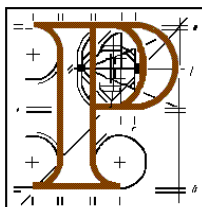


An Bord Pleanála



Inspector's Report

Retain Pedestrian opening and timber gate (facing public pavement and gate, in the rear garden of No. 74 The Cloisters, Mt. Tallant Ave, Terenure, Dublin 6W

Planning Application

Planning Authority:	Dublin City Council
Planning Authority Reg.	2226/16
Applicant:	Eugene Cleary
Type of Application:	Permission
Planning Authority Decision:	Refuse Permission

Planning Appeal

Appellant(s):	Eugene Cleary
Type of Appeal:	1 st Party Vs Decision
Observers:	The Cloisters & Maple Drive Residents Assoc.

Date of Site Inspection: 11th of July 2016

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site, 74 The Cloisters, is within a large modern housing scheme to the north of Mount Tallant Avenue, which links Kimmage Road Lower with Harold's Cross Road. The houses are two storey red brick semi-detached and terraced housing. The relevant house is a mid-terrace dwelling fronting The Cloisters. The rear boundary of the dwelling backs onto Maple Drive, which runs parallel to The Cloisters. There is a timber gate serving the rear garden area of No. 74 The Cloisters inserted into a 1.8metre block wall.

2.0 DEVELOPMENT

- 2.1 Retention permission for a pedestrian ope and a timber gate facing public pavement and road in the rear garden of No. 74 The Cloisters.

3.0 SUBMISSIONS RECIEVED

Residents from Maple Drive objected to retention of the gate for the following reasons:

Planning History;

Precedent;

Detracts from the private secured ambiance;

Traffic hazard;

Loss of privacy;

Loss of parking;

Applicant disregarding the planning histories and determined to get his way.

4.0 TECHNICAL REPORTS

Roads, Streets & Traffic Department - No objections

Planning Report: - The relevant planning history is outlined. The observations received were summarised at length. It is stated the neighbouring site at No. 75 has a similar planning history. Although the development is considered to be small in scale, it will set a precedent for the entire wall facing onto Maple drive. The intensity of use will impact on Maple Drives' residential amenity.

5.0 PLANNING AUTHORITY'S DECISION

The development was refused by Dublin City Council for one reason:

The gate would set an undesirable precedent for similar developments along the boundary wall. The gate will negatively impact on the existing character of the boundary wall and will add to the visual clutter along the wall and will negatively impact on the existing character of Maple Drive by increasing activity that would cause injury to the residential amenities of Maple Drive.

6.0 APPEAL GROUNDS

6.1 The applicant has appealed the planning authority's decision to refuse. The following is a summary of the appeal:

In March 2015 a Section 5 Declaration was made to Dublin City Council (Ref. 0061/15) and on 7th of April 2015, Dublin City Council sent out notification stating the development was exempt.

The builder was instructed to commence the development.

In September 2015 a third party made a referral regarding the gate to An Bord Pleanála. The Board deemed the development to be development, and not exempted development. Therefore the applicant made an application for retention, which Dublin City Council.

The Board and the planning authority have repeatedly referred to the boundary wall as a rear wall. The development has taken place on a wide wall. The adjacent properties No.s 67,68 69,70,71,72,73, 75,76,77,78, 79 The Cloisters only have rear walls. No. 74 the Cloisters has a rear and wide wall facing Maple Drive. Therefore the development does not set a precedent on the rear walls of the adjacent dwellings.

The Board should deem the gate onto the side wall of No. 74 The Cloisters to be acceptable, and it would not set a precedent for the rear walls of the adjacent properties.

7.0 RESPONSES

7.1 The planning authority confirms it's decision.

8.0 OBSERVATIONS

8.1 **The Cloisters & Maple Drive Residents Association, and Individual Residents of Maple Drive and The Cloisters**

The planning history is relevant involving the subject site at No. 74 The Cloisters and No. 75, which is owned by the same applicant. Since 2010 the applicant has sought a means to gain rear access to the garden areas.

The current application for retention of the timber gate sets an undesirable precedent, will have a negative impact on the character fo the boundary wall, will add to the visual clutter, and negatively impact on Maple Drive by creating additional activity, and be contrary to Z1 zoning.

- The decision of the planning authority refers to boundary walls and it does not differentiate the orientation

9.0 PLANNING HISTORY

9.1 Section 5 EXPP 0197/10

A Declaration was sought regarding a rear access at No. 75 The Cloisters and it was determined it was not exempt.

9.2 PL29S.238494

An application for a vehicular access to enable access for a gold cart which was refused by the Board because it would detract from the streetscape, erode availability of on street parking and set an undesirable precedent.

9.3 PL29S.243803

Refusal of a second application for a pedestrian gate to enable applicant to move his domestic wheelie bins, was refused by the Board for a similar reason for the previous Board decision.

9.4 Section 5 EXPP 0161/15

The development of a rear opening at No. 74 The Cloisters was not exempted development.

10.0 PLANNING POLICY

Under the provisions of the current Dublin City Development Plan 2011-2017 the site is zoned Z1 which is to protect, provide and improve residential amenities.

11.0 ASSESSMENT

11.1 The Cloisters and Maple Drive are red brick two storey dwellings configured as terraces and semi-detached units in a uniform fashion. The subject site, 74 The Cloisters is a mid-terrace dwelling with a front garden and a long narrow rear garden (17.6metres) which backs onto Maple Drive. The gate the subject of this appeal has been inserted and this is an application for retention for retention of same.

11.2 The applicant, Mr. Eugene Cleary, also owns the abutting No. 75 The Cloisters. He has tried on two occasions, to open access to the rear garden areas of No. 74 and 75 The Cloisters, but he has been refused planning permission on appeal under references, PL29S.243803 and PL29S.238494, for a pedestrian access in 2014 at the rear of No. 75, and a vehicular entrance in 2011. The reason for both refusals was the insertion of an entrance at rear of 75 The Cloisters would involve the removal of mature vegetation on Maple Drive and would involve the transfer of bin collection services from The Cloisters to Maple Drive, which would ultimately detract from the streetscape, and would set an undesirable precedent that would detract from the residential amenity of Maple Drive due to noise and disturbance.

- 11.3 The existing timber gate providing access to the rear garden of 74 The Cloisters was the subject of a Section 5 Declaration in 2014, whereby Dublin City Council determined the subject gate was 'exempted development' under the Planning legislation. However following a third party Referral of the case to the Board, it was found under RL29S.RL3368, that the gate was 'not exempted development'. At this time the applicant had inserted the gate at the property, and this appeal relates to an application for retention of same.
- 11.4 I have inspected the site and considered the content of the appeal file. I did notice that the subject site at No. 74 The Cloisters as an irregularity in terms of its rear garden layout. There is a setback of the rear garden areas associated with 72 and 73 The Cloisters, which is reflected in a visitor parking area within Maple Drive. The timber gate has been inserted into a short oblique section of the rear boundary wall associated with The Cloisters. The residents of Maple Drive are very concerned about the precedent this will create along the streetscape and all of the rear walls associated with The Cloisters. They are concerned about wheelie bin collections transferring from The Cloisters to Maple Drive, associated additional parking, security and general nuisance created by the cumulative accesses that will undermine their residential amenities and undermine the visual qualities of the streetscape.
- 11.5 The planning authority agreed with the third party observers / objectors and it refused planning permission for retention of the gate stating it would set an undesirable precedent for similar developments along the boundary wall. It is also considered the gate negatively impacts on the existing character of the boundary wall and the character of Maple Drive, and will increase activity that will impact on the residential amenity of Maple Drive.
- 11.6 In my opinion, the planning authority has greatly exaggerated the character of the boundary wall. It is a block rear boundary wall with pebble dash along certain sections. The trees and the grass verge create the character at this location within Maple Drive. From the east, the gate is not visible along Maple Drive due to the right angle of the wall where the gate is inserted. The gate is obvious from western approach and from the north. However it is not an intrusive or overbearing view as the gate is discreet and flush with the height of the boundary wall. The timber specification is soft. I would consider the visual amenities of the area are not negatively affected by the gate.
- 11.7 The gate does not detract from the residential amenities of Maple Drive. The gate serves to provide a rear access for the wheelie bin associated with No. 74 The Cloisters as the dwelling is a mid-terrace house. I noticed during my inspection that the wheelie bin associated with the dwelling is currently stored on the public footpath fronting 74 The Cloisters. Easy access to the rear will ensure the bin can be brought in and out of general public view. The existing use on the subject site is a residential use, and the gate will not intensify or change that use to the detriment of Maple Drive, as it is to serve one dwelling and it is not a vehicular entrance.
- 11.8 I do agree with the concern over a precedent been created, however the section of the boundary wall where the gate is located is an oblique setback which is not

the entire length of the rear boundary wall directly orientated towards houses along Maple Drive. I do consider the boundary wall of No. 74 is exceptional to have this setback or recess, and the insertion of a gate at this location has minimal impact on the streetscape qualities or the amenities of the area. The Board should note that there is a long list of referral histories associated with the rear boundary walls at The Cloisters.

12.0 RECOMMENDATION

I recommend the permission be granted for the retention of the gate.

REASONS AND CONSIDERATIONS

Having regard to the 'Residential' land use zoning objective for the area in the current Dublin City Development Plan and the pattern of development in the area, and having regard in particular to the width and height of the gate within a recess section of a 2metres block and dash boundary walling to the rear garden of 74 The Cloisters, it is considered that, subject to compliance with the Condition in the Second Schedule, the proposed development would not seriously injure the amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The gate is for pedestrian use only and shall solely serve the subject site at No. 74 The Cloisters.

REASON: In the interests of residential amenity

Caryn Coogan

Planning Inspector

19/07/2016