



An  
Bord  
Pleanála

## Inspector's Report PL 06D.247981

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<b>Development</b>	Restaurant development consisting of the partial demolition of the existing structure and construction of a two-storey extension to rear over a new basement and associated site works.
<b>Location</b>	56 Glasthule Road, Dún Laoghaire, County Dublin.
<b>Planning Authority</b>	Dún Laoghaire-Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D16A/0507
<b>Applicant(s)</b>	Peter Caviston
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Catherine Fidgeon Esme Lyttle
<b>Date of Site Inspection</b>	4 <sup>th</sup> May, 2017
<b>Inspector</b>	Kevin Moore

## 1.0 Site Location and Description

1.1. The site of the proposed development is located on the northern side of Glasthule Road, close to the eastern end of Glasthule village. The site comprises a terraced property, occupied at present by a part two-storey, part single-storey structure. The front section of the ground floor is used as an art gallery. The remainder of the building is vacant. An underpass and laneway is located to the east of the building. A section of the first floor of the building is built over the lane at the front. The lane runs northwards between Nos. 56 and 55 before running in an east/west direction, separating properties fronting onto Glasthule Road from residential properties on Marine Parade to the north. The rear gardens of properties on Marine Parade lie immediately north of the lane. The lane provides access to the rear of properties fronting onto Glasthule Road as well as accommodating bin storage for these properties. The laneway is gated to the front. The site is flanked by commercial properties on Glasthule Road.

## 2.0 Proposed Development

2.1. The proposed development would consist of the conversion and extension of No. 56 Glasthule Road for restaurant use. It would include the partial demolition of the existing structure, including partially constructed walls to the rear, and the construction of a two-storey extension to the rear over a new basement. The extended development would extend out over the laneway to abut No. 55 Glasthule Road and the original proposal included the enlargement of three existing windows at first floor level on the front elevation and provision of projecting balconies. It would provide restaurant accommodation at ground and first floor levels. The gross floor area of the proposed works is stated to be 376 square metres. A new shopfront and canopy would be provided. The proposal also includes the upgrading of the adjoining laneway, providing an additional access to the proposed restaurant.

2.2. Details submitted with the application included a cover letter which stated that the existing building has remained dormant for some time, currently has a temporary lease for a small part of the ground level for an art gallery, and was previously in use as a restaurant at ground and first floor level. The development intentions for the applicant's existing property (No. 58) were outlined also in the letter.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission for the development subject to 13 no. conditions on 16<sup>th</sup> January 2017.

### **3.2. Planning Authority Reports**

#### Planning Reports

The Planner noted the observations made, the site's and adjoining properties' planning histories, departmental reports received, and development plan provisions. It was considered that the proposal would result in no significant or undue overlooking on adjoining properties to the north. There were concerns that the first floor extension to the rear was not of sufficiently high quality in design terms when viewed from the public realm to the north. The guarding along the northern and eastern edges of the roof of the single-storey extension was considered visually obtrusive. The proposed balconies at first floor level on the front elevation were considered to be out of keeping with the character of the building. Details of the ownership of the entire site area as shown in the application were considered necessary to obtain. Further details were considered necessary on ventilation, air conditioning and other mechanical services, as well as on welfare facilities for staff. A recommendation seeking further information was made.

#### Other Technical Reports

The Environment Health Officer of the Health Service Executive had no objection to the proposal subject to conditions.

The Drainage Engineer had no objection to the proposal.

Irish Water had no objection to the proposal subject to conditions.

The Transportation Planning Engineer had no objection to the proposal subject to conditions.

On 30<sup>th</sup> August 2016 the planning authority sought additional information in relation to revised design proposals to the front and rear elevations, mechanical services provision, legal interest in the overall site, and provision of staff welfare facilities.

A response to this request was received by the planning authority on 13<sup>th</sup> December 2016.

The reports to the planning authority following this submission were as follows:

The Transportation Planning Engineer had no objection to the proposal subject to referenced conditions.

The Planner noted the further objections received and the second Transportation Planning report. Design changes were regarded as satisfactory and the development was considered acceptable in terms of height, massing, design and proximity to site boundaries and adjacent properties. It was considered appropriate that a condition would be attached with the grant of permission prohibiting public access to, and use of, the flat roof area to the rear as an open area for customer use. Revisions to balconies to the front were also considered acceptable, as were revisions to bin storage and the goods hoist. Details of legal title submitted by the applicant were acknowledged and the attachment of an advisory note was recommended. The provision of welfare facilities for staff was considered acceptable. A grant of permission was recommended subject to conditions.

### **3.3. Third Party Observations**

Four submissions were made to the planning authority from John Ryan, Esme Lyttle, Catherine Fidgeon, and Nuala Woulfe in response to the application. Concerns raised related to laneway access, matters pertaining to impacts on residential amenity, and impacts on functioning of adjoining commercial property.

Following the receipt of further information, additional submissions were made by John Conroy, Esme Lyttle, Catherine Fidgeon, and Nuala Woulf.

## 4.0 Planning History

### P.A. Ref. D05A/1725

Permission was granted for alterations and extension to No. 56 Glasthule Road, comprising the relocation of the restaurant entrance at ground floor level from front to side passageway, provision of second floor level in restaurant at upper/attic space area and rear extensions at first and second floor level.

### P.A. Ref. D07A/0263

Permission was refused for the relocation of the restaurant entrance permitted under Ref. D05A/1725 at ground floor level from the front to the side passageway.

## 5.0 Policy Context

### 5.1. Dún Laoghaire-Rathdown County Development Plan 2016-2022

#### Zoning

The site is zoned 'NC' with the objective "To protect, provide for and/or improve mixed-use neighbourhood centre facilities." Restaurant use is permitted in principle within this zone.

## 6.0 The Appeal

### 6.1. Appeal by Catherine Fidgeon

The appellant resides at No. 4 Marine Parade, Sandycove to the rear of the appeal site. The grounds of the third party appeal may be synthesised as follows:

- The permission granted will encroach onto a right-of-way (the laneway) by way of two sets of steps, a hatch to the proposed basement, a new structural wall adjoining No. 55 Glasthule Road, and building over part of the laneway. This will considerably reduce the lane's width, with major implications for those depending on the laneway, and threatens the established right-of-way.

## 6.2 Appeal by Esme Lyttle

The grounds of the third party appeal may be synopsised as follows:

### Ownership of the Site

- The appellant acquired the ownership of the 'T' shaped laneway included in the application plans and drawings in 2000, except for a section c.9m in length beneath the first floor extension to No. 56 which extends above the lane at its entrance to Glasthule Road. The appellant's ownership of the lane is subject to rights of way enjoyed by a number of owners of properties which have access points opening onto the lane and by the owners of No. 56 Glasthule Road. In turn, the appellant and other owners enjoy rights of way through the 'underpass'.
- Arising from the matters pertaining to land ownership and appropriate consent, the Board can refuse permission for the application on the grounds that the legislative requirements of section 34 of the Planning and Development Act have not been complied with.
- The appellant has not, nor will not, issue consent for the inclusion of the lane in the development site and the proposed works thereto.
- The Board should refuse permission on the basis that the application does not comply with permission regulations as the applicant has not established sufficient legal interest in the entirety of the development site or the consent of all parties who have sufficient legal interest to enable them to undertake the proposed development.

### The Applicant

- There is no letter of consent from Seatang Limited to Mr. Caviston to make the application, the stated freehold owner of the site to comply with permission regulations.

### The Subject Development

- The existing ground floor was previously in use as a shop. The change of use to a restaurant is not exempted development and requires permission. The submitted public notices are defective. As the requirements of the Planning

and Development Regulations have not been complied with, the application is invalid.

- Notices are defective in regard to the description of the upgrading of the laneway, to the proposed side entrance onto the lane, to the proposed extension at first floor level over the lane, and to the single-storey extension to the rear.

#### Rights of Way

- The reduction of lane width by proposed staircases and bin storage and the provision of a new door will compromise the operational utility of the lane. This will interfere with the primary use of the lane as a right of way.

#### Hours of Operation

- Condition 7 of the planning authority's decision is deficient in that it only specifies when the restaurant should close and that the hours specified can be waived by way of written agreement with the planning authority, with no opportunity for third party input. A recommendation on opening hours is set out.

#### Plant/Noise/General Disturbance/Odours/Waste

- Malfunctioning of plant will have adverse repercussions for adjacent residential properties.
- Concerns are raised about likely noise generated by activities and odours resulting from the development and lack of related conditions attached with the planning authority's decision.
- Further concerns are raised in relation to the provision of bin storage on the lane, the consequent impact for users of the lane, and the need for adequate facilities within the development.

#### Entrance to Lane

- The proposed metal gates will diminish the privacy and security of the lane while detracting from the street's amenities.

### Access Arrangements

- To site a public entrance to the proposed restaurant on the lane would have serious adverse implications for other users of the lane. There is also the strong probability this area of the lane would be used as a smoking area. It is requested that access be restricted only to that onto Glasthule Road and that the use of the lane as an outdoor smoking area is prohibited.

### Impact on Residential Amenities

- Overlooking from first floor rear windows will have a serious injurious effect on the residential amenities of the property to the north.
- The restriction on the use of the sedum roof to protect amenities is referenced also.

### Transitional Zonal Area

- The area in which the site is located is classifiable under the Development Plan as a 'transitional zonal area' being adjacent to the boundary of two adjoining land use zones. The site's location adjacent to residential development should be a critical consideration in the assessment of likely adverse impacts.

### Sewerage Services

- There have been problems with the sewerage services in the area. There is concern that the additional loading will be significantly greater than that arising from the existing premises. The need to address the provision of services to avoid issues arising in the future is referenced.

The appeal included correspondence from the appellant's Solicitor in support of the appellant's submission.

## **6.3 Planning Authority Response**

In response to the appeal by Catherine Fidgeon, the planning authority submitted that it is considered the issue relating to the existing laneway has been given due consideration in the planning authority's assessment. In response to the appeal by



Esme Lyttle, it was submitted that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

#### 6.4 **Applicant's Response to Appeals**

The response to the appeals may be summarised as follows:

- The applicant purchased the laneway immediately adjoining the building and evidence was presented to the planning authority.
- The ownership of the laneway is a matter of dispute and the applicant is attempting to resolve this. Notwithstanding this, the applicant has rights of way over the laneway as do a number of other adjoining owners. The applicant does not propose to restrict or limit the access to those who currently enjoy access and rights of way.
- The matter of building over the lane was discussed in detail with the planning authority.
- The site boundary as outlined in the application is correct.
- It is rejected that the application was substandard and the applicant can meet all regulations relating to the operation.
- The entrance to the lane and the lane would be for pedestrian use. The lane would be well managed and would be kept clean at all times.
- The use of steps is as a result of not wishing to create a change of level within the restaurant space. If the Board considers this unacceptable the applicant is prepared to create the internal change of level to eliminate the need for stairs in the lane.
- The proposal does not impact on adjoining residential amenities. The landscaped roof would not be a terrace or smoking area and there would be no public access to it.

The response includes letters from the applicant's Solicitor on the legal position in relation to the ownership of the laneway.

## 6.5 Further Responses

In response to the appeal by Catherine Fidgeon, Esme Lyttle submitted that she totally supports the appeal made.

Catherine Fidgeon and Esme Lyttle responded to the applicant's response to their appeals. The former reiterated concerns relating to proximity to residential property, public sewer deficiencies, and the extent of use of the public right of way over the laneway. The latter's position with regard to the proposed development remained unchanged. The submission included an additional response from the appellant's Solicitor.

The planning authority submitted that the grounds of appeal do not raise any new matters to justify a change in attitude to the proposal.

## 7.0 Assessment

### 7.1 Introduction

7.1.1 The principal planning issues of relevance to this appeal relate to the applicant's legal interest in the site and the impact of the development on the functioning of the laneway adjoining the building. A number of other miscellaneous issues arise.

### 7.2 Legal Interest

7.2.1 The application made to the planning authority included a Site Location Plan that included the laneway in its entirety that abuts the existing building on the site. The appellant, Esme Lyttle, submits that she is the owner of the lane, with the exception of the area forming the underpass below the first floor section of the structure built over the lane. The Board are in receipt of details of evidence of ownership from both the appellant and the applicant.

7.2.2 The applicant has responded to the appeal submission by acknowledging that the ownership of the laneway is a matter of dispute. It is further submitted that he has rights of way over the laneway. I note that there is no dispute over rights of way. The applicant has also responded by referring to addressing the issue of the provision of

steps onto the laneway by way of the potential to create internal changes of level, thus eliminating the need for the steps.

7.2.3 It is my submission to the Board that the issue of legal interest is required to be addressed in this appeal. The implications for the functioning of the laneway by carrying out the proposed development would be significant. The applicant proposes to extend the floor area over the existing lane, to provide a main entrance to the new restaurant, two sets of steps, a goods hoist and a bin store on the lane. As the Board will note, these developments are proposed to be located beyond the extent of the existing underpass. The Board could not reasonably be satisfied that the applicant has sufficient legal interest to undertake these works on this section of the lane based upon the application details and the submissions made.

7.2.4 I note the applicant has suggested to the Board that changes could be made to eliminate the steps from the laneway by making internal alterations. The Board will note the submitted ground floor plan and the array of internal services, access arrangements, etc. proposed to accommodate the development. This is not an instance where one conditions such changes in any grant of planning permission as the implications of such a condition, and the consequent modifications, would not be truly understood at this time. There are potentially significant functional implications for the operation of the restaurant by such changes. Proposals for any such changes should form part of a separate planning application.

7.2.5 Over and above potentially addressing the siting of steps on the lane, there remains the provision of a main restaurant entrance, the provision of a goods hoist, the formal enclosure of bins, and surface works to the lane beyond the underpass. I acknowledge there is also a proposal to provide a new gate at the frontage which is of concern to third parties, notably in relation to security.

7.2.6 In conclusion, I submit that the issue of legal interest has not been adequately addressed to permit the proposed development to proceed. The attachment of an advisory note relating to legal interest, such as that provided by the planning authority, is inadequate as there are clear deficiencies in the demonstration of legal interest in this instance. The applicant's response to the appeal by Esme Lyttle

raises significant concerns about interest in the ownership of the lane in its entirety to undertake the necessary works to accommodate the development of the proposed restaurant.

### 7.3 Impact on Functioning of the Laneway

7.3.1 The existing lane abutting the building on the appeal site forms an access to the rear of several properties with frontage onto Glasthule Road. It is evident from submissions made in the application and the appeal to date that there are established rights-of-way associated with the lane. As well as forming access to properties, it also accommodates deliveries (which were occurring at the time of my site inspection) and it is also used for the storage of bins.

7.3.2 The development as proposed would reduce the width of the lane in parts and would, therefore, have implications for the servicing function that it has at present. The other significant change would be to introduce a side entrance to the proposed restaurant. This would be a main public entrance to the restaurant and its functioning would likely have significant implications for the use of the lane by those with ownership rights and rights-of-way over the lane. It is my submission that there can be no doubt that the proposed development would alter the functioning of the lane, with potentially adverse impacts for those with rights to use the lane heretofore.

7.3.3 I note the previous applications relating to this site. Planning Permission D05A/1725 permitted alterations and an extension to the building and the provision of a restaurant at first and second floor levels. This permission expressly prohibited a proposed side entrance and gates to the restaurant (Condition no. 6). Under Planning Application D07A/0263, permission was refused for the relocation of the restaurant entrance at ground floor level from the front to the side passageway. While I acknowledge the reasons for these decisions to prohibit a side entrance were premised upon maintaining direct access onto the main street for vibrancy and streetscape reasons, the need to introduce a side entrance in the current proposal, where it conflicts with the established functioning of the lane and where the proposed restaurant already provides for direct street access, must be called into question.

## 7.4 Miscellaneous Issues

A number of other issues arise and are considered as follows:

### 7.4.1 *Change of Use*

At the time of the making of Planning Applications D05A/1725 and D07A/0263, the drawings submitted then indicated that the ground floor of the building was a shoe shop. At the time of my site inspection, the ground floor of the building was in use as an art gallery. The public notices submitted with the application make no reference to any proposed change of use. The Board will note the Classes of Use as set out in Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended. The public notices and application details are required to refer to the proposed change of use that would result from a development incorporating a restaurant at ground floor level.

### 7.4.2 *Impact on Residential Amenity*

Having regard to a restriction on public access to the proposed sedum room at first floor level and to the proposed setback of first floor windows on the rear elevation of the proposed development, I do not consider that the functioning of the restaurant would result in any significant overlooking concerns or other impacts on privacy of residential properties in the immediate vicinity. Furthermore, I am satisfied that the functioning of a restaurant in this commercial area of Glasthule, where there is an extensive range of restaurants, shops and other premises, would not result in any notable or significant adverse impacts on the amenities of nearby residents by way of plant noise, odours, etc. where such provisions would meet with environmental health requirements.

### 7.4.3 *Sewerage Deficiencies*

Reference has been made to problems with sewerage services in the area. I note that the Council's Drainage Engineer and Irish Water had no objections to the

proposal. There are no details that warrant a contrary view to be taken to that of Irish Water and the planning authority.

## 8.0 Recommendation

8.1. I am of the opinion that the existing building on the site is suitable to accommodate a restaurant and that the site could also accommodate an extension of the form and scale proposed. There are features of the proposed development, however, that introduce functional difficulties for other users of the lane abutting the building. The principal concern relating to the proposed development is one pertaining to legal interest. I am of the view that, if the applicant demonstrated sufficient legal interest in the lane affected by the proposed works, it would not be reasonable to prohibit the development as proposed. In light of the insufficiency of legal interest demonstrated, I recommend that permission is refused for the following reason and considerations.

## 9.0 Reasons and Considerations

1. The Board is not satisfied that the application has been made by a person who has –

(a) sufficient legal estate or interest in the land the subject of the application to enable him to carry out the works on the said land, or

(b) the approval of the person who has sufficient legal interest or estate.

In these circumstances it is considered that the Board is precluded from considering the granting of permission for the development the subject of the application.

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Kevin Moore  
Senior Planning Inspector

10<sup>th</sup> May 2017