



An
Bord
Pleanála

Inspector's Report PL06S.248525.

Development	3m wide recessed vehicular access gate to rear garden & associated dropped crossing of kerbs and strengthening of footpath.
Location	46 Birchwood Drive, Tallaght, Dublin 24.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD17B/0094.
Applicant(s)	John And Kathleen Fox.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Type of Appeal	First party vs. refusal.
Appellant(s)	John and Kathleen Fox.
Observer(s)	None.
Date of Site Inspection	11 th July 2017.
Inspector	Ciara Kellett.

1.0 Site Location and Description

- 1.1. The appeal site is to the rear of No. 46 Birchwood Drive, Springfield, Tallaght, Dublin 24 at the junction of Maplewood Road and Cookstown Way. The LUAS redline runs parallel to Cookstown Way and the Hospital stop is c.220m to the south-east and the Cookstown stop is c. 290m to the north-west of the site. St. Mark's GAA club is located c.380m west and Cookstown Industrial Estate and Tallaght Hospital are to the east of Cookstown Way.
- 1.2. No.46 Birchwood Drive is the southern end of a block of 6 terrace houses which all have long narrow large rear gardens. The rear garden of No.46 bounds Maplewood Road close to the junction with Cookstown Way and is a very large corner plot. The rear boundary wall facing Maplewood Road is a c.2m high concrete block capped wall. A pedestrian access exists from the rear garden which opens onto Maplewood Road.
- 1.3. There is a green area on the other side of the road and double yellow lines extend from the junction with Cookstown Way to just beyond the rear wall of No.46.
- 1.4. Appendix A includes maps and photos.

2.0 Proposed Development

- 2.1. The proposed development is for a 3m wide, 2.23m recessed vehicular access with double gates opening into the rear garden of No.46 Birchwood Drive, and associated dropped kerbing onto Maplewood Road and strengthening of the public footpath.
- 2.2. The proposed gates are indicated as opening in towards the rear garden and the new wing walls and gates are 2.12m high.
- 2.3. The full width of the works along the wall is indicated as being 7.65m wide with an apron and footpath extending to 11.61m on the public footpath. Internally within the garden 2 car park spaces are shown as well as a turning circle. The works are indicated as being 36.46m from the junction with Cookstown Way.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for two reasons:

1. The proposed development would create an undesirable precedent on a busy distributor road, which caters for a high number of commuters including pedestrians and cyclists due to its close proximity to Cookstown Luas Station and the Hospital Luas station, major trip attractors such as the Hospital and the Square, Tallaght Institute of Technology and a plethora of local schools including St. Marks National School. The proposed development would be contrary to the proper planning and sustainable development of the area.
2. The applicant has failed to demonstrate: (i) Sufficient legal interest/written evidence of permission to undertake works to the shared public realm boundary, (ii) Sufficient legal interest/written evidence of permission to access the proposed development across the public realm, (iii) Sufficient rationale for the 2 proposed car parking spaces and a requirement to create an access onto Maplewood Road. The proposed development would therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes zoning of the site is 'RES – To protect and /or improve Residential Amenity' and considers proposal is consistent with this zoning objective.
- Notes pre-planning consultation took place which relates to the extension of the existing pedestrian gate to 2.83m to create a vehicular access for a motorhome.
- Notes report from the Roads Department states no objections, and that Maplewood Road is included as part of the new 30kph zoning, and that there is vertical traffic calming and a signalised junction in the vicinity. Applicant proposing to recess the access and to provide a turning circle which should ensure vehicles do not reverse onto the public road.

- Planning Authority have serious concerns – notes site has off-street parking to the front of the site and a significant quantum of on-street parking to the front. Considers applicant has not provided sufficient details relating to the rationale for the proposed 2 car parking spaces and a requirement to create an access.
- Applicant proposes to create an entrance within a party boundary wall, however, the wall is not exclusively within the ownership of the applicant and opens to the public realm – applicant has not demonstrated sufficient legal interest for the proposed development.
- Notes Roads Report states it is within the 30kph residential zone and considers the rationale for 30kph relates to improving safety for pedestrians and cyclists.
- Notes rear garden is one of 7 which all share a rear party boundary with the public realm associated with Maplewood Road. There does not appear to be any developments in the area of a similar nature. Proposal would set an undesirable precedent in creating a vehicular entrance onto a busy distributor road.
- Recommends permission should be refused permission.

The decision was in accordance with the Planner's recommendation.

3.2.1. **Other Technical Reports**

- **Roads Section:** No objection subject to conditions.
- **Surface Water:** No objection subject to conditions.

3.3. **Prescribed Bodies**

- **Irish Water:** No objection subject to conditions.

3.4. **Third Party Observations**

None received.

4.0 Planning History

- SD08B/0387: Planning Permission granted in September 2008 for a single storey porch to the front of the house and a pedestrian gate through a rear boundary wall onto the public footpath.

5.0 Policy Context

5.1. South Dublin County Development Plan 2016 – 2022.

Chapter 6 refers to Transport and Mobility.

In Chapter 6, Policy **TM3 Objective 3** states:

To ensure that all streets and street networks are designed to prioritise the movement of pedestrians and cyclists within a safe and comfortable environment for a wide range of ages, abilities and journey types.

Section 6.4.3 considers Road and Street Design. Policy **TM6** states:

It is the policy of Council to ensure that streets and roads within the County are designed to balance the needs of place and movement, to provide a safe traffic-calmed street environment, particularly in sensitive areas and where vulnerable users are present.

TM7 Objective 3 states:

To ensure that car parking does not detract from the comfort and safety of pedestrians and cyclists or the attractiveness of the landscape.

5.2. Natural Heritage Designations

The Glenasmole Valley SAC (Site Code 001209) is located c. 4km to the south of the site.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party appeal has been submitted by the applicants. In summary it states:

- Consider treatment was unfair from the beginning because first application was deemed invalid, as no site notice was found, but applicant considers that the wrong site was inspected.
- No Further Information was sought on this second application to enable the applicant provide sufficient legal interest.
- Precedent has been set on Maplewood Road for vehicular access just 50m from St. Marks School, and 200m from applicants proposed development on the opposite side of Maplewood Road.
- Following Pre-Planning consultation with the Roads Department, it was determined that the gate should be recessed for pedestrian safety and provide a turnaround space to prevent reversing vehicles. Roads Department has no issue with this development.
- The development is to store a camper van/caravan when not in use and sufficient rationale was noted on the Pre-Planning consultation. Storage is for over the winter months. Family cars are parked at the front of the house.
- Precedent has already been set on Maplewood Road for rear garden vehicular access – Reg. Ref. SD02A/0752, Reg. Ref. S01B/0319 and SD03A/0508. There are similar developments throughout Tallaght.
- Major Trip attractors – Hospital and IT people come from outside the estate and alight at the Luas stops. Schools are inside the estate and no children pass the proposed gate.
- Welcome any restriction or condition – development is solely to store camper van or caravan, there will only be two vehicles parked in the rear garden at any one time, and camper van or caravan will not be used for accommodation at any time.

6.2. Planning Authority Response

The Planning Authority responded by confirming their decision and consider that the issues raised have been covered in the Planner's Report.

7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Traffic Safety
- Authority to undertake works
- Appropriate Assessment

7.1. Traffic Safety

The first reason for refusal related to creating an undesirable precedent onto a busy distributor road which caters for a high number of commuters, including pedestrians and cyclists. The proposal is c.30m from the Cookstown Way road at the T-junction with Maplewood Road.

The applicant identified a number of similar gates along Maplewood Road further into the estate, which provide access from back or side gardens directly onto the public realm. I agree with the applicant that a precedent has already been set, but I have concerns in relation to the proposed location of this particular site. As noted, the site is only 30m back from the centre line of Cookstown Way and therefore would be subject to a significant amount of traffic entering and exiting the general area, both pedestrian, vehicular and cyclist.

During my site visit, I noted a number of cars parked all along Maplewood Road, which are likely to have been parked in this location due to the roads proximity to the two Luas stops, as well as being proximate to the hospital and other facilities in the area. Undoubtedly, the junction is a busy distributor road for all users.

The key issue is whether or not a vehicular access in this particular location will create a traffic hazard that could endanger public safety. The applicant states that the proposal is for the storage of a camper van or a caravan over the winter months which would imply that it would be used infrequently. The Roads Department advised the applicants to recess the entrance and provide a turning circle to avoid

reversing on to the public footpath and road. The applicants have complied with this in the design, thereby minimising any potential traffic hazard. The access is also out onto a section of the road where double yellow lines exist meaning that there will be good visibility either way, not blocked by parked cars.

On balance, having regard to the fact that the applicants intend to use the entrance for storage of a caravan or campervan over winter and the design which includes a turning circle, I do not consider that the proposal would cause a serious negative impact on traffic safety in the area.

7.2. Authority to undertake works

The Planning Authority refused permission for two reasons. The second reason stated insufficient information had been provided in relation to legal interest or written evidence of permission to undertake the works or to access the public realm, as well as insufficient rationale for the 2 car parking spaces.

As part of the appeal the applicants have provided written evidence of sufficient legal interest to indicate that they are the owners of the land to the rear of No.46 Birchwood Drive. I note the Roads Department have not objected to the proposal, nor was there a concern raised with respect to the works on the public realm subject to conditions. I do not consider that this lack of written evidence etc. is reason to refuse permission.

I draw the Board's attention to section 34(13) of the Planning and Development Act 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development. The applicants will have to contact the Roads Department to carry out the works and this can be addressed by way of condition.

I am satisfied that the applicant has provided sufficient rationale for the 2 proposed car parking spaces, stating that they intend to store a caravan or campervan over winter in the back garden. Having regard to the size of the back garden, I consider that this is acceptable and there will still be sufficient garden area for residential amenities.

In conclusion, I am satisfied that the second reason for refusal can be addressed by way of condition.

7.3. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

I recommend that planning permission should be granted for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the zoning of the site, the objective of which is to protect and/or improve residential amenities, and the pattern of development in the vicinity, it is considered that, subject to compliance with the following conditions, the proposed development would generally be acceptable in terms of traffic safety and convenience and would be acceptable in relation to the amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **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 in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed development shall be used solely in connection with the storage of a maximum of two campervans or caravans.

Reason: To protect residential amenity.

3. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the proposed development shall be incidental to the enjoyment of the dwelling house and shall not be used for habitation or the carrying on of any trade or business, unless otherwise authorised by a prior grant of planning permission.

Reason: To protect the amenities of property in the vicinity.

4. The footpath and kerbing shall be dished at the road junction in accordance with the requirements of the planning authority. Details of the materials to be used in such dishing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and at the applicant's expense.

Reason: In the interest of pedestrian safety.

Ciara Kellett
Inspectorate

20th July 2017