



An
Bord
Pleanála

Inspector's Report PL29N.247191

Development	Widening of existing garden entrance, driveway and dished footpath. Construction of a garage in rear garden.
Location	82 Ardlea Road, Artane, Dublin 5.
Planning Authority	Dublin City Council
Planning Authority Reg. Ref.	3096/16
Applicant(s)	David and Corina Benzies
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	Veronica and Raymond Williams
Observer(s)	None
Date of Site Inspection	22 nd December 2016
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The subject site relates to a semidetached dwelling on the west side of Ardlea Road – a mature suburban residential area to the North of the Dublin City. The house is from part of an enclave of housing recessed from the main road with an intervening triangular green space. The houses on this side of Ardlea Road back on to similar but slightly lower density and older houses on Maryfield Crescent. the site is one of five on Ardlea Road that back onto an access lane which provides vehicular access into the rear gardens of potentially 6 houses on Maryfield Crescent. Presently there are 3 accesses. There are none from Ardlea Road properties although in another lane between the same roads there are accesses form both sides.
- 1.2. No 82 presently has a vehicular access of 3.127m in width. The road carriageway is approx. 5.2m. Most houses have widened entrances. On street parking without obstructing passing cars is feasible on the road fronting the house
- 1.3. The rear lane has a carriageway of less than 4m due to an embankment of debri/clay and growth. Wall to wall this width would be considerably greater than 4m but the growth and ground cover restricted access and accurate measurement,

2.0 Proposed Development

- 2.1. The proposed development comprises two separate elements.
- Widening of vehicular access onto Ardlea Road – from 3.17 m to 4.175m.
 - construction of single storey garage along rear wall with direct access onto lane.

2.2. Decision

Grant permission and permission to retain subject to 7 conditions.

- Vehicular access to be between 2.6-3.6m in width
- Restriction of garage use as ancillary to house and not for human habitation or animal use.

2.3. Planning Authority Reports

2.3.1. Planning report

- Issues relating to right of way over the lane to the rear are considered civil matters and outside scope of planning legislation
- The tree works are not planning consideration in this instance
- Access to the lane is considered to be exempted development in view of the lane width at less than 4m and provisions of Article 9 of PDR and provisions of the development Plan.
- While precedence of widening gates is noted the 4.175m would be contrary to the development plan criteria.
- The shed at 4m in height will not result in significant impact on residential amenity in terms of overlooking or overshadowing.

2.3.2. Other Technical Reports

Drainage Division Engineering Dept.: No objection subject to standard conditions

RTPD: No objection to either aspect of proposed development– the rear lane is stated to be 4.2m in width. It is confirmed that that in charge by Dublin City Council and that there is no objection to the proposed 3m wide lane access. Standard conditions apply.

2.3.3. Objections

two objections to laneway development on grounds of lack of legal entitlement as the laneway only serves certain properties on Maryfield Crescent. It is further submitted that the access would result in encroachment of and disturbance to a long established ditch boundary that pre-date houses.

3.0 Planning History

DCC Reg. Ref. 2355/10 Permission granted for conversion and first floor extension to side at subject site.

DCC Reg Ref 0421/02. Permission granted for pitched roof on single storey extension of garage new gats and alteration to front (appears to have been essentially carried out)

4.0 Policy Context

4.1. Dublin City Development Plan 2016-2022 (effective 21st October 2016)

The subject site is zoned “Z1” in the Dublin city development plan, with the stated objective “to protect, provide for and improve residential amenities” (‘Z1’ – Sustainable Neighbourhood Residential Zoning). Appendix 5 states that where driveways are provided, they shall be at least 2.5m or, at most, 3.6m in width, and shall not have outward opening gates. The design standards set out in the planning authority’s leaflet ‘Parking Cars in Front Gardens’ shall also apply. (this is the same standard as set out in Appendix 8 of previous plan in operation at time of planning authority decision. In August.

4.2. Natural Heritage Designations

Not relevant

4.3. Planning legislation - PDR

Exempted Development : Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

5.0 The Appeal

5.1. Grounds of Appeal

- Object to garage and access to laneway off Maryfield Crescent.
- The applicant does not have sufficient legal interest in laneway to permit access. The laneway is not a public road. The basis for being 'in-charge' is question in light of absence of documentary evidence.
- It is claimed that there is an exclusive Right of Way by property number 34, 36, 38, 40, 42 and 44 since 1955. They have freehold title over the lands.
- Ardlea houses have never had access and are separated by a large ditch.
- The lane is in excess of 4m as per Roads Division. The view that it is less than 4m and exempted development is an erroneous basis for decision.
- Object to any vehicular or pedestrian access – an increase in such would impact on amenity of home
- The entrance is wider than that that is normally exempted development
- Lack of adequate consideration in light of discrepancies
- The site notice in lane was erected (which involved cutting trees) without consent of landowner. Residents were not able to see it either.

5.2. Applicant Response

- The alleged freehold owner is dissolved company as of June 2000.

- The gate has never been closed off from public since 1955 nor are there any signs or indication that public access is restricted. It was regularly used as a route for children to the back gardens prior to rear wall construction
- Development site boundary with lane extends beyond trees, the 'ditch' is a collection of grass clippings and builders debris and is within site.
- Other lanes to the rear of properties on Ardlea Road and Maryfield Road have shared access.
- Not seeking to encroach on private property
- Site notice was within property
- Waste is dumped in the lane and the applicant has had reason therefore to drive up lane on a number of occasions due infestation at end of garden.
- Phot shows how no. 38 (appellant) and 40 Maryfield Cres. do not use lane for vehicular access
- The lane is in a very poor state and would appear to be seldom used by the residents claiming exclusive right of way.
- Seeking to improve home and not disturb neighbours by use of access.

5.3. **Planning Authority Response**

- No further comment

6.0 **Assessment**

6.1. Having regard to the contents of file and site inspection, I consider the issues to relate to the proposed garage only and not the widening of the existing vehicular access. The matters centre on

- Principle of development: entitlement and access, amenity
- Appropriate Assessment

6.2. Principle of the Development

- 6.2.1. The applicant is seeking to construct a single storey garage of about 48 sq.m.at the end of the garden of a semi-detached house in which the original garage has been converted to habitable accommodation. It will leave a residual circa 15m deep garden. As an ancillary domestic structure in a mature medium density residential area it is acceptable in principle. Permission is however predicated on protecting amenities by way of detailed design and use.
- 6.2.2. It is proposed to construct it to a ridge height of under 4m and parapet height of 3m along the north and south boundaries with neighbouring gardens. The windows and door face into the garden of the development site. in view of its overall scale and the garden depth it is relatively unobtrusive. I concur with the planning authority that undue impact of overlooking or overshadowing for neighbouring residents cannot be reasonably considered to be significant issues.
- 6.2.3. Of most concern to the appellant is the proposal to provide direct access to the garage from the rear lane by a vehicular garage door. In the first instance the appellant makes the case that applicant does not have sufficient legal interest in the lane to permit access. It is submitted that the lane is in the private ownership of the Maryfield Crescent residents and that the use of the lane would in effect amount to trespass. The planning authority clarifies that the lane is in charge by Dublin City Council although the basis of this is disputed by the appellant. The planning authority in its consideration of the application clarifies that the scope of planning permission under the planning acts does not confer other rights and therefore permitting development does not entitle the applicant to trespass were that established to be the case. This matter of dispute is I consider outside the scope of the powers of the Board in its decision. Aside from the legalities of the proposed access, the use of the entrance is objected to on a number of grounds which I consider to be valid. These relate to unprecedented use of lane and potential for disturbance.
- 6.2.4. This would, I accept, be unprecedented for the dwellings on Ardlea Road that back onto this particular lane although not unprecedented in other lanes in the area. The particular lane presently provides access to limited number of houses on Maryfield Crescent and two of these have objected – one proceeding to the subject appeal. The applicant in defence explains that historically there was relatively unimpeded access until the applicant constructed a wall. From my site visit I note that there is no evidence of vehicular or access to Ardlea Road from the subject lane whatever

about historical pedestrian routes. It is clear that the lane provides limited access to only a couple of dwellings. It is not presently maintained in terms of surface and landscaping and litter debris control and this is evidence of limited use. Potentially an additional 5 houses may use the lane in addition to up to a total of 6 houses on Maryfield Crescent. While the lane is restricted for 2 cars passing the 'T' configuration would allow for managing passing vehicles. I therefore do not consider the use of the lane by an additional entrance by itself or in conjunction with additional entrance to give rise to traffic safety concerns.

- 6.2.5. The appeal also raises concerns about disturbance. I do not consider the use of single domestic garage by itself or in conjunction with existing or potentially additional garage in this existing limited laneway to give rise to undue disturbance. In fact, it could be argued that the development by way of tidying up and use would be a visual improvement and also provide a degree of supervision which may enhance residential amenities of the area
- 6.2.6. The appellant makes the case that as the lane is wider than 4m (as per Road's division report which states that it is 4.2m wide) access would not ordinarily be exempted development which is contrary to the planning report on which the recommendation to grant permission is based. This refers to the lane being less than 4m. Strictly The points raised about accuracy of width of lane are not entirely relevant as permission has been applied for a garage. Form my assessment the clear carriageway in the lane varies but in the immediate vicinity of the proposed garage entrance it ranges from 3-4m.
- 6.2.7. In respect of the entrance I concur generally with restriction of the driveway entrance to 3.6m in accordance with the development plan standards in appendix 5. The applicant has made no case against this condition. In consideration of the development de novo, I note the guidance leaflet on parking in front garden and the maximum of 3.6m unless there are exceptional site circumstances. I do not consider such circumstances apply in this case. I do however note the road carriageway width is 5.2m and while narrower than the minimum width by reference to current development plan standards for single side roads I consider it sufficient to provide unimpeded access to the dwelling house. The widening of the entrance to over 4m would detract from the amenities of the area and would not be in accordance with the proper planning and sustainable development of the area having regard to the

provisions of the development plan for the nature of development proposed. I consider the decision of the planning authority to be reasonable and should be upheld in this regard.

6.3. Appropriate Assessment

- 6.3.1. Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

7.0 Recommendation

- 7.1. I recommend a decision to grant permission base on the following reasons and considerations.

8.0 Reasons and Considerations

Having regard to the zoning objective, the design and layout of the proposed development, the nature of its ancillary domestic use and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or the amenities of property in the vicinity 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.

9.0 Conditions

1. The development shall be carried out and 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 details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development

shall be carried out and completed out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The existing dwelling and proposed garage shall be jointly occupied as a single residential unit and the proposed garage shall not be used for habitable accommodation or sold, let or otherwise transferred or conveyed, except as part of the dwelling.

Reason: To restrict the use of the garage in the interest of residential amenity.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The vehicular access shall not exceed 3.6m in width and gates shall not be outward opening. All works shall otherwise be in accordance with the requirements of the planning authority.

Reason: In the interest of traffic safety and orderly development

Suzanne Kehely
Senior Planning Inspector

5th January 2016