser residential use or alternative use of the building;
- Units will not be used for short term letting/Airbnb type accommodation but will be added to clients list of long term leased accommodation through their managing agents (see attached letter describing services provided including waste management);
- Without prejudice an amended scheme attached to appeal showing provision of 10 units as a response to refusal and daylight analysis carried out (attached to appeal).
- This amendment proposes amalgamation of 2 studio units to one bed dual aspect unit at first floor level, waste storage relocated to basement level vault under pavement, addition of rooflight to bedroom of Unit 03 at basement level, Unit 03 glazed door replaced with larger frameless glass screen to kitchen space. Amendments and revision at first floor results in 40% of units meeting unit size requirement of SPPR1 & 2 and represents a high level of compliance in a building refurbishment. It results in 40% of units being dual aspect in excess of 33% requirement. Any further amalgamation of units will make scheme unviable. Bord still being asked to grant permission for 11 units but 10 if it deems it necessary;
- Sunlight/daylight assessment accompanies appeal given requirements of Apartment Guidelines and is based on 10 units however can be used to interpret impacts on original proposal for 11 units. Daylight analysis demonstrates the proposal results in 80% compliance, 80 % of rooms are compliant and just 3 rooms in the basement are not compliant. When impact of

trees are accounted for compliance drops. In terms of sunlight the proposal results in 80% compliance, 80% of the units are compliant, 2 units in the basement do not comply and existing trees are considered in this assessment. It is concluded that the amended scheme is performing well from a sunlight and daylight point of view given its protected structure status and that areas of underperformance are mainly in the existing basement with further amalgamation not feasible and no further design measures possible without serious interference in to fabric. Thus the study yields positive results.

8. PA Response/Submission of Observers

Planning Authority

- No response received from Planning Authority

Observations of Katy McGuinness & Felim Dunne

- Lack of clarity in application whether residential units are for sale, to rent or for short term letting. Architects submission refers to them as serviced residential units which could mean AirBnb short term lets. Proposed use should be clarified;
- Reference to policy and guidance is made including Z8 zoning in Development Plan, Development Plan policies on reuse and refurbishment of historic buildings, Development Standards and the Section 28 Apartment Guidelines Specific Planning Policy Requirements, the Architectural Heritage Protection Guidelines for Planning Authorities, the NIAH Architectural Heritage of Dublin South City (2017), DCC study of the South Georgian Core (2013) and DCC commissioned South Georgian Townhouse re-use Guidance Document (2019),
- Nature of proposed use is unclear and referred to as residential and serviced residential. Serviced residential is not listed as permissible or open for consideration under the land use zoning and would appear to be contrary to objective to encourage more residential use in the area. DCC therefore correct in refusing permission;

- Statements that scheme would encourage smaller more affordable units to allow more people to live in Georgian core made without evidence of an alternative approach being considered or discussed at a pre planning stage. Substantial proof required before conversion of Georgian townhouse to bed sits could be justified. Proposed development presents vista of Georgian core full of bedsits and one star hotels. Note Appellant unhappy with term bedsit yet this describes sub standard accommodation proposed;
- This is a purely speculative application and building is currently for sale, the building owner having consented to the application being made by a property developer;
- Development inconsistent with Architectural Heritage Protection Guidelines as does not meet key objective for minimum intervention as dramatic intervention proposed and applicant has failed to demonstrate how compliance with Building Regulations can be achieved without damaging historic character and fabric. Extent of development and number of units will inevitably lead to unacceptable alterations and is inconsistent with conservation objectives of Guidelines;
- Development inconsistent with character of terrace of 20 townhouses of which it forms part. Character of the street is primarily the residential use of the original design. Intensity of residential use proposed cannot be considered consistent with character and significance of the residential use as originally envisaged;
- The document The Future of the South Georgian Core sets out a residential vision for the centre and informs the Development Plan not least in establishing appropriate land uses that complement the vision for a residential core. This includes many options for the Georgian Townhouse but the reconfiguration of the townhouse where each room becomes a residential unit is not part of this vision;
- A range of solutions for such townhouses are set out in the South Georgian Townhouse Re Use Guidance document. Whilst not prescriptive it establishes the intensity of use envisaged. The proposed development is not consistent with this. No attempt was made by the Applicants to engage

with DCC officials to address issues around Fire Safety and Disability Access certification or general compliance with the Building Regulations;

- Development specifically fails to comply with Section 28 Apartment Guidelines, fails to provide an appropriate mix of unit size and type, exceeds limits on studio units, fails to meet area requirements for studios, fails to provide minimum number of dual aspect units and fails to make case allowing planning authority to exercise discretion. Only one unit at ground floor level achieves appropriate dual aspect all others are either below ground level or single aspect. The apartments are poor quality and an overall high standard of design has not been achieved;
- While appropriate floor to ceiling heights are achieved overall design is poor quality;
- Standards provide policy in respect of internal storage, private amenity space, childrens play and bicycle parking and storage. Proposed development is substandard in all these respects,
- No indication provided on management structure of the serviced apartments, who will carry out bin collections and no information on where and by whom separation of waste will occur;
- No information on daylighting submitted with application and majority of units are single aspect and at least half face north;
- Apartment Guidelines require consideration of how compliance with Multi Unit Development Act 2011 is achieved and assessment including long term running costs and a building lifecycle report. Application did not include a Building Lifecycle Report or analysis of how development complies with Multi Unit Development Act 2011;
- Agree with Appellant that planners report was deficient in that clarification of the residential use should have been sought as serviced residential is very different to residential and absence of clarity in how development complied with the Multi Unit Development Act. Whilst Appellant indicates lease terms of at least one year there is no detail of how short term lets will be prevented and design of scheme bears all hallmarks of Airbnb type offering;
- Agree that DCC conservation officer should have reviewed proposals.
Agree with decision to refuse but decision is weakened by lack of thorough

appraisal and lack of assessment of proposed change of use and interventions and how proposal complies with Building Regulations. An independent assessment from a conservation officer is required before any de novo consideration of this appeal;

- Disagree that the proposed development represents urban consolidation as this is meant for brownfield or other opportunity sites. If applicant wanted to understand the strategy for the property they would have followed guidance in relation to protected structures within the Georgian Core South Georgian Townhouse Re Use Guidance document. Application not about creating new homes in Georgian core but squashing in as many bedsit type flatlets as possible that can be sub let on an Airbnb style;
- Agree with planning officer that development represents sub standard units that would negatively impact on the special character of the protected structure. The extensive non compliance with standards is indicative of this;
- No evidence provided that this is only viable economic option to save building and to repopulate area. There are examples of successful adaption and densification of typical Georgian townhouses in immediate neighbourhood. This undermine contentions of Appellant that the proposed development is the only economically viable future for the protected structure;
- In regard to the options proposed in appeal disproportionate emphasis is placed on the bin store relocation to the cellar under the pavement which is an unsuitable location. The daylight assessment should have accompanied the original application as a requirement of the Apartment Guidelines. This demonstrated the inadequacy of the proposal and hence the amendments suggested with appeal. These changes however are only marginally less worse than the original design refused by DCC.

Environmental Screening

9. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, 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.

10. AA Screening

Having regard to the nature and scale of development, location in an urban area, connection to existing services and absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Having inspected the appeal site and surroundings and having regard to the submissions lodged with the application and appeal and the national and local policy context I consider the main issues to be considered in this case to be

- Nature of residential development proposed;
- Adequacy of information available to assess merits of case;
- Relevance of consideration of alternative proposals for the building/precedents;
- Principle of development having regard to Development Plan Zoning and other provisions;
- Residential accommodation proposed having regard to relevant residential development standards;
- Impact of proposed development on protected structure;
- Impact of proposed development on conservation area;

- Question of viability and weight to be attached in assessing planning merits of case
- Whether proposed development would constitute a material contravention of the Development Plan.

2.2. **Nature of development proposed:** The Observers to this appeal have questioned the nature of the residential use proposed alleging uncertainty and lack of clarity around the residential occupancy proposed. They refer to the proposed development as having the appearance and providing for AirBnB type short term rental accommodation. Should the Board accept this viewpoint it may wish to seek further clarity on this issue. I consider however that there is a sufficiency of information on this matter to allow the Board to proceed to a determination of the merits of this case.

2.3. As amended in the Appellants grounds of appeal (an amendment which amongst others I consider necessary in the interests of proper planning and sustainable development) the proposed development consists of 10 no. units comprising 3 no. one bed units and seven no. studio units. This is still an intensive use of the building utilising both the existing, retained structure and also proposed new additions. The size of the studios are stated as varying from between 24.3 to 39.5 sq.m and the one bed units being from 47 to 57.2 sq.m. All of the proposed development appears to be being constructed as build to rent (applicants do not presently own the building which is currently for sale) and all are self-contained with their own bathroom and kitchen facilities. The Observers describe them as bedsits although as stated they are all self-contained with their own kitchen and bathroom facilities. Overall there would appear to be relatively limited shared/communal facilities other than for matters such as refuse storage (proposed in the appeal amendment in the existing basement cellar under the pavement to the front of the property), the communal stairs and circulation areas accessing the units and a small courtyard at basement level between the existing building and proposed new one bed Unit to the rear (No 3). Communal management services are proposed as indicated below.

2.4. The Appellants submissions are that these units would be let on a minimum one year fixed tenancy and thereafter tenants would have rights of a tenancy of indefinite duration. In the letter from property managers acting on behalf of the Appellants

lodged with the appeal it is stated that the Appellants are not engaged in the provision of short term accommodation such as AirBnB or other short term bookings – the preference being to create comfortable and well equipped homes which attract tenants who are planning to remain in occupation for several years. It also provides further information on the tenant management services provided which includes the supervision and management of the upkeep, maintenance and repair of the units including common area halls and grounds and lighting in accordance with the Appellants requirements. This would include domestic waste management, landscaping and grounds maintenance and management of a secure wifi connection to all units.

- 2.5. The information provided by the Appellants in this regard could not be considered to constitute a detailed response to the requirement in the Apartment Guidelines for comprehensive information relating to the operation and management of the apartments including provision of a Building Lifecycle Report. I consider that there is however sufficient information to determine the nature of residential accommodation proposed in this instance and to consider the planning merits of the case. It appears to me that in broad terms residential use in the form of a number of small, self contained units are being proposed which are intended to be offered for rental on a temporary, lease basis. This is stated to be for a period of at least one year and offering some limited communal service provisions. Should this information be considered insufficient by the Board then it is open to it to seek further clarity on the matter by way of Further Information prior to reaching its decision.
- 2.6. **Adequacy of information available to assess merits of case:** The Observers question the adequacy of detail provided in the application plans and particulars and appeal submissions in regard to how compliance with Building Regulation requirements will be achieved. This is particularly pertinent in regard to Part M (Access and Use) which is relevant insofar as the proposed works are concerned but also to other aspects of the Building Regulations including Part B (Fire safety). This is of importance in this case given the building's sensitivity as a protected structure whose fabric, integrity, character and appearance must be protected and its setting within a terrace of such in the Georgian conservation area. The Guidance and Policy referred to above requires full implications of a development to be established

where a protected structure is involved including one where change of use is proposed.

- 2.7. Relevant information is provided on the drawings and also in the associated documentation. I draw the Board's attention to this including section 3.8 of the Architectural Design Report and section 9.5 of the Conservation Report and Impact Assessment. This information provides some clarity however the matter would not appear to be addressed as fully or in such a comprehensive manner as might be suggested for example in the South Georgian Townhouse Re Use Guidance document referred to in the Development Plan. Clarity is also not assisted in the absence of a report on this case from the DCC Conservation Section and where there is also no submission on file to suggest the outcome of any pre planning discussions with that Conservation section. The Board may therefore wish to consider whether further clarity on this issue or a report from the DCC Conservation Section is necessary prior to reaching its decision.
- 2.8. I would remind the Board In regard to the Building Regulations that the Architectural Heritage Guidelines indicates that compliance with such in historic buildings may present particular problems and approaches other than those contained in the TGDs may be appropriate in order to protect the character of the building. In the interest of conserving the character of buildings of outstanding architectural and historical importance, the enhanced thermal performance requirements introduced in the 2002 amendment to the Building Regulations do not apply to works (including extensions) to existing buildings which are protected structures or proposed protected structures under the Planning and Development Act 2000. I return to this matter again in my assessment of the merits of the proposed development and its impact on the fabric and structure of the building below.
- 2.9. **Relevance of consideration of alternative proposals for the building/precedents:** The Observers have made reference to the Development Plan and to a number of further documents including the DCC commissioned South Georgian Townhouse Re-Use Guidance Document (2019) in setting out a vision and suggested intensity of re-use within such Georgian structures. I have reviewed this 2019 document in particular and note that it itself states that it is not intended to be prescriptive. I would however concur that the nature, extent and intensity of use suggested in that document by way of examples given would not be reflected in the

development now before the Board. The document would appear to suggest less intensive configurations and use of the buildings than that now proposed which seeks the entire (retained and extended) building and each of its individual rooms (with some exceptions) being converted to provide the separate self contained residential units. Whatever the merits or otherwise of such arguments and approaches I would advise the Board that any such alternative as may be set out in the guidance for example are not the subject matter of this appeal. Whilst the Observers have pointed to successful conversions and changes of use of Georgian structures in proximity to the appeal site that they consider accords more with the vision expressed it is the merits of this particular proposal in this particular building in this particular location now before the Board which must be considered and determined on its merits. The acceptability of this change of use, its proposed alterations and extensions and their impacts having regard to the particular nature of this protected structure and its location must be considered on its own merits notwithstanding decisions that may have been made or alternatives suggested elsewhere.

- 2.10. **Principle of development having regard to Development Plan Zoning and other provisions:** I draw the Board's attention to the comments in the DCC Planner's report in regard to the acceptance in principle of the proposed residential use. It acknowledges that residential use is permissible and that where residential levels are low it is the aim of the Development Plan to encourage more residential use including support for sub division and universal access that does not impact negatively on the architectural character and setting of the area. Further the report welcomes residential use in this location to assist in addressing the housing crisis and to revitalise the social and physical fabric of the city although ultimately recommending refusal on grounds of over-intensive use, the substandard nature of residential development proposed in terms of poor minimum floor area, dual aspect, mix of units and open space provision and adverse impact on the protected structure.
- 2.11. I would support the conclusions reached in the DCC planners report on the acceptability of the principle of the residential development proposed in this city centre location within the Georgian core. I consider that albeit of a particular leasehold nature and providing small self contained residential units the introduction

of such would, in principle comply with the Z8 zoning provision being 'permissible'. In addition, it would comply with other policies and objectives of the Development Plan seeking to promote and support residential consolidation and sustainable intensification, to promote measures to reduce vacancy and underuse of existing building stock and to support the refurbishment and retrofitting of existing buildings. It is key however that notwithstanding this 'in principle' support that these policies are correctly in my opinion subject to qualification to ensure that such development accords with other proper planning and sustainable development principles. Such principles include having regard to the need for high standards of urban design and architecture and to successfully integrate with the character of the surrounding area and to ensure that the quality of accommodation proposed is itself appropriate and acceptable. The impacts on the fabric and character of the protected structure and character and appearance of the conservation area are also further critical material considerations.

- 2.12. **Residential accommodation proposed having regard to relevant residential development standards:** The Parties and Observers to this appeal make considerable reference to the Sustainable Urban Housing: Design Standards for New Apartments Guidelines. I note that as part of this appeal the Appellants have now provided a sunlight/daylight analysis which did not accompany the original application and have suggested an option for reducing the scheme to 10 no. units in total (but expressing a strong preference on viability grounds for the initial development proposed of 11 no. units).
- 2.13. I draw the Board's attention to the concluding table set out in the grounds of appeal (page 23) which summarises in tabulated form the revised scheme in terms of the units, their size and compliance with the standards set out in the Apartment Guidelines SPPR's and whether they are dual aspect or not. This table indicates that a significant proportion 60% (6 no.) of the 10 units in the revised scheme fail to meet the required floor areas. SPPR3 Minimum Apartment Floor Area states minimum floor area for a studio apartment should be 37sq.m. and for a one bed apartment should be 45sq.m. As indicated above the size of the studios are stated as varying from between 24.3 to 39.5 sq.m and the one bed units being from 47 to 57.2 sq.m. With the amalgamation of the proposed two units at first floor level to a single unit the scheme provides 40% (4 out of 10 units) with dual aspect.

- 2.14. The Sunlight and Daylight assessment provides analysis of an important measure of residential quality. This was done on the basis of the amended 10 no. unit scheme and 15 no. habitable rooms although in the grounds of appeal it is stated that the conclusions can be interpreted to apply equally to the original proposal for 11 no. units. It notes in particular that all three units at basement level are underperforming from a spatial daylight autonomy and sunlight exposure point of view (which is concluded in the study to be expected) although given the protected structure status of the building overall it is stated as performing well.
- 2.15. In regard to Unit 3, amendments contained in the appeal including provision of a skylight and revised window detailing have enhanced the daylight component of the unit. In regard to sunlight exposure the amalgamation of the initially proposed two single aspect studio apartments at first floor level to a one bed dual aspect unit is stated to be due to orientation of the building and the difficulty of the single aspect units achieving compliance. The analysis concludes that this amendment has resulted in a high level of sunlight exposure.
- 2.16. I draw the Board's attention to the conclusions of this assessment set out on pages 13 and 14 and the tabulated results set out in its Appendix. The report concludes that while there are areas of building that are under performing there are mainly confined to the basement level and taking in to account its urban location and protected status and that the vast majority of the units would receive adequate levels of daylight and sunlight the assessment yields positive results.
- 2.17. I have reviewed these documents and analysis, the conclusions reached and the information set out in the Appendices. It would appear that issues do arise in regard to the basement level which I consider must be addressed. Some improvements have been made in the amended scheme provided with the appeal to one of the basement units (No.3) however I consider this insufficient in the context of the overall development proposed for the site and amenities proposed to serve the development. I consider the measure to enhance sunlight exposure at first floor by amalgamation of the two studios units in to 1 no. one bed unit to be necessary. I also consider that spatial daylight autonomy results particularly in the different study scenarios set out and including with and without trees assessed in complying with minimum standards are not entirely as positive as the Appellants suggest and that the scheme would have limitations in this regard. However, such limitations must be

considered in the context of the proposed development seeking beneficial residential re use and refurbishment of a protected structure within a terrace of similar structures in a built up area and as part of a proposal which is not, in my opinion, and subject to amendment entirely without merit.

2.18. There are references in the submissions to the requirements of other SPPR's in the Apartment Guidelines. In regard to the requirements of SPPR2 (Unit Mix) and SPPR4 (Dual Aspect) these allow for potential exemption to the minimum standards set out on a case by case basis where building refurbishment is proposed, but subject to the achievement of overall high design quality in other aspects. The Board should also note Section 6.9 as referred to above which states 'Planning authorities are also requested to practically and flexibly apply the general requirements of these guidelines in relation to refurbishment schemes, particularly in historic buildings

2.19. I consider that the above statement is the context in which this development should be considered although the minimum quality measures set out are still a useful indicator of quality in the overall design proposed. In addition an analysis of the other aspects of the scheme as set out in the Guidelines would be necessary including for example extent and quality of community facilities proposed.

2.20. The Appellant in the grounds of appeal make a number of references to these exemption clauses in support of the scheme in addressing the reason for the DCC Notification of Decision to Refuse. I consider that there is a balance to be achieved in allowing for a beneficial use to be introduced whilst at the same time maintaining acceptable standards of residential amenity and ensuring that the fabric, character and setting of the protected structure and area are protected. Notwithstanding the amendments proposed in the grounds of appeal I do not consider that the proposed development achieves an acceptable balance. I consider that there is basis for the DCC concerns in regard to the proposed subdivision, alteration and extension of this building in the manner proposed resulting in an over intensive use of the site and substandard levels of amenity. The proposed reduction to 10 no. units has assisted to some limited extent however I consider that the overall proposal would still seek an inappropriate intensity of use and new built form on the limited site area particularly to the rear that would constitute overdevelopment.

- 2.21. At my site inspection I was able to view the incremental additions that have taken place to the rear of this property. It is intended that existing structures will be removed and replaced by various additions but in particular by the excavation proposed and construction of Unit 03 which would utilise a significant proportion of the resultant rear yard. The existing modern rear additions provided additional office floor area and ancillary facilities in a functional and utilitarian manner. They are in themselves of no merit, they have left very little usable or attractive open area and their removal would be an enhancement to the building and its setting. However a new residential use is now being proposed for the building. This new use should, in my opinion, be considered on its merits and must itself provide for amenities commensurate with its protected structure status and nature of use proposed to ensure a sustainable form of development is achieved in the interests of proper planning, the character of the area and the long term viability and integrity of the building.
- 2.22. Having regard to the preceding analysis in regard to the basement unit floor areas, to the sunlight/daylight assessments and to the further limitations set out below in regard to further deficiency of communal amenities I consider that the proposals for 2 studio apartments in the existing basement and the new one bed apartment to be constructed to the rear are deficient, inappropriate and excessive. I consider that Unit 03 should be omitted entirely and resultant area given over to provision of open communal use and services whilst Studio Units 01 and 02 should be combined to create a single one bed Unit to enhance its attractiveness and amenity. The result would be a scheme of 8 no. units comprising 3 no. one bed units and five studio units. This in my opinion would still nevertheless represent a significant intensity of use of this structure.
- 2.23. The protected structure status of the building would impose limitations in regard to provision of amenities such as private balconies. Overall however I consider there is a deficiency in communal open space provision to serve users of the development a matter of concern also given the floor area of some of the units including the studio units at second and third floor level. I accept the point made in the Appellants submissions in regard to proximity to public squares and walkways nearby and to other city centre attractions and the amenities they provide. This does not however address in my opinion the deficient nature of provision proposed in this instance in

relation to the proposed residential re-use of this protected structure and the opportunity it affords to enhance the buildings setting, amenities and attractiveness. I consider my suggestion to omit Unit 3 entirely would go some way to address this issue and the opportunity to provide further communal facilities including potentially cycle parking spaces within the private realm which are entirely lacking (although noting the proximity to Dublin Bikes station as referred to in the Appellants submission), greater opportunity for management of waste, introduction of services and some outdoor amenity.

- 2.24. **Impact of proposed development on protected structure:** I would repeat that there appears to have been no report from a DCC Conservation Officer in regard to this proposed development and no such report appears on file. This is somewhat surprising given the building's protected structure status and location in the Georgian conservation area within an attractive terrace of similar protected buildings. The Board may therefore wish to consider whether it should seek such prior to reaching its decision.
- 2.25. Notwithstanding the above the drawings lodged along with the Conservation Report and Impact Assessment and Architectural Design Report provides a history of the building, policy context, a comprehensive photographic survey and an analysis of the proposed development and its impact on the fabric of the building. I draw the Board's attention to these documents and to the photographic survey and description of the building contained therein.
- 2.26. At my site inspection I was able to gain access to most of the internal spaces of this building. There is significant evidence of its previous use as offices including the provision of partitions and services. Its internal appearance has been altered as a result. Particularly on the upper floors there were few decorative features apparent although original features still appear in the entrance hall and original cornicing is still apparent in principal rooms at ground and first floor. A small modern lift has been inserted between entrance hall and stairs rising vertically through the building to third floor/roof (plant) resulting in loss of fabric and decoration and as stated there have been substantial incremental modern additions and the installation of a metal fire escape to the rear elevation shared with the neighbouring property. The Conservation Report and Impact Assessment provided with the application notes a strong smell of damp at basement level. This was not apparent at the time of my

inspection however some evidence of damp was visible in the walls and floors. Clearly no conclusion on the extent of any damp and moisture ingress in the basement can be ascertained from my inspection alone although as indicated the Conservation Report and Impact Assessment makes reference to this and sets out measures to remediate the problem. Generally however and overall despite its current vacancy the building on initial inspection could not be described as being in a serious state of disrepair or dereliction,

- 2.27. I would concur with the statements made in the Architectural Design Report that modern interventions to date have not been carried out with due regard for good conservation practice and principle and as a result as indicated above substantial historic fabric has been lost or damaged. I consider that the conservation approach taken in the application has some merit although I still recommend as indicated above that significant amendments are necessary to the proposed development in the interests of residential amenity, proper planning and the fabric and character of the protected structure and its setting. Significant elements to be removed include the modern L shaped basement structure to the rear, modern plant room at ground floor level and brick flue enclosure to rear, modern steel deck to rear elevation at first, second and third floor levels and modern additions to the original two storey rear return. All these are in my opinion of no particular architectural or conservation merit and their removal would provide an opportunity to positively enhance the appearance of the protected structure and its setting subject to being sensitively carried out.
- 2.28. I would have no objections to the modern design or appearance of the new semi circular bay to the gable end of the original two storey rear return serving the proposed new duplex apartment.
- 2.29. I consider that the amendments I have already suggested for the basement level and proposed by the Appellant in the grounds of appeal at first floor level go some way in addressing concerns regarding the impact of the sub division of the building. The sub division of the second and third floors should be noted. I would tend to support the view expressed by the Appellants in respect of these upper floors however. Having regard to the changes already made to facilitate the previous office use, the character and appearance of the rooms themselves and the means to insert the proposed sanitary facilities as stand alone objects not connected to the ceiling and

kitchens treated as furniture items would allow for the legibility of the spaces to be retained as far as possible. It would also ensure that should circumstances dictate that such facilities could be removed without significant damage to historic fabric thus ensuring for the principle of 'reversibility'. The resultant floorspaces of the proposed units at these levels are small and below recommended apartment guidelines but they would however broadly respect the existing building plan form.

- 2.30. In regard to services installation it is stated that kitchens and bathrooms are arranged so that they have access to the existing service riser formed in the back corner of the rear rooms. This would be maintained and upgraded as necessary. All other risers or exposed services in the rooms would be removed and rerouted if needed in the floor void with new M&E distribution risers formed in the spaces where the lift was situated. The proposed development also proposes repair of the existing fabric of the building throughout including replacement of defective roof finish to the historic double pitch roof to arrest water ingress, removal of non original work which have caused damage to original fabric including the lift installation and removal and remediation of rising and penetrating damp. Section 9 of the Conservation Report and Impact Assessment further details the proposed works including proposed repair works. I consider these to be reasonable and to follow sound conservation practice including those proposed for brick cleaning and repair to facades, repair as necessary of original sliding sash windows and appropriate replacement of non original windows, installation of replacement shutter boxes where removed and the repair and reinstatement of decorative cornicing to the existing stairway and reception rooms. I consider that the conservation proposals as set out demonstrates an appropriate and sensitive approach to the restoration of the fabric of the building and intention to use appropriate levels of expertise in the carrying out of the works.
- 2.31. In regard to the impacts of compliance with Building Regulations I consider that there is still some question in regard to how compliance with part M will be achieved in particular with the Conservation Report and impact Assessment indicating that further discussion with the DCC Building Control Department will be necessary on this aspect. In regard to other Parts of those Regulations I am satisfied that the Board has a sufficiency of information to determine the planning merits of this case and to allow an informed decision on how the building will be impacted upon in accordance with Guidelines and Policy on the extent of details necessary to

accompany a planning application related to a protected structure. In reaching this conclusion I have regard to the details shown on the drawings, and provided in the reports accompanying the application and to the existing character and appearance of this already internally much altered protected structure. As an example I draw the Board's attention to information on how fire rating of floors, fire escape via a sprinkler system and acoustic separation will be achieved as described in the Conservation Report and Impact Assessment accompanying the application.

2.32. In conclusion I have reviewed all the drawings and details lodged and considered the amendment made in the Appellants grounds of appeal. I consider that the proposals (even with my suggested amendments at basement level) do seek to introduce some significant elements to accommodate such an intensity of residential use including the insertion of individual kitchen and bathroom facilities to each room which becomes a separate residential unit. I have considered the proposals in the light of Government Guidance and Development Plan policy seeking to minimise interventions, respect historical integrity and to introduce new services, fixtures and fittings sensitively respecting plan form and building fabric using established techniques and materials. I consider the conservation measures proposed and my suggested changes which can be incorporated by way of condition will result in an appropriate balance of restoration of the building respecting its historical form, identity, fabric, character and appearance whilst introducing a beneficial new residential use. In my opinion the Architect has demonstrated some sensitivity in approach albeit that I do not agree with the overall intensity of residential use proposed by the Appellants. I consider that the proposed development as amended, the associated restoration works and the demolition proposed would allow for a beneficial use that would enhance the appearance of this protected structure.

2.33. **Impact of proposed development on conservation area:** I refer the Board to my comments above. I consider that the overall impact of these proposals will be positive in terms of both enhancing the appearance of the building itself and its setting with consequent beneficial effects for the conservation area. I consider therefore that the proposed residential development as amended would fulfil the guiding principles in a Z8 zoned area 'to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective.'

- 2.34. **Question of viability and weight to be attached in assessing planning merits of case:** In their grounds of appeal the Appellants have sought to emphasises that the number of units is critical to the viability of the project and that any further amalgamation of units will render the scheme unviable from their perspective. No other alteration other than the reduction to 10 no. units is deemed appropriate in this regard.
- 2.35. Whilst I note such comments I would suggest to the Board that this issue has not been supported by substantive documentation and costing. In addition the question of viability is, in any case dependent on a number of factors and variables some of which are entirely personal to the Appellants and their circumstances which may not be applicable to others. Such factors may also fall outside of the planning remit. The Board is not party to the details of the financial model operated by the Applicants in this case nor to the yield they might expect from such an investment. As such I do not consider that these comments should be an overriding material planning consideration in the determination of the planning merits of this case which must be considered in accordance with core principles of proper planning and sustainable development.
- 2.36. **Whether proposed development would constitute a material contravention of the Development Plan:** In its Notification of Decision to Refusal the DCC have stated that the proposed development would materially contravene the Z8 zoning objective of the Development Plan. I refer the Board to section 37(2) of the Planning and Development Act 2000 (As Amended) which states
- (2) (a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.
- (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—
- (i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

2.37. I consider that there are clear grounds under section 37(b) (ii) - conflicting objectives of the Development Plan and (iii) - Section 28 Guidelines as indicated above to justify a grant of permission in this instance should the Board be minded to do so.

2.38. I have considered all the other matters raised but it seems to me that they are no so material to the consideration of the planning merits of this case to warrant reaching a different recommendation to that set out above and below.

3.0 Recommendation

3.1. In conclusion I recommend that permission for the proposed development be granted subject to conditions (including those amending the proposed development) for the reasons and considerations as set out above and below.

4.0 Reasons & Considerations

Having regard to

- the policies and objectives of the Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities 2024, the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities 2022, the Architectural Heritage Protection Guidelines for Planning Authorities (2011) and the Dublin City Development Plan 2022 – 2028:

- the protected structure status of the property as noted on the Record of Protected Structures contained within the Dublin City Development Plan 2022 – 2028
- the site's location in Herbert Street and part of a terrace of similarly designated protected structures within a Zoning Objective Z8 area as set out in the Dublin City Development Plan 2022 – 2028 with Objective to protect the existing architectural and civic design character and to allow only for limited expansion consistent with the conservation objective:
- The permissible nature of a residential use in a Z8 Zoned area as set out in the Dublin City Development Plan 2022 – 2028 and encouragement in the Plan to seek the sensitive re-establishment of residential uses in such areas and
- The current vacant status of the property and its previous use as offices which has adversely impacted on its internal and external character and appearance

it is considered that subject to the conditions set out below, the proposed development would provide an acceptable standard of residential accommodation and amenity that would not materially contravene the Z8 Zoning Objectives for the area, would not detract from the special form, integrity, character or appearance of the protected structure, its setting or the character or appearance of the terrace of which it forms part or the conservation area in which it is situated and would not otherwise detract from the amenities of the area or of property in the vicinity. The proposed development would, as such, be in accordance with the proper planning and sustainable development of the area.

5.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted with the grounds of appeal on the 7th day of November 2023 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.

For the avoidance of doubt the permission hereby granted allows for eight no. residential Units in total only consisting of the following accommodation

Basement level 1 no. one bed Unit

Ground floor 1 no one bed Unit and 1 no. Studio Unit

First floor 1 no. one bed Unit

Second floor 2 no. Studio Units

Third floor 2 no. Studio Units

Reason: In the interest of clarity.

2. Prior to commencement of development revised and additional plans and particulars shall be submitted to, and agreed in writing by the planning authority incorporating the following amendments and additions to the proposed development:

(a) Omission of Basement level Unit 3 (One bed unit) and resultant area to rear of building to be utilised and laid out as communal outdoor open space..

(b) Omission of Basement level Unit Nos 1 and 2 (Studio Units) and their replacement with a single One bed dual aspect unit.

(c) Details of the communal outdoor open space required by Condition 2(a) with provision of associated amenities and facilities including cycle parking facilities.

(d) Detailed methodologies, specifications and materials for implementation of the following works

- Proposed works to roof including any new structural support works and insulation;
- Proposed works for remediation of damp and moisture ingress to the basement level;
- Proposed works to repair and reinstate damaged and removed decorative plasterwork;

- Proposed works to upgrade floors for purposes of fire rating, acoustic insulation and services installation including the lifting and reinstatement of floorboards;
- Proposed works to repair and reinstate external facades including where demolition and repointing and repairs to brickwork is proposed.
- Proposed works to repair and reinstate windows and glazing including reinstatement of shutter boxes and provision of protective guard rails.

Reason: In order to provide an acceptable standard of residential amenity, in the interest of the amenities of occupiers of the proposed development and to protect the integrity, character and appearance and setting of the protected structure and area.

3. Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.

Reason: In the interest of public health.

4. Details of the internal and external finishes and materials of the proposed development hereby permitted shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development..

Reason: In the interest of visual amenity and to protect the integrity, character and appearance of the protected structure.

5. All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.

Reason: To secure the authentic preservation of this protected structure and to ensure that the proposed works are carried out in accordance with best conservation practice.

6. (a) A conservation expert shall be employed to manage, monitor and implement the works on the site and to ensure adequate protection of the retained and historic fabric during the works. In this regard, all permitted works shall be

designed to cause minimum interference to the retained building and facades structure and/or fabric.

(b) All repair works to the protected structure shall be carried out in accordance with best conservation practice as detailed in the application and the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts, Heritage and the Gaeltacht in 2011. The repair works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, plasterwork (plain and decorative) and joinery and shall be designed to cause minimum interference to the building structure and/or fabric. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement

(c) All existing original features, including interior and exterior fittings/features, joinery, plasterwork, features (including cornices and ceiling mouldings) staircases including balusters, handrail and skirting boards, shall be protected during the course of refurbishment.

Reason: To ensure that the integrity of the retained structures is maintained and that the structures are protected from unnecessary damage or loss of fabric.

7. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, or any statutory provision amending or replacing them, no form of advertising, posters, boards or other form of advertising (illuminated or otherwise) shall be displayed on the building or within the site subject of this permission unless they have been the subject of a separate application for permission to the planning authority.

Reason: To enable the planning authority to assess the impacts of any such advertising on the character and appearance of the site, protected structure and the amenities of the area.

8. The developer shall enter into water and wastewater connection agreements with Uisce Éireann. .

Reason: In the interest of public health.

9. Prior to commencement of development details of a Construction Management Plan and a Demolition Management Plan shall be submitted to, and agreed in writing by, the planning authority. These Plans shall include provision of details relating to traffic management and parking of construction and construction workers vehicles, plant and materials compounds, hours of work, noise and dust management and control measures, access provisions for plant, labour and materials, off site disposal of waste and measures proposed to keep adjacent roads clean of dirt, dust and debris. The development shall thereafter only be carried out in accordance with the details contained in the agreed Plans.

Reason: In the interest of orderly development and to protect the amenities of the area

10. The site and building works required to implement the development hereby permitted shall only be carried out between the hours of:

0700 hours to 1800 hours Monday to Friday

0800 hours to 1400 hours Saturday

Sundays and Public Holidays No activity on site

No deviation from these times shall be permitted unless a written request has been previously submitted to, and agreed in writing by, the planning authority

Reason: In the interest of orderly development and to protect the amenities of the area

11. Any landscaping incorporated pursuant to the provision of the communal outdoor open space required by condition 2(a) and (c) above shall be carried out within the first planting season following substantial completion of external construction works.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

12. The management and maintenance of the proposed development following its completion shall be the responsibility of a legally constituted management company. A management scheme providing adequate measures for the future maintenance of open space and communal areas shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for the satisfactory future maintenance of this development in the interest of residential amenity.

13. (a) A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials [and for the ongoing operation of these facilities] for each apartment unit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

(b) This plan shall provide for screened communal bin stores, the locations and designs of which shall be included in the details to be submitted.

Reason: In the interest of residential amenity, and to ensure the provision of adequate refuse storage.

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.

Philip Green

Planning Inspector

26th March 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	318409-23		
Proposed Development Summary	Change of use to residential units together with associated site works.		
Development Address	16 Herbert Street D2		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <i>(that is involving construction works, demolition, or interventions in the natural surroundings)</i>		Yes	X
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment <i>(if relevant)</i>
No		N/A	No EIAR or Preliminary

				<i>Examination required</i>
Yes		<p><i>10. Infrastructure projects</i></p> <p><i>(b)(i) Construction of more than 500 dwelling units</i></p> <p><i>(b)(iv) Urban development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.</i></p>		<i>Proceed to Q.4</i>

4. Has Schedule 7A information been submitted?		
No	X	<i>Preliminary Examination required</i>
Yes		<i>Screening Determination required</i>

Inspector: _____

Date:
