



An
Bord
Pleanála

Inspector's Report PL29S.247163.

Development	Permission for retention and completion of existing vehicular entrance at the west end of Grosvenor Road.
Location	47 Rathgar Road, Dublin 6. (Protected structure).
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3043/16.
Applicant	Peter Kelly.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party
Appellant	Peter Kelly.
Observers	Rathgar Residents Association.
Date of Site Inspection	10 th November, 2016.
Inspector	Jane Dennehy.

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1.0 Site Location and Description.

- 1.1. No 47 Rathgar Road is a large detached two storey over garden level nineteenth century house on the west side of Rathgar Road on a site between Leicester Avenue to the south and Grosvenor Road to the north. The house footprint is perpendicular to terraced houses located along these two roads. Calp limestone walls capped in granite are located along the boundaries but at the time of inspection the front boundary onto Rathgar Road was enclosed by hoarding. The original opening at the corner of Rathgar Road and Grosvenor Road and a part completed entrance which is circa 3.5 metres in width at the western end of the frontage on Grosvenor Road were blocked up and the site was inaccessible. A pedestrian gate, closed at the time of inspection, is located on the southern frontage onto Leicester Avenue.
- 1.2. On street residential permit and pay and display parking is available along Grosvenor Road and along Leicester Avenue.

2.0 The Proposed Development

- 2.1. The application is for permission for retention and completion of the part constructed entrance at the western end of the frontage on Grosvenor Road which, according to the written submission was permitted under P. A. Reg. Ref. 6460/07 but was omitted by condition under Condition No 2 of the grant of permission under P. A. Reg. Ref. 3435/14. (Details are available under Planning History" in section 3)

3.0 Planning History:

- 3.1. The following applications are of direct relevance to the consideration of the current application and appeal:
- 3.2. P. A. Reg. Ref. 6460/07 /PL 228049: The planning authority decision to grant Permission, for demolition, alterations and extensions to the existing building containing apartments, a new detached house and a new entrance off Grosvenor Road was confirmed following third party appeal. (The duration of this grant of

permission was extended until 16 November, 2018 by Manager's Order on 10th January, 2014.)

3.3. P. A. Reg. Ref. 3435/14: Permission was granted for amendments to the prior grant of permission providing for conversion of the house to a single dwelling from three existing apartments. The application also included proposals for the previously permitted works which include a new detached four-bedroom house, with an entrance off Grosvenor Road and additional entrance off Grosvenor Road with a car space, new boundary walls between the existing and proposed houses and a boundary wall adjacent to the property at No 33 Grosvenor Road.

3.4. Condition No 2 is reproduced below:

“Prior to the commencement of the development, the applicant shall submit details and revised plans to the Planning Authority for written approval indicating the following: a) The two proposed vehicular entrances shall be omitted and only a pedestrian entrance, having a maximum width of no more than 1.5 m shall be provided to the proposed dwelling. The two car parking spaces associated with the proposed vehicular entrances shall be omitted and these spaces shall be retained as part of the private open spaces area to the dwellings. b). Details of the materials, finishes and heights of the new boundary treatments. Any new boundary along the western boundary with no 33 Grosvenor Road shall match the existing stone boundary wall. c). Details of the materials, colours and textures of all external finishes to the proposed dwelling including samples. Brickwork used in the proposed dwelling shall closely match the existing brickwork of the original house at 47 Rathgar Road in colour, size and texture. Reason: To comply with policy S114 of the Dublin City Development Plan, 2011-2017 and to protect the visual amenities of this residential conservation area.

3.5. The site of No 47 Rathgar Road also has a prior history of unsuccessful and invalid applications for significant development. Details are available on the written submission accompanying the application and the planning officer report. (P A. Reg. Refs. 2190/06, 6460/07/PL 228049: 3178/06, 6216/07 and 3240/14 refer.)

4.0 The Planning Application.

- 4.1. The application lodged with the planning authority indicates proposals for completion and retention of the part constructed entrance which has a width of 2600 mm redbrick piers with granite capping 2170 mm in height and vertical mild steel gates at a height of circa 2000 mm. Details as to whether one or two gates are proposed and as to whether they are electronically or manually controlled and sliding or opening inwards or outwards have not been included. The plan indicate continuation of use of the existing entrance to the original house at the corner of Rathgar Road and Grosvenor Road.

5.0 Decision of the Planning Authority:

- 5.1. The planning authority decided to refuse permission based on the following reason:

“The proposal for removal of an on-street car parking space to accommodate a private vehicular access is contrary to Dublin City Council policy and would reduce the supply of on street carparking. The proposed development would directly contravene Policy S113 of the Dublin City Development Plan, 2011-2017 which seeks to retain on street parking as a resource for the city as far as practicable, and as such the proposed development would set an undesirable precedent for similar development. It is therefore considered that the proposal would seriously injure the amenities of this residential conservation re and as such would be contrary to the proper planning and sustainable development of the area.”

5.2. Internal Reports

The report of the Roads and Traffic Planning Division notes Section 17.40.11 of the Dublin City Development Plan, 2011-2017, Condition No 2 of the grant of permission under P. A. Reg. Ref. 3435/14 due to loss of an on street space, the limited supply and, dual use of on street parking in the area. It is recommended that permission be refused due to direct material contravention of Policy S113 of the development plan seeking to retain the on street parking supply and on grounds of potential undesirable precedent.

5.3. The planning officer in her report notes the prior grants of permission under P. A. Reg. Refs. 6460/07 and 3435/14, the latter of which provided for the return of the existing house to one dwelling unit from multiple units as well as providing for the previously permitted new detached house and was subject to the condition for blocking up of the vehicular entrances. She also notes development plan policies for the protection and preservation of protected structures, their curtilages and contribution to the streetscapes and policies FC 33 and S113 and section 17.40.11 in relation to the presumption against removal of on street parking and in relation of off street parking in residential areas at private properties. In arriving at her conclusion, she states that there is no indication that the permitted developments have been implemented and that “cherry picking” elements from grants of permission is not acceptable.

5.4. **Third Parties submissions and objections.**

An objection from the Rathgar Residents’ Association notes the planning history and the application of development plan policy to maintain and protect the supply of on street parking and it is requested that permission be refused.

6.0 **The Appeal**

6.1. An appeal was received from Rob Goodbody on behalf of the applicant on 24th August, 2016 which includes a copy of the conservation report and written statement submitted with the application and a copy of the commencement notice in relation to the grant of permission under P. A. Reg. Ref. 6460/07. The appeal grounds can be outlined as follows:

- The decision to refuse permission is unreasonable because the entrance had previously been opened and brought into use following lodgement a commencement notice in November 2013 in in respect of the grant of permission under P. A. Reg Ref 6460/07 in October, 2008 following an appeal. The subsequent application under P. A. Reg Ref 3435/14 incorrectly included the entrance that had been opened and was in use (initially as a

construction entrance for the permitted refurbishment project) and a condition was attached excluding both entrances. In the attached conservation report which contains an account of the planning history it is stated that the reason for the lodgement of the current application is to resolve the anomaly that has arisen because the opening of the entrance is in accordance with the grant of permission which is still valid and was then excluded under the subsequent grant of permission.

- The anomaly is compounded in that the second entrance can be opened with the benefit of a valid grant of permission
- If the entrance is to be closed the applicant will revert to use of the original entrance at the junction with Rathgar Road which is too narrow and not ideal from a traffic perspective.
- To resolve the anomaly, it is now proposed to proceed with the use of the entrance on Grosvenor Road.

7.0 Observer – Rathgar Residents’ Association.

7.1. In the submission received on 14th September, 2016 it is stated that the application site already has had an access at the junction with Rathgar Road since the mid nineteenth century and that, in the interests of consistency with regard to residential conservation areas a second entrance where an entrance exists to serve a dwelling should not be permitted.

7.2. It is also stated that Maintenance and protection of on street parking facilities to servicing residential requirements in residential conservation areas especially Grosvenor Road which is near bus lanes and businesses and the church in the Rathgar Road area not served by on street parking should not be further eroded. Proposals for off street parking have not been permitted on the roads in the area.

8.0 Development Plan.

8.1. The Dublin City Development Plan, 2016-2022 development plan was adopted in September 2016 and brought into effect in October, 2016 after the determination of the decision on the application by the planning authority.

The site location is within an area subject to the zoning objective Z2: Residential Conservation Area. Some surrounding areas are subject to the zoning objective Z1: Residential.

Development Management standards are set out in Chapter 16.

Policy Objective MT14. (Section 8.5.6). It is the policy to minimise loss of on street parking whilst recognising that some loss of spaces is required for, or in relation to sustainable transport provision, access to new developments or public realm improvements. According to section 8.5.6 it is the Policy Objective CHC8 (section 11.1.5.12) provides for facilitation of off street parking for residential owners / occupiers where appropriate site conditions exist while protecting the special interest and character of protected structures and conservation areas.

9.0 **Assessment.**

- 9.1. It is agreed that the prior planning history authorised both entrances but the new additional dwelling permitted under P. A. Reg. Ref. 6460/07 was excluded from the development included in the commencement notice lodged with the planning authority on 12th December, 2013. (The works covered by the notice are confined to the permitted new entrance and works to the existing house.) In proceeding with implementation of part of the permitted development according to the commencement notice lodged with the planning authority the applicant has developed the entrance to serve the additional house but has not developed the additional new house to be served by the entrance at the western end of the site frontage. The applicant has not stated that he intends to construct the additional house and complete the permitted development prior to the expiry of the extended duration of the grant of permission in 2018 and has not lodged any commencement notices with the planning authority to this end. Two entrances are not justifiable in such circumstances.
- 9.2. It is acknowledged that the use of entrance at the western end of the site frontage onto Grosvenor Road necessitates the loss of an on street parking space. This is inconsistent with development plan policy (MT14) to minimise any loss of on street parking that services residential properties and business premises. However, in this

instance it is considered that some flexibility can be accommodated provided it is conditional on permanent closure of the historic entrance at the junction with Rathgar Road on grounds of traffic safety and convenience.

- 9.3. The applicant offers to discontinue the use of this historic entrance at the corner and to confine use for access/egress purposes to the entrance at the western end of the site frontage the retention and completion of which is subject of the application. This proposed resolution of the issue is considered reasonable and it is recommended that this arrangement as proposed be accepted.
- 9.4. An appropriate condition can also be attached which could include a requirement for a compliance submission so as to ensure clarity as to the completeness of the detail for the proposed gates, having regard to the inclusion of No 47 Rathgar Road on the record of the protected structures. For example, there are no details as to whether the gates are inward opening, outward opening, a sliding gate, mechanically or manually operated and as to the materials on the application drawings. It is also recommended that a condition be attached with the requirement that the original entrance at the corner of Rathgar Road and Grosvenor Road on the frontage be permanently closed unless authorised by a grant of planning permission
- 9.5. In view of the foregoing, it is recommended that the appeal be upheld and that permission for retention and completion be granted. A draft order is set out overleaf.

10.0 **Appropriate Assessment.**

Having regard to the scale and nature of the proposed development which was carried out several years ago, the retention of which is proposed no Appropriate Assessment issues arise and it is not considered that the proposed development has a significant effect individually or in combination with other plans or projects on a European site.

11.0 Decision

Grant Permission for Retention and Completion on the basis of the Reasons and Considerations and subject to the Conditions set out below:

Reasons and Considerations.

Having regard to the planning history, to the location of the proposed entrance at a position on the site frontage it is considered that subject to compliance with the conditions set below, the proposed development would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and development of the area.

Conditions.

1. The development shall be completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The entrance shall be the sole entrance to serve the existing house. The existing historic entrance on the site frontage at the corner of Rathgar Road and Grosvenor Road shall not be used for access and egress and shall be closed on a permanent basis unless otherwise authorised by a prior grant of planning permission.

Reason: In the interest of clarity, orderly development and the proper planning and sustainable development of the area.

3. Prior to the commencement of the development the applicant shall submit and agree in writing plans and specification details for the proposed gates to include materials, finishes and colours and method of operation. Outward opening gates are not acceptable.

Reason: In the interest of clarity, convenience and visual amenity.

Jane Dennehy
Senior Planning Inspector
11th November, 2016.