

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL06D.248341

**Development:** Retention of a timber fence erected to the front of dwelling house at 18 North Avenue, Mount Merrion, Blackrock, Co. Dublin.

### Planning Application

Planning Authority: Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.: D17B/0047

Applicant: Craig Doherty

Planning Authority Decision: Refusal

### Planning Appeal

Appellant(s): Craig Doherty

Type of Appeal: First party -v- Decision

Observers: Des Smyth  
Mount Merrion Residents Association

Date of Site Inspection: 6<sup>th</sup> July 2017

**Inspector:** Hugh D. Morrison

## **1.0 SITE LOCATION AND DESCRIPTION**

The site is located on the eastern side of North Avenue, a residential boulevard in Mount Merrion to the west of the Stillorgan Road (N11) and the south of Foster's Avenue (R112). This site is bound along its northern side by a pedestrian walkway (hereafter referred to as an alleyway), which links North Avenue to The Close, a residential cul-de-sac off The Rise, on which there is a cluster of shops and local services.

The subject site is of rectangular shape and it extends over an area of 0.026 hectares. This site accommodates a two storey semi-detached dwelling house with a part two storey/part single storey side/rear extension and front and rear gardens. The exposed side elevation to this extension abuts the alleyway. The front garden contains a timber gated vehicular drive-in and the rear garden is served by a timber pedestrian door from the alleyway. The site is bound by a pebble-dashed wall around the front garden and a blockwork wall around the rear garden.

## **2.0 PROPOSED DEVELOPMENT**

The development proposed for retention is a timber fence, which has been erected on the inside of the pebble-dashed wall that accompanies the southern side of the alleyway. This fence varies in height between 1935 mm, where it abuts one of the vehicular entrance gate posts, and 2290 mm, where it abuts the front elevation of the two storey side extension. Its structure is exposed to the alleyway and it is the subject of continuous vertical boards on the garden side.

## **3.0 PLANNING HISTORY**

The site:

Enforcement enquiry ENF18816: Warning letter concerning fence and the need for permission as it would not be exempted development under Condition and Limitation 1 of Class 5 of Schedule 2 of Part 1 to Article 6 of the Planning and Development Regulations, 2001, as amended.

Other sites:

No. 13 North Avenue

D12B/0328: Retention of lattice fence along common boundary was refused on the grounds of amenity and adverse precedent.

No. 8 North Avenue

D15A/0700: Proposed ancillary works including the construction of 2.1m high fence along the common boundary: Permission granted subject to a condition requiring that the full height would be restricted to behind the front building line.

#### **4.0 PLANNING AUTHORITY DECISION**

##### **4.1 Planning and technical reports**

- Planning: See reason for refusal.
- Surface Water Drainage: No objection.
- Transportation Planning: No objection, provided fence reduced to 1.1m in height for a distance of at least 1m from the gate pier.

##### **4.2 Planning Authority Decision**

Retention permission was refused for the following reason:

*The proposed retention of the timber fence would significantly detract from adjoining residential and the visual amenity of the area. The proposed development for retention would set an undesirable precedent in the area for similar type development and would contravene the zoning objective in the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 “To protect and/or improve residential amenity”. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

#### **5.0 GROUNDS OF APPEAL**

- The applicant outlines how he erected the subject fence to provide privacy to an adjacent kitchen window from the adjoining alleyway and to secure the front garden for children to play in.
- At the application stage, he offered to:
  - Reduce the height of the fence by 0.6m for the first 7.5m back from the street, and
  - To stain the fence to match the front gate to the site.
- The case planner did not refer to these points in his/her report and so the question arises as to whether they were properly considered.

- The draft decision refers to adverse precedent and yet the site adjoins an alleyway, which is a juxtaposition peculiar to it, and so the concern over precedent is misplaced.
- Elsewhere in Dun Laoghaire-Rathdown there are examples of similar fences next to alleyways.
- In addition to the aforementioned proposed amendments, the applicant now proposes to sheet the elevation of the fence facing the alleyway, thereby enhancing its appearance.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

No new matters raised that would prompt the Planning Authority to make a different decision.

### **6.2 First party response**

None

### **6.3 Observations on grounds of appeal**

(a) Des Smyth of No. 36 North Avenue:

- Since North Avenue was laid out in the 1950s, the attractive streetscape has remained unaltered.
- The alleyway to the side of the site has been insitu for over 60 years. Previous owners did not feel exposed or intimidated by the lack of a fence. Allegedly, the current owner does not tend to close the gate to his front garden drive-in.

(b) Mount Merrion Residents Association

- The subject fence is, due to its scale, height, and character, visually obtrusive and out of character with the established pattern of development in the area.
- The fence would not be exempted development and so it would not be in accordance with the proper planning and sustainable development of the area.

## **7.0 POLICY CONTEXT**

Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022 (CDP), the site is shown as lying within an area that is subject to Zoning Objective A, “To protect and/or improve residential amenity”.

## **8.0 ASSESSMENT**

I have reviewed the proposal in the light of the CDP, relevant planning history, and the submissions of the parties and the observers. I consider that this application/appeal should be assessed under the following headings:

- (i) Procedures,
- (ii) Streetscape, and
- (iii) Precedent.

### **(i) Procedures**

- 1.1 The warning letter sent to the applicant concerning the subject fence expresses the view that it may not be exempted development due to Condition and Limitation 1 attached to Class 5 of Schedule 2 of Part 1 to Article 6 of the Planning and Development Regulations, 2001, as amended. This Condition and Limitation states that structures, such as wooden fences, are not exempted development if they are over 1.2m in height and bound front gardens to dwelling houses.
- 1.2 The subject fence is between 1.935 and 2.290m in height and it bounds the northern side of the front garden to the dwelling house at 18 North Avenue. I, therefore, consider that it is not exempted development and so retention permission is need to regularise this fence for planning purposes.
- 1.3 Observer (b) considers that, as the subject fence is not exempted development, it does not accord with the proper planning and sustainable development. However, it does not follow that just because development is not exempted under the aforementioned Regulations that it fails to accord with the said statutory test to be applied to proposals that are the subject of planning applications. Instead, assessment under this test needs to ensue.
- 1.4 I conclude that the subject fence is not exempted development and that it needs to be assessed under the statutory test that is applicable to all planning applications.

### **(ii) Streetscape**

- 2.1 North Avenue is an attractive, generously dimensioned, residential boulevard with pairs of two storey semi-detached dwelling houses on either side. Mature trees punctuate the grass verges and the central meridian and front gardens display mature shrubs and trees. The boundaries to these gardens are denoted by uniform walls and, in places, hedgerows. The applicant's front garden follows this pattern, too. In

addition, the wall along the northern side of this garden is accompanied by a timber fence, which is the subject of this application.

- 2.2 The subject fence rises above the height of both the wall along the northern boundary and the gate post at the end of this boundary. This wall and gate post abut an alleyway, which provides a pedestrian link between North Avenue and The Close, which leads onto The Rise where there is a cluster of local shops and services. The fence is visible above this wall. As it is not boarded on its alleyway elevation, the structure of this fence is clearly visible and so it has an unfinished and, thus, unsightly appearance. From within North Avenue, which rises in a southerly direction, the fence is visible in its entirety at close range and above the line of boundary walls from more distance points. While from higher points its boarded garden side elevation is visible, from lower points its non-boarded elevation is visible. Thus, due to its height or to its height and unsightly appearance, the fence is a visually intrusive feature within the setting of the boulevard.
- 2.3 During my site visit I observed that the existing pair of gates to the vehicular entrance to the drive-in to the applicant's front garden are composed of timber and the pedestrian gate to the rear garden from the alleyway is, likewise, composed of timber. The fence is seen in conjunction with the former gates and so they could complement one another. However, unlike the gates, the height of the fence exceeds that of the gate posts and so they stand out.
- 2.4 At the application stage, the applicant offered to amend the fence by reducing its height for the first 7.5m back from the boulevard by 600 mm. He also offered to stain the fence to match that of the adjacent pair of gates. At the appeal stage, he has further offered to amend the fence by boarding the elevation to the alleyway.
- 2.5 I consider that the aforementioned amendments would mitigate the visual impact of the subject fence upon the streetscape. The said reduction for the first 7.5m would ensure that the more visually exposed portion of the fence from public vantage points within North Avenue would be seen as being no higher than the adjacent gate post. (As there is a slight difference in levels between the alleyway and the drive-in on the site, this reduction would effectively meet the requirement of the Council's Transportation Planning advice that 1.1m be achieved for the first 1m, i.e. the internal to the site height of the fence would be 1.140m). Furthermore, roughly half the length of the retained higher fence would be within the recessed space forward of the front elevation of the two storey side extension and yet behind the front building lines of the original dwelling house.
- 2.6 From within the alleyway, the reduction in height of the fence would reduce its profile and the boarding out and staining of the presenting

elevation would ensure that it has a finished and thus satisfactory appearance when viewed from within the alleyway and from adjacent public vantage points on North Avenue.

2.7 I, therefore, conclude that the subject fence would be compatible with the streetscape of North Avenue, provided the amendments proposed by the applicant at the application and appeal stages are fully implemented.

### **(iii) Precedent**

3.1 The Planning Authority's draft reason for refusal expresses concern that to permit the retention of the subject fence would establish an adverse precedent for the locality.

3.2 The applicant has responded by drawing attention to the juxtaposition of the site to an alleyway and to the incidence of fences in similar situations elsewhere in Dun Laoghaire-Rathdown. The former item is not replicated on North Avenue and so the risk of precedent within this context is allayed thereby. The latter item establishes a precedent for the proposal from comparable situations in the wider administrative area.

3.3 I concur with the applicant's response. In this respect, I note that the risk of adverse precedent would be limited to that of the residential property at No. 16 North Avenue on the northern side of the alleyway. I note, too, that, as the impetus for the fence arose from the applicant's side extension, which is not paralleled at No. 16, a corresponding proposal may not arise. If one did, then it would be capable of complementing the applicant's fence.

3.4 I conclude that the risk of adverse precedent is not an issue in this instance.

## **9.0 CONCLUSIONS AND RECOMMENDATION**

That this proposal be granted retention permission.

### **REASONS AND CONSIDERATIONS**

Having regard to the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, it is considered that, subject to conditions, the proposed retention of a fence on the site would be consistent with the Zoning Objective A for North Avenue and it would be compatible with the streetscape and hence visual amenity of this residential boulevard. Due to the juxtaposition of the site next to the only pedestrian alleyway off North Avenue, the risk of adverse precedent is allayed, and so the proposal would accord with the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 18<sup>th</sup> day of April, 2017, except as may otherwise be required in order to comply with the following condition.

**Reason:** In the interest of clarity.

2. Within 3 months of the date of this Order, the retained fence shall be amended in accordance with the modifications shown on the submitted plans. Specifically,
  - (a) It shall be reduced in height by 600 mm for the first 7.5m back from the gate post,
  - (b) It shall be boarded on its northern elevation to match the boarding on the southern one, and
  - (c) It shall be stained to match the adjacent pair of gates to the drive-in.

**Reason:** In order to safeguard the visual amenities of the area.

---

Hugh D. Morrison  
Planning Inspector  
10<sup>th</sup> July 2017