



An
Bord
Pleanála

Inspector's Report

ABP-320818-24

Development

Protected Structure: Demolition of return and construction of two/three-storey rear extension with all associated works.

Location

No. 72 Marlborough Road,
Donnybrook, Dublin 4, D04 W652.

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

4917/23.

Applicants

Siobhan O'Callaghan & Brian Rushe.

Type of Application

Planning Permission.

Planning Authority Decision

Grant with conditions.

Type of Appeal

First & Third Party.

Appellants

1. Mary Mullen & Alan Roberts (Third Party)
2. Siobhan O'Callaghan & Brian Rushe (First Party - Vs - Condition No. 5(a), (b) and (c)).

Observer

Ciara Loughney.

Date of Site Inspection

11th day of December, 2024.

Inspector

Patricia M. Young.

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1.0 Site Location and Description

- 1.1. No. 72 Marlborough Road, the appeal site has a stated site area of 275m². It forms part of a period terrace group, which is located on the southern side Marlborough Road to the immediate north of its junction with Sandford Avenue and circa 225m to the north east of Marlborough Roads junction with the Sandford Road (R117) as well as circa 317m to the south west of its junction with the Morehampton Road (R138), in the south city suburb of Donnybrook, Dublin 4.
- 1.2. No. 72 Marlborough Road is a Protected Structure (RPS Ref. No. 4983) that presents to its Marlborough Road streetscape scene as a two storey two bay over raised half basement level with an A-shaped roof over Georgian period terrace dwelling that appeared to be habitable use at the time of inspection. It and No. 70 Marlborough Road, also a Protected Structure, as well as once matching mid terrace Georgian period dwelling have a circa 12m setback from the public domain of Marlborough Road. This combined open area and served by a single shared vehicle entrance opening onto Marlborough Road accommodates the main parking, bicycle, and bin storage needs of these properties. Their shared vehicle entrance is ungated and flanked by painted period railings over raised cut stone plinths on either side. Both of these properties alongside No.s 66 and 68 Marlborough Road, which are also Protected Structures, form part of a once matching Georgian terrace group of four which sometime after their construction were then booked ended by a larger three bay period dwellings on similar in depth but much wider plots on both ends (No. 64 and 74 Marlborough Road, both Protected Structures).
- 1.3. Together this period group of six share the same angled front building line relative to the public domain of Marlborough Road. Additionally, to the rear they share a once coherent rear building line with the original rear of the properties providing access onto cul-de-sac lane of Sandford Gardens. This subject terrace group forms part of a period in layout and character streetscape scene as well as setting that is architecturally rich in terms of its collection of 19th century and early 20th century buildings, structures, and spaces. This period suburban-scape is designated a larger Residential Neighbourhood Conservation Area.
- 1.4. Attached to the main rear elevation of No. 72 Marlborough Road is a staggered in height part sunken two storey rear return that in part expands the width of the site and

opens onto a mainly grassed rear garden area. The rear garden area is demarcated by varying in height and condition period stone walls that bound with the rear amenity space of No. 74 Marlborough Road. As well as the northern boundary of a corner mews dwelling that is modern in design that incorporates at ground level part of the old stone walls (Note: this property is called 'Tawney'). This property is located on what was historically part of the rearmost garden of No. 74 Marlborough Road. Whereas the side boundary with No. 70 Marlborough Road consists of timber panel fencing as well as towards its mid-way and rear end a part mature tall coniferous hedge.

- 1.5. There is also an ancillary timber and felt roof over shed structure located in the south easternmost corner of the rear garden area and the rear boundary that provides access onto the cul-de-sac lane of Sandford Gardens. Access to Sandford Gardens is via a tall timber double gate that is flanked on either side by a traditional rendered tall wall. This access is situated circa 13m to the north of Sandford Garden's junction with Sandford Avenue.
- 1.6. Sandford Gardens is a modest in width and length substandard in finish cul-de-sac lane that serves a limited number of Marlborough Road properties (No.s 64 to 72 Marlborough Road). It also provides access to a derelict dwelling, a bungalow and an ancillary garage type building located to the rear of No. 1 Sandford Avenue.
- 1.7. This appeal site forms part of a mature residential in character area that contains a mixture of Georgian and Victorian period dwellings. Many of these period properties have been subject to various alterations and additions since their construction and first occupation.

2.0 Proposed Development

- 2.1. Planning permission is sought for demolition, alterations and additions to No. 72 Marlborough Road, a Protected Structure (RPS Ref. No. 4983). The proposed development can be summarised as follows:
 - Demolition of the two-storey return (Note: 22m²).

- Removal of the following: modern partition walls including a door set at first floor, the bottom flight of three steps, part of the original return side wall and the door set to the rear room at garden level.
- Alterations of the following: lowering the floor level of the return, lowering the floor level of the space under the front steps, widening the opening between the principal rooms and widening the original rear opening to the rear of the main house at garden level.
- Construction of the following: a new single, part two and part three storey extension (Note: 78m² / New and Retailed Floor Area of 218m²) with rooflights to the rear, including new leaf-flashed roof junctions, refitting the first-floor rear bedroom as a bathroom including a new door set to a new location in a new partition wall.
- Repairs/replacements as follows: replacement external and internal door sets to the new understairs WC, a new lowered patio to the rear at garden floor level, redecoration of previously painted surfaces inside and out.
- All associated works and services.

The planning application form indicates that the proposed resulting plot ratio and site coverage would be 0.79 and 36%, respectively. It is accompanied by:

- Architectural Heritage Impact Appraisal Report
- Architectural Heritage Appraisal Record of Photographs

2.1.1. On the 24th day of July, the applicant submitted their further information response. It indicates that the space as designed is not excessive nor would it give rise to any redundant spaces. It includes a modest reduction in floor area to 62m². The Planning Authority determined that no new public notices were required given the modest changes to the proposed development as lodged.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 20th day of August, 2024, the Planning Authority granted permission subject to 14 no. mainly standard conditions. I consider the requirements of the following conditions are of relevance:

Condition No. 5 (a); (b) and (c). It states:

“The development shall be revised as follows:

a. the proposed single-storey garden level extension shall be reduced in length to be a maximum dimension of 7m from the rear wall of the original house.

b. The proposed ground and first floor rear return shall be reduced in length to a maximum of 4m from the rear wall of the original house, omitting the shower room at ground floor level.

c. The overall width of the proposed rear return/extension at ground and first floor level shall be consistent along its length and shall be a maximum of 3.2m wide”

The stated reason for this condition is given as: *“in the interests of orderly development, residential and visual amenity and to reduce the impact on the Protected Structure”* and I note that no concerns are raised by any Parties to this appeal in relation to sub condition (d) which relates to bicycle and bin storage.

Condition No. 6 (v), (vii) and (viii). It states:

“The Applicant shall make the following amendments to the proposed plans, sections and elevations and submit revised drawings to the Conservation Division for their written agreement by compliance in advance of the works commencing. The revised drawings and documentation shall provide the following:”

....

“(v) 1:50 accurate existing elevation drawing of the entirety of the historic boundary wall between No. 74 and No. 72 from the rear wall of the Protected Structure No. 72 to the end wall onto Sandford Gardens, including all levels, and additions to the top of the wall to increase its height, accompanied by good quality photographs along its length cross-referenced to the drawings.

- o The drawing shall accurately indicate the elevation of the monopitch glazed roof which adjoins the central rear return to No. 74 to indicate the proposed junction arrangement between the new kitchen/living/dining extension and No. 74 rear return and party wall. The partial/truncated cross section drawing no. 330MRd-205P is inaccurate and does not reflect what is indicated on the current Google Maps Aerial View.*
- o The Applicant shall indicate if it is intended that the boundary wall for the extent of the proposed (revised) rear extension adjoining No. 70 will be formed by the new building, with the remainder demarcated with the existing timber fence.”*

...

“(vii) ‘Short’ 1:50 section through the existing arrangement in the rear gardens of Nos. 74, 72, 70 including key dimensions for boundary walls, relative ground levels in each garden to facilitate comparison with the proposed section on drawing no. 330MRd-205P.

(viii) 1:50 plan and section drawings of the sunken courtyard to the rear garden ensuring the use of high-quality well-detailed materials and soft landscaping that will complement the setting and amenity of the Protected Structure”.

No other concerns are raised by Parties to this appeal case to any of the other sub conditions attached to Condition No. 6.

Condition No.8. It states:

“A conservation expert with proven and appropriate expertise shall be employed to design, manage, monitor and implement the works 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 fabric and the curtilage of the Protected Structure. The conservation expert shall assist in the preparation and submission of the documentation set out in the conditions noted above”.

The stated reason for this condition is given as: *“in order to protect the amenity, setting and curtilage of the Protected Structure at 72 Marlborough Road, and adjoining Protected Structures, and to ensure that the proposed works are carried out in accordance with best conservation practice”.*

In addition, I also note the requirements of the following conditions:

Condition No. 3: Restricts the use to a single dwelling.

Condition No. 7: Restricts the introduction of ventilation grilles on the principal elevation from the garden level en-suite.

Condition No. 9: Sets out additional heritage conservation requirements.

Condition No. 13: Sets out the standards to be adhered to during demolition and construction in relation to noise.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Officers report** (14/08/2024) included the following comments:

- The further information request has not been fully addressed. Particularly it does not adequately alter the original proposed design to address the overall size, length, and height concerns of the rear extension.
- The proposed development does not balance the need for an extension and the intervention to the Protected Structures built fabric.
- The precedents cited by the applicant are not comparable.
- The recommendations made by the Conservation Officer that includes amendments to the rear extension are concurred.
- Concludes with a recommendation to grant permission, subject to safeguards.

The **initial Planning Officers report**, (02/02/2024), concluded with a request for additional information on the following matters:

Item No. 1: Seeks a redesign of the proposed rear extensions on the basis of visual and residential amenity concerns.

Item No. 2 & 3: Sets out the revisions sought by the Planning Authority's Conservation Officer.

I also note that the initial Planning Officer's report includes the following comments:

- The proposed alterations at garden level in terms of built structure and external spaces are not deemed to be acceptable as they do not respect the character of the Protected Structure, they are excessive in their nature and scale as well as give rise to undue loss of this Protected Structures surviving integrity.
- The proposed alterations at ground level are considered to be excessive and the alterations at first floor level are considered to be more acceptable in terms of its size.
- The proposed extensions would be overbearing in the context of this Protected Structure as well as would give rise to undue overshadowing of properties in its vicinity.
- Regard should have been had to the pattern of development in its setting. With particular reference given to the extension permitted to the rear of No. 70 Marlborough Road (P.A. Ref. No. 2223/17).
- Adequacy of drawings raised as a concern.
- The concerns raised in the Conservation Officer's report are concurred with.
- No AA or EIA impacts arise.
- Concludes with a recommendation for further information.

3.2.2. Other Technical Reports

Conservation Officer's Report (12/08.2024): I consider the comments in this report to be of particular relevance to the proposed development sought and the concerns raised by Parties in this appeal case. They include the following:

- In principle they support proposed extensions, alteration, and refurbishment of Protected Structures to accommodate modern living requirements. However, this is subject to a balance being struck between this type of development and ensuring the survival of their special architectural character as well as their setting.
- Some but not all of their concerns have been addressed by the further information response. The unresolved matters can be addressed by way of planning conditions.
- There are aspects of the proposed development that exceed the balance between new interventions and the impact on the host Protected Structure's special character.

- The applicant was requested that they revisit their proposal with cognisance given to the redevelopment of the adjoining No. 70 Marlborough Road; however, the applicant indicates that such an approach would not meet their needs.
- As revised the proposed rear extension still contravenes Policy BHA2 in the Development Plan. As now proposed the rear extension not only adversely impacts the host Protected Structures but also the Protected Structures that adjoin it. The rear extension would be visually overbearing and would diminish the rear amenity space of these adjoining terrace Protected Structures.
- The stepped form of the rear return at ground and first floor level is not supported on the basis of adverse visual, architectural, and residential impacts on the host structure and properties in its vicinity.
- The design would also create an uncharacteristic and unsatisfactory overhang of the roof form at the 'neck' / step-back of the extension.
- The following amendments are recommended to rear extension:
 - Reduction in its length to a maximum of 7m from the rear wall of the host Protected Structure at ground floor level.
 - The overall width of the rear return/extension at ground and first floor level shall be consistent along its length and shall be reduced from c3.9m to c.3.2m wide.
 - The upper floor levels of the proposed return shall be reduced in length to align with No. 70 Marlborough Road.
 - The proposed arrangement within the main floor plan at first floor level will retain a master bedroom to the front and shared shower room and en-suite serving the master bedroom.
- The concerns raised in relation to the garden level have been addressed.
- The concerns raised in relation to the removal of existing steps and the introduction of winders to the staircase which was considered problematic in the design as lodged has been addressed by its omission.
- Concern is raised that the main staircase has been inaccurately shown.
- The comprehensive demolition and loss of the historic boundary wall is not supported.

- It is recommended that the applicant submit short sections through the existing arrangement between the rear gardens with No.s 74, 72 and 70 Marlborough Road.
- Insufficient information has been provided on the proposed storage of bicycles and bins.
- The proposed use of the rear garden for car parking is not supported or the installation of grasscrete hard stand, particularly given the extent of alterations that have occurred to the front of this Protected Structure to facilitate car parking.
- Concerns are raised with the introduction of Air Source Heat Pumps as the documentation provided does not provide assurance that it would not adversely affect the special architectural character of this Protected Structure.
- Other than the continuance of residential use of this Protected Structure little of conservation gain has been demonstrated in the proposed works or in terms of the undoing of previous inappropriate works as part of this proposed development.
- It is also not clear whether or not the cement render applied to this historic building has resulted in a lack of breathability on walls.
- It is intended to repaint the existing previously painted likely cement external render, repairing any cracks as necessary, however, it is recommended that a detailed inspection is executed to definitively determine the material and condition of the render so that appropriate repairs can be executed.
- It is recommended when the existing inappropriate replacement roof coverings and rainwater goods come to the end of their life that a more appropriate treatment be provided.
- The proposed use of fibre cement slates over the upper floor roof level of the proposed extension is not supported.
- The use of cast iron rain water goods outside of the Protected Structure's envelope is not supported.
- As this Protected Structure is one of regional significance a Grade 1 or 2 architect shall be employed as part of completing the works sought.
- Concludes with a recommendation to grant permission subject to detailed bespoke safeguards (See: Appendix 2 of this report below).

Drainage: No objection, subject to standard safeguards.

3.3. Prescribed Bodies

3.3.1. None received.

3.4. Third Party Observations

3.4.1. During the course of the Planning Authority's determination of this application they received 2 No. Third Party Observations with addresses that correspond with the adjoining properties on either side of the host Protected Structure. These submissions raise a number of concerns which I consider can be summarised as follows:

- Inadequate and errors in the documentation provided.
- The proposed extension is excessive and out of character with its setting.
- The proposed extension would give rise to visual overbearance and diminishment of residential amenity of properties in its vicinity.
- The shadow analysis is incorrect as it does not accurately depict the built form of the extension sought.
- The residential amenity of properties in its immediate vicinity would be diminished adversely by way of overshadowing arising from the proposed rear extension.
- The proposed development would give rise to adverse overlooking.
- The documentation provided fails to clarify impact on rear boundaries.

4.0 Planning History

4.1. Site

P.A. Ref. No. 2408/95: Planning permission was **refused** for a development consisting of the construction of two storey mews building fronting onto Sandford Gardens, comprising 2 no. residential units with self-contained garage for the following stated reasons:

Reason 1: This reason for refusal was based on the substandard nature of the Sandford Gardens, inadequate visibility from Sandford

Gardens onto Sandford Avenue, traffic hazard and obstruction of road users.

Reason 2: This reason for refusal was based on adverse residential amenity impacts and depreciation of property value of properties in its immediate vicinity.

Reason 3: This reason for refusal was based on the relationship between the proposed development and the back gardens of listed for protection properties No.s 64 to 74 Marlborough Road. In this regard it was considered that the proposed development would seriously injure their amenities and depreciate the value of property in the vicinity through overlooking, overshadowing as well as visual obtrusiveness in a manner that would be contrary to the proper planning and development of the area.

Reason 4: This reason for refusal was based on the adequacy of private amenity open space for No. 70 & 72 Marlborough Road.

Reason 5: This reason for refusal was based on concerns that the proposed development would give rise to overdevelopment of the sites of Nos.70 and 72 Marlborough Road.

Decision date: 23/01/1996.

4.2. **Setting: Planning History of Subject Terrace Group – Mid Terrace Properties**

No. 70 Marlborough Road, a Protected Structure, adjoining the northern boundary of the appeal site.

P.A. Ref. No. 2223/17: Planning permission was **granted** for a development consisting of the demolition of the two-storey return, alterations, additions, and all associated works subject to revisions made by way of further information and conditions. Decision date: 23/06/2017.

No. 74 Marlborough Road, a Protected Structure, adjoining the southern boundary of the appeal site.

P.A. Ref. No. 4032/06: Planning permission was **granted** for a development consisting of alterations and additions subject to the revisions made by way of further information and subject to conditions. Decision date: 24/11/2006.

No. 66 Marlborough Road, a Protected Structure (Note: mid terrace period property to the north of the host dwelling).

P.A. Ref. No. 3602/12: Planning permission was **granted** for a development consisting of the removal of a detached timber shed & pair gates onto rear laneway (Sandford Gardens) and the construction of a detached single storey playroom, subject to conditions. Decision date: 01/02/2013.

PL29S.209906 (P.A. Ref. No. 4581/04): On appeal to the Board permission was **granted** for a development consisting of the alterations and additions to the host dwelling. Decision date: 18/04/2005.

4.3. **Setting: Other**

No. 63 Marlborough Road, a Protected Structure (Note: opposite side of Marlborough Road and located on the eastern side of its junction with Carlisle Avenue. The appeal site also included garages at Carlisle Avenue.

ABP-301002-18 (P.A. Ref. No. 4384/17): On appeal to the Board permission was **granted** for the demolition of domestic garages to rear of and construction of a 2-storey two-bed mews dwelling with first floor terraces, hard and soft landscaped garden area, and a single car parking space. Demolition of a single-storey rear return extension and shed at the rear of 63 Marlborough Road, a Protected Structure. Minor internal alterations to 63 Marlborough Road along with alterations to the existing boundary wall to Carlisle Avenue to provide separate pedestrian and vehicular entrances, and all associated site works. I note to the Board that sub condition 2(a) omitted the proposed first and second floor extensions on the basis of adverse built heritage, residential and visual impacts. Decision date: 20/07/2018.

ABP Ref. No. PL29S.244877 (P.A. Ref. No. 3735/14): On appeal to the Board permission was **refused** for the demolition of a modern single storey rear return and the construction of a two-storey two-bedroom mews dwelling to the rear of the site at a Protected Structure. The single stated reason related to the substandard private open space provision, and it was further considered that the proposed development

would neither protect nor improve the amenities of the existing residential property or of the wider area and would therefore contravene the 'Z2' zoning objective of the site. Decision date: 13/05/2015.

No. 80 Marlborough Road, a Protected Structure (Note: this structure is a period mid terrace property that forms part of the terrace group situated to the south of Marlborough Roads junction with Sandford Avenue).

ABP-PL29S.245217 (P.A. Ref. No. 2801/15): On appeal to the Board permission was **granted** to widen entrance gateway and install new gates to facilitate off-street parking subject to conditions. Decision date: 30/10/2015.

Rear of No. 76 Marlborough Road, a Protected Structure (Note: This property is an end of terrace period dwelling located on the southern side of Marlborough Road and at western corner of its junction with Sandford Avenue).

ABP-PL29S.245147 (P.A. Ref. No. 2254/15): On appeal to the Board permission was **granted** for the construction of a two storey over basement mews dwelling and associated site works subject to conditions. Decision date: 28/10/2015.

No. 28 Marlborough Road, a Protected Structure (Note: this property is located on the southern side of Marlborough Road and is located outside of the visual setting of the appeal site).

ABP-301002-18 (P.A. Ref. No. 4420/17): On appeal to the Board permission was **granted** for the demolition of extension to the rear and construction of a part single, two and three storey extension together with alterations to the Protected Structure and all associated works subject to conditions. I note to the Board that sub condition 2(a) omitted the proposed first and second floor extensions on the basis of adverse built heritage, residential and visual impacts. Decision date: 19/09/2018.

5.0 Policy Context

5.1. Local

- 5.1.1. The appeal site is zoned 'Z2' Residential Neighbourhoods (Conservation Area) in the Dublin City Development Plan, 2022-2028. The given objective for 'Z2' lands is: 'to protect and / or improve the amenities of residential conservation areas'.

- 5.1.2. Section 14.7.2 of the Development Plan states that: *“residential conservation areas have extensive groupings of buildings and associated open spaces with an attractive quality of architectural design and scale”*; *“the overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals”*; and *“the guiding principle is to enhance the architectural quality of the streetscape and the area, and to protect the residential character of the area.”*
- 5.1.3. Section 11.5.1 in relation to Protected Structures states that: *“protection also extends to any features specified as being in the attendant grounds including boundary treatments.”* Policy BHA2 of the Development Plan sets out that development will conserve and enhance Protected Structures from any works that would negatively impact upon their special character and appearance.
- 5.1.4. Section 11.5.3 of the Development Plan provides guidance on Conservation Areas with Policy BHA8 stating: *“there is a presumption against the demolition or substantial loss of a structure that positively contributes to the character of the ACA except in exceptional circumstances where such loss would also contribute to a significant public benefit”* and Policy BHA9 seeking to protect their special interest and character. This Development Plan policy also states that: *“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.”* Further, Policy BHA10 states that: *“there is a presumption against the demolition or substantial loss of a structure that positively contributes to the character of a Conservation Area, except in exceptional circumstances where such loss would also contribute to a significant public benefit”*.
- 5.1.5. Section 11.5.4 of the Development Plan deals with the matter of retrofitting, sustainability measures and addressing climate change in period buildings. This is further supported by Policy BHA21.
- 5.1.6. Policy BHA22 of the Development Plan deals with the matter of upgrading environmental performance of historic building stock within the city and Policy BHA23 in part seeks to enhance adaptive capacity, strengthen resilience and reduce the vulnerability of heritage in line with the National Climate Change Sectoral Adaptation Plan for Built and Archaeological Heritage, (2020).

- 5.1.7. Policy BHA24 of the Development Plan indicates that the City Council: “*will positively encourage and facilitate the careful refurbishment of the historic built environment for sustainable and economically viable uses and support the implementation of the National Policy on Architecture as it relates to historic buildings, streetscapes, towns and villages, by ensuring the delivery of high quality architecture and quality place-making*”.
- 5.1.8. Chapter 3 of the Development Plan deals with the matter of Climate Change.
- 5.1.9. Section 15.11 which sets out that guidance and standards relating to ancillary residential accommodation. Additional standards and guidance are provided under Appendix 18.
- 5.1.10. Volume 4 of the Development Plan contains the Record of Protected Structures.

5.2. **Other**

- Architectural Heritage Protection, Guidelines for Planning Authorities, 2011.
- Climate Action Plan, 2024.

5.3. **Natural Heritage Designations**

- 5.3.1. None within the zone of influence.
- 5.3.2. The nearest Natura 2000 sites are South Dublin Bay & River Tolka SPA (Site Code: 004024) and South Dublin Bay SAC (Site Code: 000210) are located c.2.5km to the east, as the bird would fly.

5.4. **EIA Screening**

- 5.4.1. See Appendix 1 – EIA Pre-Screening Form 1 attached.
- 5.4.2. Having regard to the modest nature, scale and extent of the development proposed, the site’s location outside of any sensitive location specified in article 109(4) of the Planning and Development Regulations, 2001, (as amended), and consisting of a brownfield site forms part of an established period terrace group in the built-up suburban area to the south of Dublin’s city centre which is served by an existing connections to public infrastructure, the nature of the receiving environment, the existing pattern of development in the vicinity, and the separation distance from the

nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development or in combination with any other plans or projects.

- 5.4.3. Conclusion: The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required in this appeal case.

5.5. Built Heritage

- 5.5.1. No. 72 Marlborough Road forms part of a group of six terrace properties that are each designated as Protected Structure. This terrace forming part of a larger streetscape scene that extends from Marlborough Roads its junction with Morehampton Road and its junction with Sandford Avenue that is addressed on either side by several Protected Structures and is a Residential Neighbourhood Conservation Area that relates to the expansion of Dublin city's suburbs in the 19th into the 20th Century.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The Board received a **Third-Party Appeal** on the 16th day of September, 2024, which was made by Mary Mullen and Alan Roberts of a given address of No. 74 Marlborough Road, which I note is the adjoining property to the south of the appeal site. Their submission seeks that the decision of the Planning Authority is overturned on the basis that it has the potential to seriously injure their residential amenity of their home in a manner that would materially contravene the provisions of the Development Plan for this type of development in this site setting.

It can be summarised as follows:

Principle of Proposed Development

- The general principle of modernising/extending this property is accepted, however, the further information response fails to address fully all of the items set out in the Planning Authority's further information response nor is it one that provides a reasonable balance of improving residential amenity whilst protecting the host property as well as the amenities of properties in its setting.

Procedural/Civil

- The Planning Authority granted permission despite the applicant's failure to fully address all of its further information request items.
- The further information response still contains inadequate information.
- There is no clarification provided in relation to the proposed height of the extension relative to their boundary wall and whether it would tie in to it. In the absence of these details, it is unclear what will be the actual level of impact on their property from the proposed extension and this period boundary wall.
- Section 34(5) of the Planning & Development Act, 2000, as amended, allows for the provision of points of details relating to a grant of permission to be agreed between the Planning Authority and the person carrying out the development after a grant of permission. However, case law stated that these cannot be impermissibly wide. It is considered that Condition No.s 5, No. 6 (v), (vii) and (viii) as well as 8 do not meet the parameters for which conditions should be used for considering the extent of significant changes they require. They also exclude those with a sufficient interest to make comments on these changes.
- The boundary wall between their property and No. 72 Marlborough Road is not in the applicant's legal interest.

Proper Planning & Sustainable Development of the Area

- The proposed development by way of its visual overbearance, overlooking, privacy, loss, sunlight/daylight diminishment, insufficient lateral separation distance and the resulting undue overshadowing is contrary to the proper planning as well as sustainable development provided for this site and its setting.

6.1.2. The Board received a **First Party Appeal** on the 16th day of September, 2024, which seeks that the Board omit the requirements of Condition No. 5 (a), (b) and (c) of the Planning Authority's notification to grant planning permission. This submission can be summarised as follows:

Existing Rear Two Storey Extension

- The existing two storey full width extension was added in the 1840s. It was intended for it to be retained subject to part demolition, repairs, and reinstatement.

Revisions to the Proposed Development

- The proposed development as revised was permitted subject to mainly standard in nature conditions.
- There is no objection to Condition No. 5(d) but the requirements of its sub conditions (a), (b) and (c) are objected to on the basis that they are not reasonable.
- The revised design and layout sought to comply with relevant planning policy provisions, meet the needs of the applicant's family, minimise impact on this Protected Structure and minimise impact on neighbouring properties. It is considered that it does so in a manner that accords with relevant planning provisions and guidance.
- Natural light and ventilation to the original structure will remain unchanged.
- The design of the extension seeks for it to sit discretely with its setting.

Impact of Condition No. 5 (a), (b) and (c)

- When taken together with the further information amendments to the development as lodged this condition would eliminate 50% of the garden level extension; 75% of the proposed entrance floor return extension; and 42% of the first-floor level extension.
- Externally the amenity improvements arising from the requirements of Condition No. 5 (a), (b) and (c) would be minimal. This is given on the basis of the proposed extensions, position, height, and relationship with neighbouring properties. Alongside in a context where there are limited views of the rear of the host property. These changes would result in an extension that would not meet their needs and would not give rise to any improved outcome for properties in its vicinity.

Built Heritage

- This proposal has no impact on the Protected Structure or its setting.

Residential Amenity Impact

- No undue residential amenity impacts would arise from the proposed development on properties in the vicinity of the extension.

Other

- No undesirable precedent would arise from a grant of permission for the proposed development as revised by their further information response.

- The appeal submission is accompanied by a number of attached documents the content of which I have noted. This includes a document titled 'Conservation Report and Architectural Impact Report', dated the 14th day of September, 2024. This report indicates that the rear extension to be demolished is non-original and that it obscures the intention of its original construction. It also contends that the length of the rear garden is such that it could accommodate the nature and extension of the development as sought.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority's response received on the 14th day of October, 2024, requests that their decision is upheld. If permission is granted, it is requested that a condition requiring the payment of a Section 48 contribution be imposed.

6.3. Observations

- 6.3.1. A Third-Party Observation was received by the Board on 14th day of October, 2024, from Ciara Loughney, with an address of No. 70 Marlborough Road. This is the adjoining property to the north of the appeal site. It can be summarised as follows:
- The proposed extension will have a significant adverse impact on the residential amenity of their property by way of its excessive size and substantial diminishment of daylight to the rear elevation as well as rear garden area.
 - No objection is raised to the garden level extension. However, it is not accepted that the remainder of the extension as revised would have minimal impact on neighbouring properties established amenity.
 - It would have been more appropriate for the First Party to have had regard to the extensions to the mid terrace properties within its subject group. The proposed extension sought is significantly larger than any of these properties.
 - The rear extension would be visually overbearing on properties in its vicinity.
 - If the ground and first floor level extension were pulled back similar to permitted extensions to the rear of mid-terrace properties in its subject terrace group, it would reduce the proposals visual overbearance as well as it would give rise to greater light penetration and less overshadowing of properties in its vicinity.

6.4. Further Responses

6.4.1. The First Party's response received by the Board on the 14th day of October, 2024, can be summarised as follows:

- The documentation is sufficient for the Board to make an informed decision.
- It is not proposed to tie in the proposed development in any way with the adjoining property of No. 74 Marlborough Road.
- The proposed courtyard would be formed within the site area of No. 72 Marlborough Road. It would provide natural light and ventilation in three directions.
- The extension to is freestanding.
- No contravention of the Development Plan arises from the proposed development.
- No undue adverse overshadowing would arise from the proposed rear extension on properties in its vicinity.
- It is not possible to get the exact topographical details of the adjoining properties. It is noted that ground levels can vary transversely and/or longitudinally over the width and length of a site and its setting.
- The engagement of a conservation expert as part of the construction team is standard in relation to works to a Protected Structure.

7.0 Assessment

7.1. Introduction

7.1.1. I consider that the key issues that arise in this appeal case can be addressed under the following broad headings:

- Principle of the Proposed Development
- Material Contravention
- Built Heritage Impact
- Other Matters Arising

7.1.2. Additionally, I note to the Board that there are two Appellants in this appeal case, i.e., the First Party Appellant who seek that the Board omit Condition 5 and its sub

conditions (a), (b) and (c) only from the Planning Authority's notification to grant permission. The main reason given by the First Party for the omission is that they consider the requirements to be unreasonable. They also consider that the proposed extension as revised gives rise to no undue built heritage, visual and/or residential amenity impacts. It is further contended that the proposed development as revised accords with the proper planning and sustainable development of the area as provided for under relevant planning provisions. On this basis the requirements of Condition 5 (a), (b) and (c) are not necessary.

- 7.1.3. The other appeal submission received by the Board is made by a Third Party with a given address for the adjoining property to the south of the site. By way of their submission to the Board they note that they accept that the general principle of the alterations and additions to this period property is acceptable as well as is a type of development that accords with the land use zoning of this site as well as its setting. Notwithstanding this they consider that the proposed development as lodged and as revised would materially contravene the Development Plan. This is on the basis of the adverse impacts that would arise to residential amenities in the immediate vicinity of the proposed rear extension. In this regard they contend that the potential impacts on these properties are such that they would materially contravene the 'Z2 – Residential Neighbourhood Conservation Area' land use zoning objective of this site and its setting.
- 7.1.4. Additionally, they consider that the level of adverse amenity impacts that would arise from the rear extension, despite the revisions made to it, would seriously injure their residential amenities as well as would result in adverse visual intrusion on their properties. They contend that this is substantive in its own right to support a reason of refusal. However, should the Board be minded to grant permission they request that the floor levels above the garden level be pulled back so that they have a similar projection to other extensions to mid terrace properties extensions in its subject terrace group.
- 7.1.5. I also consider that the Third-Party Appellant raises a number of concerns in relation to the proposed development that overlap with those raised by the Third-Party Observer in this appeal case. I note that this Third-Party Observer has a given address relating to the adjoining property to the north of the appeal site. Their main concerns relate to amenity impact of the proposed rear extension on their residential and visual

amenity on their property, which is also a designated Protected Structure. Of particular concern to them is the potential for the rear extensions to give rise to adverse diminishment of daylight and overshadowing of the rear of their property which in their view is such that it would seriously injure their residential amenities. They also consider the rear extension to be unduly excessive, visually overbearing, and out of character with those in the appeal sites setting.

- 7.1.6. I further note to the Board that both Third Parties in this appeal case raise concerns in relation to the adequacy of the documentation provided with the subject planning application as lodged as well as amended by way of the applicant's further information response. The latter I note was received by the Planning Authority on the 24th day of July, 2024. In relation to this matter, they contend that this a concern that was also shared by the Planning Authority's including with regards to the further information response. However, the Planning Authority validated this planning application as well as considered that the further information was satisfactory for them to make a final determination on the proposed development. The Planning Authority also considered that any outstanding matters of concern, including where they considered that items within their further information response was not fully addressed, could alongside other issues arising from the proposed development be dealt with by way of appropriately worded condition.
- 7.1.7. In light of the above, I consider that the Boards remit in this case is not to confine its determination to Condition No. 5 (a), (b) and (c) of the Planning Authority's notification to grant permission. It is to carry out a *de novo* assessment of the proposed development on its own merits and on a site-specific basis. With this assessment having regard to relevant local through to national planning policy provisions as well as other relevant planning considerations including but not limited to planning history and the pattern of development that characterises the site's setting. I consider that there is sufficient information on file together with the inspection of the site and its setting for the Board to make a determination on the proposed development. I also consider that the Board does not have an ombudsman's remit in their determination of this appeal in relation to the procedural concerns raised by the Third Parties on the Planning Authority's determination of the subject planning application.
- 7.1.8. For clarity purposes my assessment is based on the proposed development as revised by the applicant's further information response which was submitted to the Planning

Authority on the 24th day of July, 2024. This is on the basis that I consider that this amended design gives rise to modest qualitative improvements to the design of the proposed rear extension sought in terms of it balancing the applicant's needs for additional habitable floor area whilst reducing the potential for likely adverse impacts on the host Protected Structure. In terms of the latter, it would give rise to modest less loss of its surviving built integrity from the demolition, alterations to surviving built fabric of interest and the extension of floor area to be provided attached to its main rear elevation.

- 7.1.9. Moreover, I note that the revised design clarifies that no changes would be made to the existing staircase, the external steps and its associated features that provide access to the raised principal entrance into the host dwelling which faces onto Marlborough Road. These are key surviving architectural design features of this mid terrace Georgian period property. In particular the exterior steps and railings are an architectural exterior feature that is provided to the principal façade of the mid terrace properties within this subject terrace group and is also present in other mid terrace properties along Marlborough Road that together add to the intrinsic character of its period streetscape scene.
- 7.1.10. Before I commence my assessment I consider that the civil issues arising in this appeal case in relation to the proposed developments relationship with the rear boundaries of No. 74 and 70 Marlborough Road, adjoining properties to the south and north of the subject property, respectively, are such that in my view the applicant has not demonstrated that they have sufficient legal interest to carry out any development that has the potential to interfere with, encroach onto or oversail the adjoining side boundaries with No. 70 and 74 Marlborough Road. The First Party contend that they do not intend to carry out works beyond the confines of their legal interest.
- 7.1.11. On the matter of the boundary between No. 72 and 74 Marlborough Road I note that it consists of a period stone wall alongside the stretch where the proposed garden and ground level extensions are proposed. The drawings appear to show that the proposed extension at garden, ground and first floor level would immediately adjoin this boundary. They also show that the extension would bound immediately the boundary with No. 70 Marlborough Road also. In relation to this boundary the original boundary wall like that which existed between the semi-private setback area to the front of these

mid terrace properties has been removed at some point in time and with the rear boundary now demarcated by timber fence panels c1.8 to 2m in height.

- 7.1.12. The surviving stone boundary between No. 72 and 74 Marlborough Road, both designated Protected Structures, I consider is a surviving feature of interest from the original design and layout of these two period properties as designed and as implemented. Any loss of its integrity would be contrary to Policy BHA2 of the Development Plan which provides protection for such features that form part of Protected Structures. The applicant also has not clarified in the documentation that they have sufficient interest to interfere with this boundary nor do the works as set out clarify the level of intervention to this period stone wall.
- 7.1.13. Against this context whilst I recommend that the Board include the provisions set out under Section 34(13) of the Planning and Development Act 2000, as amended, as part of any grant of permission. This stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development. I also note the provisions of Section 5.13 of the Guidelines for Planning Authorities, Development Management, 2007 in this regard. It states under Section 5.13 that *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts”*. I also recommend that the Board include a condition that requires revisions to the rear extension so that it is adequately setback from the period stone boundary wall present between No. 72 and 74 Marlborough Road so that the proposed extension does not diminish its surviving integrity. Such a condition would be reasonable in the interests of its protection as part of the surviving authenticity of these two Protected Structures.
- 7.1.14. In addition to the above matter, I raise a concern that the documentation as lodged and as revised show a bin/bicycle structure located in the semi-private domain in close proximity to the Marlborough Road boundary as well as the front side boundary with No. 74 Marlborough Road in the site layout drawings. This structure is not provided for in the public notices, there is no detailed drawings of this structure, and it is not a structure that in this built heritage sensitive to change context be considered to meet the definitions of exempted development.
- 7.1.15. Against this context and given that the host dwelling is a Protected Structure, forms part of a terrace group of Protected Structure, forms part of a designated Residential

Neighbourhood Conservation Area, the level of alterations that have already occurred to the semi-private set back area of this period host dwelling, the ample space and access to the rear private domain of the host dwelling to the public domain with this area containing an ancillary shed structure as well as the pattern of development that characterises the site's setting, I consider it appropriate that any grant of permission omits this structure from any grant of permission. This is in the interest of orderly development, safeguarding the host Protected Structure and its sensitive to change setting from any inappropriate development that has the potential to diminish its special character through to its appreciation as part of Marlborough Road architecturally rich streetscape scene.

- 7.1.16. I also note that the drawings as lodged and as revised show the creation of a car parking provision in the rear private amenity space of this host dwelling accessible from the cul-de-sac lane of Sandford Gardens. This provision is not indicated in the public notices and is a type of development that would not be deemed to be exempted development given the sensitivity of the host dwelling and its site setting.
- 7.1.17. Additionally, the amendments to the semi-private domain to the front of No.s 72 and 70 Marlborough Road include a gravelled area for car parking to accommodate both properties in a now combined space accessed from a single vehicle entrance on the Marlborough Road frontage. These works do not appear to have the benefit of permission and have resulted in a significant erosion of the semi-private domain of these properties particularly in terms of loss of original built fabric associated with their boundary treatments. The level of existing car parking that is in situ despite these concerns more than meets the Development Plan standards for a single dwelling at this location. The provision of vehicle parking in the historic rear garden area also has the potential to materially erode the character of the host Protected Structure as well as give rise to additional nuisances for neighbouring sensitive to change properties.
- 7.1.18. Moreover, the applicant has not demonstrated that the remaining private open space amenity would be consistent or site context appropriate for No. 72 Marlborough Roads residential use as a single dwelling with the number of bed spaces this proposed development would cumulatively give rise to.
- 7.1.19. Furthermore, they have not demonstrated that the intensification of vehicle traffic onto this substandard lane (Sandford Gardens) would not give rise to a traffic hazard for

other road users. Including at its junction with Sandford Avenue where its sightlines are restricted in both directions, in particular in the sightline northwards towards Marlborough Road. Through to they have not demonstrated any measures to capture any contaminants that could potentially leak into the ground from the parking of cars on what has historically been an area of deep soil. This latter concern could however be dealt with by way of an appropriately worded condition if this component of the proposed development were otherwise acceptable.

7.1.20. Given these concerns I recommend that any grant of permission similarly omit this component from any grant of permission.

7.1.21. In addition to the above, the matter of 'Appropriate Assessment' also requires examination. This I propose to deal with separately at the end of my assessment.

7.2. Principle of the Proposed Development

7.2.1. The proposed development as set out in detail under Section 2 of this report seeks the demolition of an existing rear extension, as well as alterations and additions to No. 72 Marlborough Road. The site and its setting are zoned 'Z2' Residential Neighbourhoods (Conservation Area) in the said Development Plan. The given objective for such zoned lands is: "*to protect and / or improve the amenities of residential conservation areas*".

7.2.2. No. 72 Marlborough Road is a designated Protected Structure under Volume 4 of the Dublin City Development Plan, 2022-2028 (Note: RPS Ref. No. 4983). This applicable plan provides protection for these buildings and their setting mainly under Chapter 11. This Chapter of the Development Plan also provides for protection of Residential Neighbourhood Conservation Areas from developments that are deemed to be inappropriate to them. The site forms part of such a setting.

7.2.3. The Development Plan considers that the best way to prolong the life of a Protected Structure is to keep it in active use, ideally in its original use. This proposal is one that proposes to use this period property for its original intended purposes, i.e. one dwelling house. There is no planning history that indicates that permission was ever granted for such use or that if this is indeed the case that it predated the Local Government (Planning and Development) Act, 1963. Further, the proposed development as described in the public notices through to the documentation on file does not indicate

that a change of use is sought as part of the proposed development to reinstate its use as a single dwelling unit. It would also appear that its use prior to its last sale was as a single dwelling.

- 7.2.4. Against this context I consider that there is limited evidence that would support that its current use is not as a single dwelling or that it is a single dwelling accommodating multi-occupancy and in turn that this proposed development would give rise to any material change of its use. I therefore accept on the basis of the information on file that the proposed development is not likely to include a material change in the use of the host dwelling.
- 7.2.5. On this point I also note that the Planning Authority as part of their notification to grant permission included under Condition No. 3 a restriction of the subject premises use to a single residential unit. The basis of this condition is given to clarify the extend of the permission. I recommend that the Board provide similar clarity by way of condition should it be minded to grant permission for the proposed development sought under this application.
- 7.2.6. In relation to the general principle of the alterations and additions to the host Protected Structure, the Architectural Heritage Protection Guidelines for Planning Authorities, 2011, indicate that a degree of compromise will be required in adapting a Protected structure to meet the requirements of modern living, it is important that the special interest of the structure is not unnecessarily affected (Note: Section 7.3.1) and under Section 6.8.1 it also recognises that it *“will often be necessary to permit appropriate new extensions to protected structures in order to make them fit for modern living and to keep them in viable economic use”*. It further it indicates *“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”* (Section 6.8.2) and *“in urban areas, careful consideration needs to be given to proposals for the construction of rear extensions to protected structures”* (Section 6.8.3). This guidance is similarly echoed under Chapter 11 of the Development Plan. With both local through to national planning provisions having a general presumption against any significant or undue loss of built layers of interest as well as key design features.

- 7.2.7. Additionally, this period host dwelling forms part of a terrace group and period laid out residential in function suburban setting that has a pattern of alterations and additions. This is particularly observable behind their original rear elevations as well as to the rear of their principal ridge height. With this also including demolition of part and/or all rear returns through to the provision of varying in architectural design approach, building heights, volumes, mass through to including the introduction of more contemporary external treatments additions.
- 7.2.8. Conclusion: Taking the above considerations into account I am satisfied that the general principle of residential development to the host dwelling is acceptable, subject to safeguards, including but not limited to a detailed assessment of the potential impact on the special character of the host Protected Structures and its setting. Alongside, the potential impact on residential and visual amenities of adjoining and neighbouring similarly designated Protected Structure, the setting as part of a Residential Neighbourhood Conservation Area, the pattern of development through to demonstrating compliance with other relevant planning policy provisions and guidance.

7.3. **Material Contravention**

- 7.3.1. Concern is raised by the Third-Party Appellant that the proposed development, despite the amendments made to it as part of the applicant's further information response, would if permitted, would materially contravene the land use zoning objective of this site and its setting as provided for under the Development Plan. This is based on what is considered to be the material adverse impacts that would arise to properties in its setting.
- 7.3.2. As previously discussed, the land use objective for the site and its setting is one that seeks to provide a reasonable balance between the protection and improvement of residential neighbourhood conservation areas. I consider that this objective is considered reasonable when regard is had to the period built through to functional land use characteristics of this particular suburban period laid out setting. Alongside the additional layer of protection that arises from the host property and its subject terrace group Protected Structure designation that is given to each of the six period properties of which it is comprised.

- 7.3.3. Further, the Development Plan in general supports the provision of alterations and additions to existing residential dwellings and with the rear return for which demolition is now sought likely to have been constructed sometime after the construction of what are the mid terrace properties within this subject group. Their construction appears to date to circa 1830s and the documentation provided appears to suggest that the rear return potentially dates to circa 1840s and prior to the 1860s. Sometime after the construction of what are now the four mid terrace properties in this subject group larger in width plots on either side were created. These plots were developed to contain three bay over raised two storey level properties that maintained the front and rear building line of the four terrace properties. These later properties now book end the subject terrace group on its southern and northern end.
- 7.3.4. In more recent times an examination of the planning history of the subject terrace group shows that some of the rear returns have been lost as a result of demolition and/or incorporated into later additions extending from the original rear elevations. I note that these are not consistent in their design, built form, massing and scale. I also note that to the rear of the mid terrace properties the rear additions are generally more modest in their overall built form and scale. This I consider to be the case with the extensions to the rear of No. 64 Marlborough Road.
- 7.3.5. This pattern of development appears to be consistent with other similar in period terrace groups that address either side of Marlborough Road. With as said the mid terrace properties having more modest ancillary habitable areas in comparison to corner and end of terrace properties that in some cases occupy wider plots.
- 7.3.6. In the case of the subject period terrace group these changes are in part locally visible from the public domain of Sandford Avenue and the cul-de-sac of Sandford Gardens that runs alongside their rear boundary.
- 7.3.7. It is also of relevance in my view that since similar applications have been determined on foot of the making of a planning application, particularly in relation to applications relating to demolition, alterations and additions to mid-terrace period Protected Structures, including to the rear of the adjoining site of No. 70 Marlborough Road that local through to national level have evolved and are arguably now more robust. Particularly in my view in terms of the considerations for built heritage, residential and visually sensitive to change settings like that of this appeal site. This I acknowledge

is despite that previous Development Plans had the same or similarly phrased land use objective (Note: Z2) to that of the current Dublin City Development Plan, 2022-2028.

- 7.3.8. I am also cognisant that current local planning provisions in a consistent manner with regional and national planning provisions promote a compact city, sustainable neighbourhoods, healthy place making and support subject to safeguard at a more micro level improvements including modernisation of existing housing stock, subject to safeguards. In relation to local planning provisions they also consider that extensions play an important role in the sustainable development of Dublin city. In this context the City Council under the Development Plan sets out that it supports extension to existing dwellings subject to safeguards including but not limited to demonstrating compliance with the design principles set out under Appendix 18 of the Development Plan.
- 7.3.9. I note that Appendix 18 of the Development Plan includes planning applications for extensions demonstrating that the improvement to the residential amenity of existing properties has had appropriate regard to the amenities of the adjoining properties. In particular their need for light and privacy. They also require that the existing building should be respected and that the development should integrate with the existing as well as neighbouring buildings. With this being more critical in terms of consideration for an extension to a Protected Structure and in the context of Conservation Area settings.
- 7.3.10. Against this context I note that the Planning Authority did not consider that the proposed development as lodged, or as revised, was one that materially contravened the Development Plan land use zoning objectives. Nor did they consider that it contravened any relevant local through to national planning provision or guidance relevant to the proposed development sought. They also considered that the general principle of such development was not inconsistent with the pattern of development in this particular period laid out and residential in function suburban setting.
- 7.3.11. I similarly concluded above that the general principle of the proposed development was acceptable to the host Protected Structure, in a terrace group of Protected Structures through to is a type of development as well as land use that is consistent with the pattern of development within its residential neighbourhood conservation area

setting, subject to safeguards. With an examination of the relevant safeguards provided in the following sections of this assessment.

7.3.12. Having regards to the above considerations and having assessed the development against the four criteria under Section 37(2)(b) of the Planning and Development Act 2000, (as amended). These I note are the criteria that allows the Board to grant permission in the event of a material contravention and I having regard to them I conclude the following:

- 1) In relation to the first criteria of Section 37(2)(b) of the said Act I have concluded that the proposed development which essentially seeks demolition, alteration and addition to an existing individual dwelling, albeit this dwelling is a designated Protected Structure that is indicated in the Record of Protected Structures as regionally important, is not a type of development that could be reasonably be considered as being of strategic or national importance.
- 2) In relation to the second criteria of Section 37(2)(b) of the said Act having examined the local planning provisions in detail I am satisfied that there are no conflicting objectives in the applicable Development Plan. Nor do I consider that this plan's objectives are not clearly stated, as far as the proposed development is concerned.
- 3) In relation to the third and fourth criteria of Section 37(2)(b) of the said Act I am satisfied that there is no imperative in the regional planning guidelines for the area or other guidelines, Government policy provisions or otherwise which would support the proposed development alongside the pattern of development and permissions granted in the area since the making of the Development Plan has not altered.

7.3.13. Conclusion:

Having regard to the foregoing, it is my considered view that a material contravention does not arise in this case and I consider that this conclusion is further bolstered by the conclusions of the following sections of this assessment which further examines in more detail the potential for adverse impact of the proposed development as revised on not only the host dwelling but against its 'Z2' land use setting.

7.4. Built Heritage Impact

7.4.1. Preliminary Comment

7.4.1.1 The proposed development as set out under Section 2 of this report above consists of demolition, alterations and additions to No. 72 Marlborough Road, a Protected Structure noted of being of regional importance, that forms part of a terrace group of six period terrace properties that are similarly designated and considered to be also as regionally significant, that together with their wider setting form part of a Residential Neighbourhood Conservation Area.

7.4.1.2 As discussed, I consider that the Board is confined in its determination of this appeal case to the proposed development as lodged and by the modest revisions made to it as part of the applicant's further information request. This is on the basis that physical interventions to the built fabric of this regionally important Protected Structure, despite the fact that unsympathetic alterations have been made to it in the past, are beyond the scope set out in the public notices. With such works having the potential to give rise to material and adverse impacts on the special character, built integrity and surviving legibility of the host Protected Structure. Particularly as appreciated from the public domain of Marlborough Road, where No. 72 Marlborough Road, forms part of a visual setting of a period terrace group of six properties all of which are designated Protected Structures.

7.4.1.3 I also consider that these works have also diminished its positive contribution to the streetscape of Marlborough Road and its wider Residential Neighbourhood Conservation Area setting which consists of an important collection of period buildings, hierarchy of spaces and associated features that date to the 19th century and early 20th century.

7.4.1.4 Such outcomes in my view would be contrary to the provisions of Policy BHA2 of the Development Plan. This policy under sub condition (b) seeks to protect these structures from any works that would negatively impact their special character and appearance.

7.4.1.5. Conclusion: On the basis of the above, I propose to examination of the proposed development as set out in the public notices and subject to the revisions made to it by the applicant's further information response only. I recommend that the

Board similarly confine their determination of this Protected Structure and its sensitive to change setting.

7.4.2. **Alterations to the Principal Elevation:**

7.4.2.1 These works include the provision of an entrance door and frame to provide entry to the part raised basement level. These external works relate to interior works to the part sunken raised basement level of the host Protected Structure which is also referred to in the submitted documentation as the garden level. With these interior works facilitating access to this level from the sunken area forward of the principal elevation of the host Protected Structure that addresses Marlborough Road. Similar interventions appear to have been made to similar in architectural design and built form properties fronting Marlborough Road as providing more qualitative habitable floor area at this level. The existing opening to be impacted does not appear to contain its original opening treatment. Subject to safeguards, including agreement of the final door treatment and its design, by way of condition, I consider that this component of the proposed development raises not particular concerns.

7.4.2.2 The amendment to include the entrance door and frame for access to the basement level of this property relate to the proposed lowering of this levels floor area. In this regard, a revised floor to ceiling heights of c2.49m is proposed. With this level reconfigured to also accommodate the provision of a shower room in the front guest bedroom as well as would result in its finished floor level matching that of the courtyard feature of the proposed replacement rear extension.

7.4.2.3 I consider that the details provided in relation with these works are limited in setting out their scope in terms of the detailing the nature and extent of intervention that would be involved in lowering floor levels to facilitate the increased floor to ceiling heights through to services associated with the additional services to this level as revised. It is also unclear whether these amendments would give rise to further amendments to the principal elevation beyond that detailed. However, I consider that the safeguards recommended by the Planning Authority's Conservation Officer satisfactorily addresses these concerns and therefore recommend that the Board should it be minded to grant permission include their recommendations in relation to these particular alterations to the host Protected Structure.

7.4.2.4 In relation to the scope of alterations to the principal elevation I consider that the proposed development is a missed opportunity to provide compensatory gains in reversing unsympathetic works to this Protected Structure. Including providing a part or in full sympathetic restoration of its principal façade eliminating unsympathetic alterations to it and tidying up the *ad hoc* cables that are attached to its façade. I also concur with the Planning Authority's Conservation Officer that caution should be had to carrying out works that reinforce past unsympathetic alterations that are likely to have resulted in deterioration of this buildings original external expression. Including but not limited to the painted cement render which as applied does not appear to be a breathable finish. With deterioration of it particularly visible at the first-floor level of the principal façade.

7.4.2.5 Of further concern this proposal also does not include the removal of paint from the granite quoins, granite cills and other granite string features of the principal façade. Nor is there any proposal to provide more appropriate restoration of the A-shaped roof structure over this Protected Structure through to repairs of its chimney structures.

7.4.2.6 Conclusion: Having regards to the above whilst I consider that there is a lack of compensatory restoration and refurbishment of this Protected Structure despite the significant level of change proposed to it. Notwithstanding, in my considered opinion the works to the principal elevation are modest and subject to standard safeguards including but not limited to that all works to external and interior envelope of the host dwelling being carried out under the supervision of an appropriately qualified and experienced conservation expert that the proposed development. The modest tidying up of the paint works, its existing window as well as door treatments, and the like would give rise to a modest improvement of its appreciation from its public domain setting as well as part of the visual setting of neighbouring Protected Structures to it in its Residential Neighbourhood Conservation Area setting.

7.4.3. Demolition of the Existing Rear Extension

7.4.3.1 It is contended in the documentation provided with this application that the 22m² rear return for which demolition is sought does not form part of No. 72 Marlborough Road. In this regard, it indicates that it was likely constructed within a

decade or so of its main envelope which dates to c1830s. This however is not definitively proven to be the case in the documentation provided with this application and given its surviving consistency with other rear returns there is in my view potential that it is a rear return that could date to the original construction of this mid terrace. As such a level of precaution is appropriate in terms of its consideration for demolition.

7.4.3.2 It is clear in my view that the subject rear return for which demolition is sought has been subject to diminishment of its original period character by way of later alterations to it.

7.4.3.4 What is visible of this period building layer shows a rear elevation with non-sympathetic cement render finish through to uPVC type window and door treatments. The photographs of its interior spaces do not support the presence of any surviving of merit features of interest *in situ*. This I consider is to a greater extent than the surviving main interior space of No. 72 Marlborough Road which whilst containing a number of features of merit including but not limited to some of its original plasterwork through to the main staircase has also suffered from a loss of built integrity and special character in its interiors by way of unsympathetic past alterations.

7.4.3.5 The internal spatial arrangement of the rear return for which demolition is sought is in existing state not of any significant merit that would warrants its protection as a building layer of significant merit in its own right.

7.4.3.6 Within this period terrace group there are examples where rear returns that have maintained a higher degree of their original character due to more sympathetic custodianship. There are also alterations made to similar period terrace properties that have integrated them with modernisation of the main building as well as with more modern additions. Further, there are also examples where rear returns have been demolished within this terrace group to accommodate modernisation of their host period dwelling and the provision of additional habitable floor area of varying architectural designs and quality.

7.4.3.7 Overall the approach to modernising period properties within the site's subject terrace group setting, is visible from Sandford Avenue as well as from the cul-de-sac of Sandford Gardens. From limited viewpoints in these streetscapes later above ground level additions are in part visible. With these showing an *ad hoc* approach to such insertions. However, in the most part significant portions of the

original rear elevation, in particular the roof structure over, are still legible as being visually dominant to these later additions.

7.4.3.8 Under Policy BHA11 of the Development Plan the City Council encourages the retention where appropriate of existing older structures which make a positive contribution to the character and appearance of the area and streetscape in preference to their demolition. As discussed above I consider that this modest in scale rear return has been significantly diminished from its original design intent externally as well as internally.

7.4.3.9 I also note that Policy BHA2 of the Development Plan sub section (c) seeks that the structural integrity of Protected Structures are retained in any redevelopment. Additionally, under Policy BHA11 it provides for the retention of older buildings structures which make a positive contribution to the character and appearance of the area as well as streetscape setting in preference to their demolition.

7.4.3.10 While I consider that sympathetic refurbishment of the existing rear return or a more detailed examination into the possibility of limiting the loss of its this structure would be an approach that would accord with the Development Plans provisions set out above. Alongside I note that the Development Plan recognises the positive outcomes associated with the inherent sustainability of retention and adaptive reuse of older structures where practical in comparison to the whole life energy costs and waste impacts that result from demolition. There is also an opportunity for demolition of this existing rear return for an extension that does not seek to obscure significantly the original rear elevation of this Protected Structure.

7.4.3.11 Having regards to the above on balance I consider that the demolition of this period rear return, subject to safeguards, would not compromise the special character and interest of this host Protected Structure which would remain largely intact as part of the proposed development. It is also a structure that is not highly visible from the public domain of this Residential Neighbourhood Conservation Area setting. With the principal elevation of this Protected Structure being its elevation that addresses the public domain of Marlborough Road and its rear elevation being a secondary less decorative elevation in comparison. Moreover, the demolition of this structure is not a type of development that is inconsistent with the pattern of development that has occurred to its mid terrace properties in this modest period

terrace group of six Protected Structures or in similar contexts within this Residential Neighbourhood Conservation Area setting, in particular properties that align either side of Marlborough Road and Sandford Avenue.

7.4.3.12 Conclusion: I am satisfied that the demolition of the existing rear extensions subject to standard safeguards would not materially adversely impact on the special and intrinsic character of No. 72 Marlborough Road, a Protected Structure and its sensitive to change setting which includes Protected Structures in its vicinity as well as a setting that forms part of a larger zoned Residential Neighbourhood Conservation Area.

7.4.4. Other Interior Works to the Protected Structure

7.4.4.1 I have set out in detail the proposed works sought under this application in Section 2 of this report above and that these were subject to modest amendments set out in the applicant's further information response. These works include the removal of modern partitions; removal of non-original door sets, frames; widening of the opening between the principal rooms, widening the original rear opening to the proposed courtyard area, the provision of some internal reorganisation of internal spaces through to the widening of existing openings between the main envelope and the interior space of the rear return for which demolition is proposed.

7.4.4.2 I consider that the revisions made to the original design as lodged by the applicant does result in modest changes which give rise to less loss of built fabric, intervention to built features of interest through to results in internal spaces that are more consistent with the historical layout of this Protected Structure as originally intended. It also includes more successful integration of the retained spaces of the host Protected Structure and the proposed new floor area contained in the proposed rear extension.

7.4.4.3 While I concur with the Planning Authority's Conservation Officer in relation to the internal works that there is still a lack of certainty that works as revised by the applicants further information response would be carried out in a manner that would accords with best accepted practice for a Protected Structure and in the context of adjoining other Protected Structures. In particular the guidance provided under the Architectural Heritage Protection Guidelines for Planning Authorities, 2011. I also concur with them that there is a need for further clarification that the works to the

interiors would definitively not adversely impact the main staircase and levels as it survives. Given that there appears to be discrepancies in the accuracy of its representation in the submitted drawings. With additional clarification required to provide assurance on the integration of its landing with the proposed levels associated with the proposed rear extension.

7.4.4.4 Moreover, I consider that in terms of safeguarding the surviving built fabric to be retained and the shell of this Protected Structure that further assurance is required in relation to the use of materials, interventions for services through to whether or not the use of a heat pump for the heating of the retained period structure would not give rise to any adverse impacts on it. This is given the concerns that are associated with their use and the level of airtightness required for their efficiency of use.

7.4.4.5 On this point I note that Policy BHA2 of the Development Plan which seek to ensure that all new development works to Protected Structures protect its structural integrity through to requires any development to such structures to have regard to the Architectural Heritage Protection Guidelines for Planning Authorities (2011). Alongside ensure that works are carried out in line with best conservation practice as advised by a suitably qualified person with expertise in architectural conservation.

7.4.4.6 The First Party Appellant indicate in their submission received by the Board that they do not object to carrying out works in a manner that accords with best conservation practices. Nor do they object to having the works carried out under the supervision of an expert in this field. I am cognisant that such oversight is standard practice by way of condition in this type of development situations given the architectural and built heritage sensitivity of a Protected Structure to loss of integrity and special character.

7.4.4.7 I consider that any grant of permission should be subject to a condition that requires for written agreement the detailed conservation management plan/method statement of demolition and construction works that appropriately set out in detail the scope of works to the Protected Structure, which should include interventions to its curtilage and its surviving features. This document should clearly set out how the scope of works aligns with best practice as provided for under the

Architectural Heritage Protection Guidelines, 2011, and in turn accords with Policy BHA2 of the Development Plan.

7.4.4.8 I also consider that the reversal of later non-sympathetic building layers like the modern partitions and restoring a spatial internal layout that is more sympathetic to the original design intent together with its internal functions is a positive though modest outcome in the context of this Protected Structure.

7.4.4.9 Conclusion: I concur with the Planning Authority that the alterations to the interior spaces of this subject Protected Structure as revised are acceptable, subject to safeguards.

7.4.5. Exterior Works to the Rear Elevation of the Protected Structure

7.4.5.1 It would appear from the documentation provided with this application that the proposed development includes the general repair of the cement render to the retained rear elevation and repairs of the roof structure over the Protected Structure.

7.4.5.2 In relation to these works I concur with the Planning Authority's Conservation Officer that the repairs to this Protected Structure should not reinforce works that have been carried out to it in the past that has resulted in a diminishment of its built integrity, special character and its contribution to built heritage as well as visually rich and sensitive to change setting. Alongside that the overall materials, treatments and finishes that are used in the proposed works are sympathetic to the host Protected Structure. Including in relation to the repair and any refurbishment to the exterior of this host Protected Structure as well as that are used in the replacement larger rear extension to it.

7.4.5.3 Crucially in relation to the host Protected Structure as retained repair works should not result in any undue damage to this period buildings fabric or diminishment of its special character as legible within its visual context and sensitive to change setting. Such an approach is consistent with Policy BHA2 of the Development Plan and the safeguards advised in the Architectural Heritage Protection Guidelines for Planning Authorities, 2011.

7.4.5.4 Against this context I consider that given the modest areas of rear elevation that would be left exposed as painted cement render *in situ* or localised repairs to it that these works should demonstrate that they do not result in any further

damage to this structure. If cement render is to be maintained with localised repairs to it, I concur with the Planning Authority's Conservation Officer that it is appropriate that it is demonstrated that this would not result in further material and adverse impact to this Protected Structures special character. In particular the decay of the hidden original external elevations underneath it.

7.4.5.5 Moreover, the carrying out of interventions to the rear roof structure where it is proposed further use fibre cement tiles, which is a type of roof treatment that is not sympathetic to the Bangor blue slate, that would have formed part of the original palette of external materials, treatments and finishes, is similarly not an appropriate or sympathetic building material to use in this Protected Structures. On this point this material is not of an age or finish that is sympathetic to the original roof structure over this mid terrace property or its terrace group. Also works to the roof structure other than modest localised repair of this unsympathetic external material should be kept to the minimum and not be carried forward as part of the palette of materials in the upper roof structure of the larger replacement extension. The uppermost roof structure should be finished in Bangor blue slate so that when the fibre cement roof reaches its end of life that a similar replacement roof finish be reinstated as part of the restoration of this Protected Structures special character and its positive contribution to its sensitive to change setting. Including the terrace properties within its terrace group and their contribution to the streetscape scene of Marlborough Road, Sandford Avenue and Sandford Gardens.

7.4.5.6 If it is the case that there is any significant failure of the existing roof treatment over the A-shaped roof it would be appropriate that it be refurbished using an external roof treatment like Bangor blue slates as part of reversing the adverse impacts that have arisen from the use of fibre cement roof slates. It is also concerning given the substantive intervention that is indicated in tying in the uppermost level of the replacement extension that the applicant has not considered the replacement of the fibre cement to the rear of the ridge over this Protected Structure as part of the scope of the proposed works. Alongside ensuring that the upper floor level of the proposed extension which would be a dominant feature to the rear of this ridge and the remaining rear roof structure visually integrate more successfully with the subject terrace group of Protected Structures where the predominant roof treatment that survives is natural slate/Bangor blue slate.

7.4.5.7 In a consistent manner with the comments above any other interventions to the host dwelling's external period structure, including rainwater goods should be subject to agreement so that they are appropriate and sympathetic to its special character. Alongside they should not contribute to further erosion of this Protected Structure's special character, the visual setting of Protected Structures in its vicinity and the Residential Neighbourhood Conservation Area it forms part of.

7.4.5.8 Conclusion: I am satisfied subject to safeguards that deal with the concerns raised above that the interventions to the exterior of this Protected Structure can be dealt with by way of appropriate conditions so as to ensure that the proposed development as revised does not give rise to any further diminishment of its special character. I also consider it is standard practice for such detailed matters be subject to agreement by way of condition given the architectural sensitivity of the host structure and the built heritage as well as visual amenity sensitivity of its setting.

7.4.6. **Proposed Rear Extension**

7.4.6.1 This proposal seeks to replace the existing non-original rear extension by a part single, part two storey and part three storey extension with this positioned behind the ridge height and to the rear elevation of this surviving 1830s mid terrace period property. The Planning Authority in its further information request raised concerns over this extension as lodged. In particular it raised concerns that it was excessive in its overall size, mass, and length. On this point the Planning Authority considered that it would give rise to overbearing and adverse amenity impacts on its host Protected Structure and its setting if permitted as revised.

7.4.6.2 The amendments provided by the applicant as part of their further information response provided modest changes to the level of intervention to the Protected Structure and to the spatial layout of the proposed retained and new floor area. It gave rise to 40m² floor area at garden level. With this not including the courtyard area that would be accessible and maintaining the floor level of the revised in floor to ceiling height garden level. In each of the floor levels over 11m² is proposed. Thus, the extension is given as having a floor area of 62m². With the retained area given as 140m² and new given 62m² giving rise to a dwelling with a total floor area of 202m². This appears to be a c16m² reduction from the new and retained area of 218m² given for the proposed development as lodged.

7.4.6.3 To this I note that the proposed extension as measured from the rear courtyard has maximum ridge height of c9.5m (circa 3.2m above that existing sunken courtyard and its adjoining southern elevation extension). Though maintaining this overall height over its three storeys projection I note that the adjoining and neighbouring ground levels behind the rear elevation are part sunken in their existing state. With the ground levels higher in the main rear garden area. The proposed design of the extension includes a lower sunken courtyard area that would be accessible from the lowest floor level of the host dwelling. As such the three-storey extension relative to the courtyard the lower ground level has as said a measured 9.5m but relative to the raised rear kitchen/living/dining area it has an 8.9m height at its ridge level. (Note: Courtyard: -2.74 and the combined living and the sunken patio to the rear of its GL -2.2250). Against this context I note that the rear elevation's eaves height of the surviving 1830s measures c7.7m and its principal elevation is given as having a ridge height of 7.365m.

7.4.6.4 Of further note the ridge height over the second-floor level extends just over 6m from the slope of the A-shaped roof structure at its highest point. This is a comparable width to the rear elevation. Its eaves height is circa 1.2m higher than the second-floor level of the surviving rear eaves height of the period host dwelling. With the eaves extending c5.8m from the A-shaped slope of the rear roof and c6.3m from the rear elevation of the host period building. Alongside the rear extension at its maximum extends at full width circa 10m from the 1830s rear elevation at ground floor/garden level and c6.3m at first as well as second floor level. With the c6.3m rear projection exceeding the width of the rear elevation of the host Protected Structure.

7.4.6.5 In comparison the proposed extension relative to the existing rear extension, for which demolition is sought, at ground floor/garden level extends a further c7.5m at full width at its lower opening onto a sunken garden level. Whereas at first as well as second floor level it extends and an additional c3.8m as well as is c3.3m higher than the existing rear return.

7.4.6.6 The drawings suggest that despite the ground levels internal height of 3.345m and parapet height of c3.8m that in comparison to the height of the main rear garden area that the difference in ground level is such that it would have a height of 1.57m above it. They also indicate that in relation to the adjoining boundary with No. 74 Marlborough Road it would be built immediately alongside it with no gap in between.

Alongside the drawings indicate that its foundations would be directed inwards into the site to support the proposed extension. There is no indication on how the period stone wall will be repaired or made good prior to becoming inaccessible or where exposed alongside the proposed Courtyard.

7.4.6.6 They further show that the garden/ground level extension would be c0.8m above the main adjoining stretch of this period stone wall boundary. In relation to No. 70 Marlborough Road, it is indicated that the timber fence would remain *in situ*, and it is not proposed to provide a more permanent boundary solution between No.s 70 and 72 Marlborough Road. It is also unclear in my view whether or not this existing boundary timber fence has been positioned just inside the curtilage of No. 70 Marlborough Road. Nonetheless, the proposed extension appears to maintain the northern alignment of the existing rear return and the drawings indicate that at garden/ground floor level it would have a height of c1.1m above the timber fence. The submitted drawings also indicate that the eaves height of the uppermost second floor level would be c5.7m above this timber fence as would be the eaves height of the rear level of the proposed extension which would include windows of a similar dimensions in terms of their height and width to the one remaining window that would be maintained at second floor level as part of the limited visible rear elevation of the host Protected Structure.

7.4.6.7 In addition to the above the overall ridge height of the uppermost roof level of the rear extension is indicated as sitting c0.2m below the ridge height of the host dwellings A-shaped main roof structure. Additionally, the uppermost window in the third-floor level of the rear extension is placed at a height above that of the maintained second floor level of the host dwellings original rear elevation. It would also appear that the design does not integrate internally the collection of rainwater captured by the roof structure of the uppermost roof structure and that mounted rainwater guttering and downpipes would be appended to this structure. I note that the drawings show the use of cast aluminium gutters which I further note are not deemed to be acceptable to the Conservation Officer.

7.4.6.8 I also consider that the width of the upper two levels of the proposed extension add to the visual overbearance of the design of the proposed extension. In this regard I note that the width of this mid-terrace period dwelling measures c6m to the rear and the width of the proposed extension at these levels measures c3.9m. At

this width when taken together with the overall height and depth of the upper floor levels this extension would in my view dominate the rear of this Protected Structure. When taken together with its overall eave and ridge height, the depth, the interventions carried out in the past which would be maintained, i.e. cement render and fibre cement roofing, with the inappropriate palette of cement render and fibre cement roof reinforced in the external palette of the proposed rear extension, would in my view fail to be visually subservient to this Protected Structure as it survives and as it is appreciated in its visual context. With this including but not limited to the public domain where it would be visually apparent and overtly dominant than the existing modest and subservient rear return. It would also obscure views of the rear elevation of the subject terrace group as appreciated from its visual context given its overall height, built form, mass, scale and volume.

7.4.6.9 In comparison the overall ridge height of the proposed extension to the host dwelling is higher than that present at No. 70 Marlborough Road, the ridge height extends a further c3.4m and its eaves height extends a further c2.8m than that sought under this application. I further note at first and second floor level the rear extension to No. 70 Marlborough Road extends a further c2.8m and at garden/ground floor level a further c5.2m and has a measured width at upper floor levels of c3.2m. It also appears to have a lower eaves height projecting above the eave's height of the surviving 1830s rear elevations eaves height in comparison to the proposed development at of c0.8m. Additionally, overall ridge height sits much lower than the main ridge height by c0.6m. With significantly more of the roof structure over being of a more modest size and volume which allows for the main A-shaped roof to be legible as a dominant feature of this adjoining Protected Structure as it survives.

7.4.6.10 Moreover, in terms of the highest point of the centrally placed rear return of No. 74 Marlborough Road. I note that it extends at its maximum point and height by 4.5m into its rear garden space which appears to have a main rear garden ground level c1.5m above that of the site where its ground levels are given as GL -2.225 and c0.5m in relation to the main rear garden ground level of the site.

7.4.6.11 It is also of note that the external material envelope of the extension finished is indicated in the accompanying documentation as being finished in painted sand and cement render. This choice of materials appears to have been informed by the existing external painted cement render that currently covers the principal and

secondary elevations of this Protected Structure. In my view the choice of materials further reinforces unsympathetic alterations to the exterior of the host Protected Structure which would further add to the diminishment of this building's structural integrity and special character. Alongside would not give rise to any distinctive differentiation between the two building layers that would be legible. In a context where the proposed extension is one that its overall built form overwhelms in a non-subservient manner the surviving rear elevation of this host Protected Structure.

7.4.6.12 The revised design also includes a window opening at second floor level on the southern side elevation addressing that would have a lateral separation distance of c2.1m to the rear boundary with No. 74 Marlborough Road. This window would be one of the windows that would serve Bedroom 3 with no measures incorporated into the design to limit the potential arising from this window to overlook this adjoining property.

7.4.6.13 Additionally the proposed extension would largely obscure the rear elevation of this host dwelling and where visible there would be limited separation distance between its one surviving window opening from the proposed first and second floor level extension.

7.4.6.14 The Architectural Heritage Impact Appraisal Report accompanying the applicant's further information response and appeal submissions consider that the proposed works will give rise to relatively little loss of historic fabric. It also considers that the proposed development is appropriate to the host Protected Structure and its setting through to it would not give rise to any undue visual and/or residential amenity impacts on its setting.

7.4.6.15 I do not concur with this conclusion. Additionally, I do not consider that the proposed design as revised is one that has reasonably had regard to maintaining the special character of this host Protected Structure as part of the proposed modernisation and the provision of additional habitable floor area under the proposed development as revised.

7.4.6.16 In my view the Planning Authority provided an opportunity for the applicant by way of their further information request to address their concerns in relation to the proposed extensions visual overbearance, its impacts on the built heritage, residential and visual amenities of its setting.

7.4.6.17 While I consider that the proposed garden level/lower floor level of the proposed extension would not despite its significant depth of projection into the rear garden area give rise to significant undue overshadowing that could be deemed to be exceptional in its context. Notwithstanding, the level of overshadowing that would arise from the upper two floor levels over it is such that it could not be meaningfully addressed by way of conditions alone. The overlooking arising from the overall extension outside of the south facing uppermost window is not exceptional in a context where there is already an established level of overlooking given the pattern of development that characterises this setting. The overlooking arising from the second-floor level window in the upper floor level of the southern elevation of the proposed extension could be dealt with by way of a condition. There are a number of options the Board could consider including its omission, the use of permanent opaque glazing through to its modification to a clerestory type window that is positioned at such a height relative to the floor level of the room that it would serve would not give rise to overlooking of No. 74 Marlborough Road.

7.4.6.18 Of additional concern is that this site has an opportunity to provide a more subservient extension even if it is to be three storeys in its overall built form than that proposed under this application. The lack of visual subservience to the host Protected Structure and its subject terrace group of Protected Structures when viewed within its visual context is contrary to Policy BHA2 of the Development Plan which seeks to ensure that any development, modification, alteration, or extension affecting a protected structure and/or its setting is sensitively sited and designed. Also, this Development Plan policy requires that such interventions be appropriate in terms of the proposed scale, mass, height, density, layout, and material. Alongside it seeks to ensure that the form and structural integrity of these structure are retained in any redevelopment as well as ensure that new development does not adversely impact the curtilage or the special character of the protected structure.

7.4.6.19 For the same reasons I consider that the proposed rear extension would also be contrary to the land use objective of the site setting which under Section 14.7.2 of the Development Plan. It states that: "*the general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area*". The design approach is one that is contrary to the provisions of Policy BHA9 the Development Plan which

states that: *“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”*. In this regard it sets out enhancement opportunities may include replacement or improvement of any building and the reinstatement of missing architectural detail or important features.

7.4.6.20 As set out in this report above they seek that the Board grant permission subject to the omission of Condition No. 5 (a), (b) and (c). In relation to sub condition (a) this requires the proposed single storey garden level to be reduced in its length to a maximum of dimension of 7m from the rear wall of the original house. Under sub condition (b) it sets out that the ground and first floor level rear return shall be reduced in length to a maximum of 4m from the rear wall of the original house and under sub condition (c) it restricts the width of the replacement rear return at upper floor level to be consistent along its length and not exceed 3.2m. The stated reason for these revisions to the proposed development as revised is given as being in the interests of orderly development, residential and visual amenity as well as to reduce the impact on the Protected Structure. In relation to sub condition (d) of Condition No. 5 of the Planning Authority’s notification to grant permission I note that this relates to the bin storage and bicycle storage. A matter which I have already commented on this assessment above and concluded that it should be omitted.

7.4.6.21 Having regard to the Planning Authority’s interdepartmental reports the revision to the proposed new rear extension reflects the concerns particularly of their Conservation Officer in relation to their assessment of the further information response. The Planning Authority’s Planning Officer concurred with the recommendations proposed by the Conservation Officer to the proposed development as revised so that it addressed the concerns of the further information request in a manner that was consistent with the proper planning and sustainable development of the area.

7.4.6.22 In relation to the reduction in length of the single storey garden level extension to 7m when taken from the rear elevation of the retained envelope of what is purported to be the original rear elevation of the host dwelling, i.e., the applicant’s documents including their Heritage Impact Assessment seek to suggest that the existing rear return for which demolition is sought is not original. I consider that the

reduction of the length of this extension alone would not give rise to a significant built heritage, residential and visual amenity gain outside of it would reduce some level of daylight diminishment arising from it on the adjoining property of No. 70 Marlborough Road.

7.4.6.23 In relation to No. 74 Marlborough Road it would provide a level of additional containment of its private amenity open space provision of this property. However, its construction in the absence of any appropriate intervention to safeguard the boundary treatment between the two properties, a boundary which contains period stone wall, has the potential to give rise to further loss and diminishment of surviving features of both the host Protected Structure and No. 74 Marlborough Road, also a designated Protected Structure.

7.4.6.24 Further, the proposed design does not propose a comparable drop in ground levels comparable to the adjoining extension to the rears of No. 70 or 74 Marlborough Road. These more meaningful reduction in ground levels as part of achieving a reduction in overall height of their additions resulted in more subservient outcomes in terms of impact to the rear of these host Protected Structures to varying degrees.

7.4.6.25 Additionally, it is not fully clear from the limited sections provided through the retained floor levels and new floor levels that a more subservient in overall height 3-story extension could not have been achieved. Through to where the new floor levels integrated with that of the retained floor levels and rear elevation envelope that nibs of the original built structure could not have formed part of the design solution. Such a modest change would allow the openings between the retained and new floor area to be internally more legible⁴ as well as would result in a further modest reduction in period built fabric loss.

7.4.6.26 In relation to the upper floor levels of the proposed extension I consider that their overall height, width through to depth are excessive in terms of the host Protected Structure, its terrace group of Protected Structures through to its visual overbearing built form would give rise to undue overshadowing particularly of No. 70 Marlborough Road as well as neighbouring properties to the north of it due its positioning, orientation and overall built form.

7.4.6.27 Against this context I consider that in relation to these upper floor levels that the revisions set out under sub condition (b) and (c) are reasonable as they would result in a significant reduction in the actual level of daylight diminishment and overshadowing, particularly to No. 70 Marlborough Road. However, I am not satisfied that they achieve adequate subservience of the proposed extension, particularly in terms of its height and overall lack of subservience of built form.

7.4.6.28 Additionally, in tandem a more contemporary of its time light weight approach for the proposed extension including its roof structure over its upper floor level could when taken together with other design measures including minimising the floor to ceiling heights could still have achieved additional habitable floor and refurbishment of this Protected Structure but with less potential for adverse built heritage, residential and visual impacts on its setting.

7.4.6.29 In addition to the above considerations I note that the Architectural Heritage Protection Guidelines for Planning Authorities, 2011, states that: *“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”* (Note: Section 6.8.2). Of further relevance under Section 6.8.3 these Guidelines state that: *“careful consideration of the palette of materials with which the works are to be executed can mediate between a modern design idiom and the historic fabric of the structure”* and that *“extensions should complement the original structure in terms of scale, materials and detailed design while reflecting the values of the present time”* and under Section 6.8.5 that: *“rear elevations sometimes contain fabric that is useful in reading the history of the structure, for example surviving older windows or doors. The effect of extensions may have considerable impact on the appearance of buildings or on the setting of neighbouring buildings, or indeed on the appearance of the structure when viewed from a distance (or a set of similar structures such as in a terrace)”* should be considered when assessing applications.

7.4.6.30 Having regard to the planning precedents cited by the First Party in their documentation I am of the view that they are not comparable to this mid terrace property and relate to larger in width properties. Further, planning provisions have evolved since their determination and I highlight that that neither the Board or a Local Planning Authority are bound by precedent decisions, and each application/appeal is assessed on its own merits.

7.4.6.31 Conclusion: The proposed development seeks permission for a three-storey rear extension facilitated by the demolition of the existing rear return to the rear of this mid terrace Protected Structure. While I acknowledge the modest improvements to the design of this extension contained in the applicant's further information response; notwithstanding, as revised I am not satisfied that it would not give rise to undue adverse residential and visual amenity impacts on the host Protected Structure and its sensitive to change setting. To permit the proposed development as revised would be contrary to the site's land use Residential Neighbourhood Conservation Area land use zoning objective, Policy BHA2 and Policy BHA9 of the Development Plan. It would also be contrary to the guidance set out in the Architectural Heritage Protection Guidelines, 2011. In particular that provided for under Section 6.8. For these reasons, I consider that the proposed development would be contrary to the proper planning and sustainable development of the area.

7.5. Other Matters Arising

- 7.5.1. **General Comment:** I concern that other matters that would arise from the proposed development outside of those examined in the assessment above are such that they can be dealt with by way of standard conditions. This includes drainage, external material treatments, nuisances arising during construction through to construction and environmental management of the demolition and construction works. These are also matters that are not raised as issues by the Planning Authority in their assessment of the proposed development as lodged and as revised, subject to safeguards. I concur with this finding. I also further note that Third Parties to this appeal do not raise any substantive concerns on these particular matters either. Should the Board be minded to grant permission I recommend that it include similar conditions to that imposed by the Planning Authority in their notification to grant permission for these particular matters.
- 7.5.2. **Contributions:** I refer to the Dublin's City Council Development Contribution Scheme, 2023-2026. The development is not exempt from the requirement to pay a development contribution. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000. I note that this is provided for under Condition No. 2 of the Planning Authority's notification to grant permission.

- 7.5.3. **Encroachment/Structural Integrity of Observers Property:** In relation to the observers concerns that the subject proposal may infringe on the boundary with No. 74 Marlborough Road and the potential for the proposed development to give rise to structural integrity issues to it, it is my opinion that any instances of damage to, or interference with, shared boundaries and/or property in Third Party ownership is a civil matter for resolution between the parties concerned. I also again refer to the caveat provided under Section 34(13) of the Planning and Development Act, 2000, as amended. This I have set out previously in my assessment above and should the Board be minded to grant permission I recommend that it is included as an advisory note. I therefore note for clarity purposes that any grant of permission for the subject proposal would not in itself confer any right over private property.
- 7.5.4. **Condition No. 6, 7, 8 and 9 of the Planning Authority's notification to grant permission:** Should the Board be minded to grant permission I recommend that it include these conditions in the interests of protecting the special character, integrity, amenity and setting of the host dwelling, a Protected Structure.

8.0 AA Screening

- 8.1. I have considered the proposed development which consists of demolition of a period rear return, alterations and additions to No. 72 Marlborough Road, a Protected Structure, together with ancillary works. No. 72 Marlborough Road is a mid-terrace period property that forms part of a group of Protected Structures and forms part of Residential Neighbourhood Conservation Area located in a serviced area of Dublin 4, in light of the requirements of Section 177U of the Planning & Development Act, 2000, as amended.
- 8.2. The subject site is not located within or adjacent any Natura 2000 sites designated Special Areas of Conservation (SAC) or Special Protection Areas (SPA). The closest Natura 2000 sites are South Dublin Bay & River Tolka SPA (Site Code: 004024) and South Dublin Bay SAC (Site Code: 000210) are located c.2.5km to the east, as the bird would fly. There are other Natura 2000 sites that are located at a further lateral separation distance. These are also beyond the zone of influence of the proposed development sought under this application.

- 8.3. The proposed development is located in a mature serviced suburban area that dates back to the 19th and early 20th Century. The works relate to the interior and exterior spaces of No. 72 Marlborough Road alongside demolition works as part of facilitating the construction of a three-storey extension on what is period brownfield site.
- 8.4. No significant nature conservation concerns were raised as part of this appeal case and including by the Planning Authority in their determination of this planning application. Similarly, no significant nature conservation concerns are raised by any of the Parties in this appeal.
- 8.5. Having considered the nature, scale, extent, and location of the development I am satisfied it can be eliminated from further assessment as there is no conceivable risk to any Natura 2000 Site.
- 8.6. The reasons for my reaching of this conclusion are based on the modest nature of the development sought and its location in a mature period suburban area to the south of Dublin's city centre, a location that is served by mains drainage. Together with the standard surface water drainage measures incorporated into the design, the limited additional footprint of buildings that would arise, the distance to any Natura 2000 sites, and the suburban nature of intervening habitats as well as the absence of ecological pathways to any Natura 2000 site including sites that are located at a further distance to those identified above.
- 8.7. I am also cognisant that there are also significant improvements to the treatment of foul water as part of the current major upgrading works to Ringsend Wastewater Treatment Plant to enable it to treat the increasing volumes to the required standards.
- 8.8. I conclude that on the basis of objective information the proposed development would not have a likely significant effect on any Natura 2000 site(s) either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment Stage 2 under Section 177V of the Planning & Development Act 2000 as amended is not required.

9.0 Recommendation

- 9.1. I recommend that planning permission is **refused**.

10.0 Reasons and Considerations

1. Having regard to the Protected Structure status of No. 72 Marlborough Road, in the Dublin City Development Plan, 2022-2028, for the area, it is considered that the proposed development, in particular the proposed rear extensions by reason of its overall design, layout, height, built form, nature and extent of intervention, would be out of scale and would seriously detract from this period Protected Structure's special character by way of its visual overbearance and visual incongruity of its overall built form in a manner that would be contrary to Policy BHA2 of the said plan. This Development Plan policy has an overarching objective of conserving and enhancing protected structures as well as their setting from any works that would negatively impact upon their special character and appearance. This is considered reasonable and as a policy it accords with the guidance set out on Architectural Heritage Protection Guidelines for Planning Authorities, 2011, in relation to Protected Structures.

It is also considered that the proposed would be out of scale with its surroundings. In particular the adjoining mid-terrace property of No. 70 Marlborough Road, also a Protected Structure, which it would seriously injure the amenities of this property by way of overshadowing and visual overbearance. Further, it would be visually overbearing when viewed from No. 74 Marlborough Road, also a Protected Structure, alongside when viewed as part of its subject terrace group which is visible from the public domain of Sandford Avenue and the cul-de-sac lane of Sandford Gardens.

In relation to these concerns it is considered that the design of the proposed extension and its lack of visual subservience to its host dwelling and its subject terrace group would unduly detract from the visual and built heritage special character as well as quality of its Residential Neighbourhood Conservation Area setting in a manner that would conflict with the 'Z2' land use zoning of this parcel of suburban land. This land use objective seeks to achieve a reasonable balance between improving residential amenities and protecting the residential amenities of its period building stock from inappropriate developments.

Alongside in tandem with Policy BHA9 of the said plan which provides an additional layer of protection for such areas, this Development Plan policy seeks to protect

and enhance the character as well as appearance of these areas wherever possible including as part of proposed works seeks the re-instatement of missing architectural detail and features.

The proposed development would, therefore, materially, and adversely affect the character of this Protected Structure, would seriously injure the residential and visual amenities of its setting and would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia M. Young
Planning Inspector

4th day of February, 2025.

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320818-24		
Proposed Development Summary	Protected Structure: Demolition of return and construction of two/three-storey rear extension with all associated works.		
Development Address	No. 72 Marlborough Road, Donnybrook, Dublin 4, D04 W652.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	√	
	No		
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	√	<i>Class 10 (b) (iv) Urban Development. (Threshold is 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>	Proceed to Q3.
No			No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	√		Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	Tick/or leave blank	Subthreshold. Proposal consists of alterations to an existing Protected Structure, demolition of an existing rear return and the construction of a replacement three storey extension together with ancillary works.	Preliminary examination <u>not</u> required.

5. Has Schedule 7A information been submitted?		
No	√	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____

Date: 4th day of February, 2025.

Appendix 2

Planning Authority's Conservation Officers Recommended Bespoke Planning Conditions

Recommendation

<input type="checkbox"/>	Request for Clarification of Additional information
<input checked="" type="checkbox"/>	Grant of permission
<input type="checkbox"/>	Refusal
<input type="checkbox"/>	Comment only

I recommend that the proposed development be **Granted** with the following conditions set out below:

Recommended Planning Conditions

The following requirements of the Planning Authority's Conservation Section shall be fully complied with in the proposed development:

The Applicant shall make the following amendments to the proposed plans, sections and elevations and submit revised drawings to the Planning Authority for their written agreement by compliance in advance of the works commencing. The revised drawings and documentation shall provide the following:

- Reduction in the length of the proposed single-storey garden level extension to be a maximum dimension of 7m from the rear wall of the Protected Structure.
- The overall width of the proposed rear return/extension at ground and first floor level shall be consistent along its length and shall be reduced from c. 3.9m to 3.2m wide, which will reduce the adverse impact on the Protected Structure and will be comparable to the permitted return at No. 70.
- The proposed return shall be reduced in length to align with the rear return of No. 70, omitting the shower room at ground floor level and installing a bedroom at ground and first floor levels. The proposed arrangement within the main floor plan at first floor level will retain a master bedroom to the front and shared shower room and ensuite (or bedroom) serving the master bedroom.
- Detailed specification describing how damp shall be addressed in the entrance beneath the front entrance steps. The alleviation of damp shall be to best conservation practice and shall be consistent with the recommendations set out in Chapter 2 of the Department of Housing, Local Government and Heritage Publication *"Improving Energy Efficiency in Traditional Buildings"*.

- Timber staircase: revised plan drawings shall be submitted that indicate all handrails, levels, and differentiate between existing and new construction, indicating the stepped junction of the existing and new handrail between first floor level and the rear return.
- Accurate record section drawings AA and BB of the existing Protected Structure, clearly indicating all relevant existing levels to facilitate a proper understanding of the Protected Structure and comparison with the proposed drawings and interventions.
- Updated Section drawing of the garden level indicating any proposed lowering/excavation/installation of a new floor slab/any underpinning in a contrasting colour, and proposed methodology for any interventions required.
- 1:50 accurate existing elevation drawing of the entirety of the historic boundary wall between No. 74 and No. 72 from the rear wall of the Protected Structure No. 72 to the end wall onto Sandford Gardens, including all levels, and additions to the top of the wall to increase its height, accompanied by good quality photographs along its length cross-referenced to the drawings.
 - The drawing shall accurately indicate the elevation of the monopitch glazed roof which adjoins the central rear return to No. 74 to indicate the proposed junction arrangement between the new kitchen/living/dining extension and No. 74 rear return and party wall. The partial/truncated cross section drawing no. 330MRd-205P is inaccurate and does not reflect what is indicated on the current Google Maps Aerial View.
 - The Applicant shall indicate if it is intended that the boundary wall for the extent of the proposed (revised) rear extension adjoining No. 70 will be formed by the new building, with the remainder demarcated with the existing timber fence.
- The Applicant shall retain as much as possible of the repaired historic stone boundary wall within the proposed development and shall submit detailed drawings of the proposed works. A comprehensive specification and methodology for any repair work that will be required to the historic boundary walls shall be submitted for the written agreement of the Conservation Office.
- 'Short' 1:50 section through the existing arrangement in the rear gardens of Nos. 74, 72, 70 including key dimensions for boundary walls, relative ground levels in each garden to facilitate comparison with the proposed section on drawing no. 330MRd-205P.
- 1:50 plan and section drawings of the sunken courtyard to the rear garden ensuring the use of high-quality well-detailed materials and soft landscaping that will complement the setting and amenity of the Protected Structure

- The Applicant shall separate the bins from the bicycles and locate them as follows:
 - Bin storage shall be placed discreetly behind and aligned with the front boundary (hedge and railing).
 - Bicycle storage shall be placed along the boundary hedge opposite the front steps.
 - Detailed drawings shall be submitted for the written agreement of the Planning Authority.
2. Heat pump: In accordance with Section 4.2.2.1 Heat Pumps of the DHLGH document *Improving Energy Efficiency in Traditional Buildings*, the applicant shall calculate the buildings proposed Heat Loss Indicator (HLI) to determine whether a heat pump would be suitable for this building as the use of heat pumps in historic buildings is often problematic because of their inability to achieve complete air-tightness. The applicant shall submit the results of the calculation and should an alternative heating system be required, the applicant shall submit details and include the proposal on the services drawing.
 3. Detailed drawings indicating the location for the heat pump plant and equipment and key pipe runs shall be submitted, when this has been established by the Applicant. Plant and equipment shall be located where the special architectural character of the Protected Structure would not be affected.
 4. New roof coverings shall be Bangor Blue natural slate. When the existing fibre cement slates on the main roof perish, they shall all be replaced by Bangor Blue natural slate, to respect the architectural character and authenticity of the Protected Structure.
 5. Cast iron rainwater pipes /gutters /hopper heads only shall be used for the disposal of rainwater from the Protected Structure, to respect the architectural character and authenticity of the Protected Structure.
The Applicant shall indicate the proposed material to the new flat roof on the garden level extension.
 6. The introduction of any unsightly ventilation grilles on the principal elevation from the garden level en-suite shall not be permitted.
 - A conservation expert with proven and appropriate expertise shall be employed to design, manage, monitor and implement the works 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 fabric and the curtilage of the Protected Structure. The conservation expert shall assist in the preparation and submission of the documentation set out in the conditions noted above.
 - A conservation expert with proven and appropriate expertise shall be employed to design, manage, monitor and implement the works 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 fabric and the curtilage of the Protected Structure. The conservation expert shall assist in the preparation and submission of the documentation set out in the conditions noted above.

- The proposed development shall be carried out in accordance with the following:
 - (i) All works to the structure shall be carried out in accordance with best conservation practice and the Architectural Heritage Protection Guidelines for Planning Authorities (2011) and Advice Series issued by the Department of Housing, Local Government and Heritage. Any repair works shall retain the maximum amount of surviving historic fabric in situ. Items to be removed for repair off-site shall be recorded prior to removal, catalogued and numbered to allow for authentic re-instatement.
 - (i) All existing original features, in the vicinity of the works shall be protected during the course of the refurbishment works.
 - (ii) All repair of original fabric shall be scheduled and carried out by appropriately experienced conservators of historic fabric.
 - (iii) The architectural detailing and materials in the new work shall be executed to the highest standards so as to complement the setting of the protected structure and the historic area.

- **Reason:** In order to protect the amenity, setting and curtilage of the Protected Structure at 72 Marlborough Road, and adjoining Protected Structures, and to ensure that the proposed works are carried out in accordance with best conservation practice.