

An Bord Pleanála



Addendum Inspector's Report

Appeal Reference No: PL06D.247064

Development: Retain subdivision of first and second floor into two apartments at apartment 20 Sky View House, Vico Rock, Dalkey, County Dublin.

Planning Application

Retention Permission

Planning Authority: Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.: D15A/0368

Applicant: James Delaney

Planning Authority Decision: Grant with Conditions

Planning Appeal

Appellant(s): (1) Sorrento Heights Management Limited
(2) Vico Rock Property Management Limited

Type of Appeal: Third Part vs Grant

Observers: Mark Pigott

Date of Site Inspection: 13th April 2017 (second site inspection)

Inspector: Hugh Mannion

1.0 BACKGROUND.

Appeal reference PL06D.245540 was a third party appeal against a decision by Dun Laoghaire Rathdown County Council to grant permission for the retention of subdivision of a two storey apartment into two separate apartments at 20 Sky View House (also known as apartment block E), Vico Rock, Dalkey, County Dublin.

Following my report and recommendation on appeal reference number PL06D.245540 the Board granted planning permission to retain subdivision of first and second floor into two apartments at apartment 20 Sky View House, Vico Rock, Dalkey, County Dublin. My report and the subsequent Board's order referred incorrectly to drawing number 156042/10 whereas the correct number is drawing number **15042/10**. Furthermore, my report incorrectly stated that the applicant claimed to have 6 spaces; four in front of the 20 Sky View House/apartment block E and two spaces in the area to the south of apartment block E. The applicant makes the point that he has 6 spaces set out as two to the front of 20 Sky View House/apartment block E and four in the area to the south of 20 Sky View House/apartment block E.

A judicial review of the Board's decision was taken by Mark Pigott, an observer on PL06D.245540 and the occupier of 'Cassini' a house to the south of the application site.

With a view to clarifying the parking arrangements affecting the application and landownership of the site the Board by letter dated 14th October 2016 asked the applicant to submit a revised drawing number 15042/10 that illustrated both the location of any proposed car parking spaces and the location of right of way **over the site** to 'Cassini'.

2.0 SUBMISSIONS RECEIVED SINCE HIGH COURT DECISION

James Delaney, the applicant for planning permission (Pierce Fitzpatrick Architect's submission, 7th October 2016) makes the point that a drawing referred to by the Board in its letter of the 14th October 2016 (A00017-09-101) was not submitted by Pierce Fitzpatrick Architect on behalf of the applicant for planning permission but may have been prepared on behalf of an earlier owner of 'Cassini' before the property passed to Mark Pigott (an observer on the appeal file and applicant for judicial review). The right of way over the

parking area to the south of 20 Sky View House/apartment block E is disputed and the subject of High Court proceedings. A copy of drawing number **15042/10** is attached with the disputed right of way shown on it. The Board should re-confirm its earlier decision in this minor case.

Mark Pigott was invited to comment on the applicant's submission. He (Reddy Charlton Solicitors' submission 28th November 2016) makes the following points;

- Mark Pigott has a right of way over the site where the car parking is proposed. Ownership of this area is disputed between Mark Pigott, James and Tracey Delaney and Vico Rock Management Company Limited.
- Mark Piggott's right of way originated in a transaction between the previous owner of the 'Cassini' site and Mark Pigott. It did not originate from a permission from James Delaney to Mark Pigott to place a construction works related crane in the area south of Sky View House.
- A drawing submitted (drawing number A0017-07-101 included at tab 3 of the submission) is stated to illustrate the relationship of car parking on the site and the right of way enjoyed by Mark Pigott.
- The parking spaces south of Sky View House the space with access to 'Cassini'. This situation gives rise to conflicting traffic movements which require reversing onto the public road and endangers public safety by reason of traffic hazard (see detailed analysis set out in the 'Trafficwise' Traffic and Transportation Solutions study included at tab 4).

Vico Rock Management Company Limited was invited to comment on James Delaney's submission. Vico Rock Management Company Limited's (Justin O'Callaghan Architect) submission received on the 28th November 2016 makes the following points;

- James Delaney does not have title over the lands included in the application and the boundaries of the application site are incorrectly shown on drawing number 15042/10. An ownership map is submitted which illustrates that Vico Rock Management Company Limited is the owner of parts of the site the subject of this application. James Delaney has a licence to park two vehicles to the front of Sky View

House designated as the area B2 on the ownership map submitted. The laying out of four car parking spaces on the lands to the Skyview House has infringed on the right of way over that area to 'Cassini'.

Sorrento Heights Management Limited was invited to comment on the applicant's submission. Sorrento Heights Management Limited's (Doyle Kent Planning Partnership) submission received on the 28th November 2016 makes the following points.

- The application was flawed in that it did not give notice of the layout of additional car parking spaces and therefore did not fully describe the nature and extent of the proposed development.
- The area to the south of Skyview House was originally conditioned (under application reference number 65/86) to be left free of development through the omission of a once proposed Block F so as to serve as a turning area serving the remainder of the completed development on Vico Rock. Parking for Skyview House was provided in front of that building not in this area to the south.
- There is a right of way over this area to the 'Cassini' site. The layout of car parking spaces carried out by James Delaney conflicts with that right of way. Some of the lands included in the application site are in the ownership of Sorrento Heights Management Limited. Since September 2015 a gas tank within the area to the south of Skyview House has been replaced with a number of smaller cylinders and notices concerning the allocation of parking have been erected.
- As set out in the original grounds of appeal there is already inadequate car parking to serve the needs of residents in Vico Rock, the application exacerbates this situation, the applicant does not own the lands encompassed in the application and the proposed parking would interfere with a right of way.

The planning authority was invited to comment on the applicant's submission. It replied that it had no further comments to make on the 30th November 2016.

The applicant (James Delaney) was invited to comment on the submissions made by the two third parties; Vico Rock Management Company Limited and Sorrento Heights Management Limited, the

observer Mark Pigott and the planning authority. The applicant (Pierce Fitzpatrick Architect's submission received 18th January 2017), made the following points.

- The entrance to 'Cassini' has been altered without the benefit of planning permission. The position of the entrance to 'Cassini' has moved from point X to point Y as illustrated on the attached drawing number 15042/30. Therefore, the right of way to 'Cassini' has been altered. Details of this right of way are currently the subject of High Court proceedings.
- A second drawing (drawing number 15042/31 is submitted which would provide four car parking spaces without impacting on access to 'Cassini'. The applicant would welcome a condition granting permission subject to compliance with this condition.

The planning authority was invited to comment on the applicant's submission. The planning authority (submission received on 11th January 2017) states that the it has no further comments to make.

Sorrento Heights Management Limited was invited to comment on James Delaney's submission. Doyle Kent Planning Partnership's submission received on the 18th January 2017 makes the following points.

- Mark Pigott is correct that the proposed development would exacerbate an existing deficiency in car parking in Vico Rock.
- The proposed development would contravene a condition of an earlier permission granted under PL57/5/84094 which required that Sky View House would contain two units only.
- The applicant does not have sufficient interest to carry out the proposed development.
- The application is invalid.

Vico Rock Management Company Limited (Justin O'Callaghan Architect submission received on 18th January 2017) stated that the Board should refer to its earlier submissions in this case.

3.0 Assessment

3.1 Introduction

3.2 On foot of a further information request the applicant submitted a drawing number 15042/10 to the planning authority on the 10th August 2015 which indicated an application site within a red line boundary with 6 car parking spaces. The Board granted permission for the change of use of one apartment to two separate apartments subject to the provision of parking in accordance with that drawing (see condition 3 of the order under PL06D.245540). On application to the High Court the observer in that case (Mark Pigott) obtained an Order of Certiorari quashing the Board's decision and remitting the matter to be reconsidered by the Board.

3.3 Traffic

3.4 The appellants make the case that Vico Rock provides insufficient driving and manoeuvring space for the level of vehicular traffic which it accommodates. This is a reasonable point; however, the proposed development is relatively modest and does not add to the residential floor space accessed over Vico Rock but redistributes existing space between two apartments in place of a single apartment. I conclude that the proposed development would not materially alter the traffic loading on Vico Rock so as to give rise to traffic hazard and I do not recommend refusal of permission on this point.

3.5 Parking

3.6 Table 8.2.3 in the Dun Laoghaire County Development Plan 2016 to 2022 (copy attached) requires the provision of 2 parking spaces for each three bed unit. The submitted floor plans show the proposed development to comprise a three bed unit which would, therefore, require two parking spaces. The application documentation shows a site outlined in red on drawing number 15042/02. In response to a request for further information from the planning authority the applicant submitted drawing number 15042/10 which again outlined the

application site in red and indicated the position of 6 car parking spaces. Two spaces are shown to the front of Skyview House and four in the off-road area to the south of Skyview House.

- 3.7 Following on the decision of the High Court to quash the Board's order in PL06D.245540 the Board invited the applicant to submit a drawing showing the proposed car parking spaces relative the right of way claimed by Mark Pigott of 'Cassini'. The applicant submitted a drawing to the Board 12th October 2016 which showed an overlap between the parking spaces and the right of way. This was copied for comment to the observer (Mark Pigott) and he replied enclosing a drawing showing a similar relationship between the proposed car parking spaces and the right of way. Furthermore, a third party appellant, Vico Rock Management Company Limited, commented on the applicant's drawing number 15042/10 to make two points (a) there is a right of way over this area of which Mark Pigott is the beneficiary and (b) two sections of the application site outlined in red on drawing number 15042/10 are owned by Vico Rock Management Company Limited and the applicant has a licence to park two cars in front of Skyview House/apartment Block E.
- 3.8 The applicant (see submission from Pierce Fitzpatrick Architect) made a further submission to the Board on 18th January 2017 showing the setting back, further north, of the boundary wall of the proposed parking area and a revised layout of the four parking spaces so that one abuts the public road on Vico Road and three are aligned along the rear/south east wall of the site and thereby avoiding the right of way in favour of Mark Pigott.
- 3.9 In relation to this submission received by the Board on 18th January 2017 from the applicant in which boundary walls are realigned and the four proposed car spaces are redistributed within an altered site I consider this is a material change to the application currently on appeal to the Board which should be subject to a separate application to, and assessment, by the planning authority in the first instance. I conclude that this material change to the application may not for the basis for a decision by the Board in the present appeal.
- 3.10 Furthermore, I consider that the requirements of the development plan in relation to the provision of car parking spaces to meet the needs of additional residential units are reasonable and in the absence of

provision of two spaces in accordance with the standards that the proposed development should be refused on this point.

3.11 Legal Interest

3.12 Paragraph 5.13 of the Development Management Guidelines for Planning Authorities (DoEHLG June 2007) advises that where doubts arise as to the sufficiency of the applicant's legal interest in lands the subject of an application that the planning authority should seek further information in order to establish the applicant's legal interest. The submissions by the applicant acknowledges that there is a right of way over a section of the application site impacted upon by the originally proposed parking layout.

3.13 Having regard to the submissions by the observer (Mark Pigott) in relation to the right of way and by the appellant (Vico Rock Management Company Limited) stating that it is the owner of lands shown within the application site in relation to which it does not consent to this application for permission I conclude that the Board cannot be satisfied that the applicant has sufficient interest in the lands to make a valid application and/or carry out the proposed development.

RECOMMENDATION

I recommend that permission be refused for the reasons and considerations set out below.

Reasons and Considerations

The Board is not satisfied on the basis of the information submitted with the application and appeal that the applicant has demonstrated sufficient legal interest to make this application and/or carry out the proposed development.

Hugh Mannion
Senior Planning Inspector
19th April 2017.