



An
Bord
Pleanála

Inspector's Report ABP300064-17

Development	The provision of Protective Netting to the rear of goalposts on sports pitch.
Location	St. Michael's college, Ailesbury Road, Dublin 4.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	3619/17.
Applicants	The Congregation of the Holy Spirit.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Eithne Blake.
Observer	Seamus McCrosain.
Date of Site Inspection	13 th February, 2018.
Inspector	Paul Caprani.

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1.0 Introduction

ABP300064-17 concerns a third party appeal against the decision of Dublin City Council to issue notification to grant planning permission for the provision of netting around a pitch. It is argued that the provision of permanent netting significantly impacts on the appellant's amenity.

2.0 Site Location and Description

- 2.1. The appeal site is located within the grounds of St. Michael's College a national school for boys located to the rear (south) of Ailesbury Road with access from both Merrion Road, Ailesbury Road and Nutley Lane in the south-eastern environs of Dublin City. The school comprises of a three-storey late Victorian structure fronting onto Ailesbury Road with a series of more recently constructed extensions and annexes to the rear. A separate sports hall is also located to the south-west of the school buildings. The school also incorporates a number of playing fields and tennis courts to the south and west of the main school buildings. The main playing pitches are located along the rear of the houses fronting onto Ailesbury Road and 'Ailesbury Wood' a small residential development to the south-west. The playing fields also share a common boundary with the rear gardens of dwellings fronting onto Nutley Avenue to the south.
- 2.2. The two largest playing pitches are located on lands to the immediate west of the main school. The rugby pitch closest to the school buildings is orientated in a north-south direction and consists of a synthetic playing pitch surrounded by a running track. The playing pitch backs onto the rear gardens of Nos. 11 – 19 Ailesbury Road. A c. 2-metre-high stone wall runs along the northern boundary of the college and a mews type laneway separates the northern boundary of St. Michael's College from the rear gardens of the houses on Ailesbury Road. There are a number of mews dwellings located along this laneway including a mews dwelling to the rear of the appellant's house. The separation distance between the rear of the appellant's house and the goalposts at the northern end of the pitch is estimated to be just over 46 metres.

3.0 Proposed Development

Planning permission is sought for the construction of new bigger and wider netting to replace the existing netting to the rear of the goalposts on the northern end of the synthetic pitch which backs onto the northern boundary of the school adjacent to the mews lane. Permission is also sought to construct netting behind both goalposts on a sand based grassed playing pitch located on lands to the immediate west of the synthetic playing pitch (no concerns are raised in the grounds of appeal in respect of this netting). Currently there is an existing 18-metre-wide and 8-metre-high retractable netting located on the inside of the boundary wall to the rear of the existing goalpost. Under the current application it is proposed to replace this netting with higher 12-metre-high and 24 metre length netting to the rear of the goalpost. It is also proposed to provide similar type netting behind both goalposts on the grass pitch to the west. The netting is to be located just inside the boundary wall and approximately 5 metres to the rear of the goalposts.

4.0 Planning Authority Decision

Dublin City Council issued notification to grant planning permission subject to 7 conditions.

4.1. Planning Authority's Assessment

- 4.1.1. The planning application was lodged with the Planning Authority on 10th August, 2017. A covering letter was submitted together with a planning report. The planning report sets out the site location and description, planning history, development description, the planning policy context and details of the planning application.
- 4.1.2. A separate conservation assessment was also submitted by Rob Goodbody Historic Building Consultant. The conservation report sets out details of the historical development of the area and Ailesbury Road in particular. The report notes that the buildings fronting onto Ailesbury Road are listed as protected structures and this includes St. Michael's School. The report describes the existing site and its surroundings before assessing the proposal from a conservation viewpoint. It notes that the netting at the northern end of the smaller pitch would be directly to the rear

of houses on Ailesbury Road. It is stated that the increase in length and height of the netting is necessitated in order to prevent balls oversailing the end of the pitch. It notes that the netting by its nature is relatively transparent and does not present any significant visual barrier. It notes that both the existing and proposed netting is separated from the rear of the protected structure by a distance of 45 metres and this is deemed to be acceptable. As such, it is not considered that the proposal would have any significant effect on the setting of the protected structures fronting onto Ailesbury Road. While it is noted that the mews buildings to the rear of the property on Ailesbury Road are within the curtilage of a protected structure, it is nevertheless stated that the relevant transparency of the netting ensures that the historic character and settings of these buildings would not be significantly affected. Thus, from a conservation perspective the impact of the netting both existing and proposed would be of a low order.

4.2. Observations

A number of letters of objection were submitted from the residents of the dwellinghouses on Ailesbury Road directly to the north of the proposed development. These letters of objection raise concerns in relation to the impact of the proposal primarily on the visual amenities of the area but also on the setting and conservation status of the dwellings on Ailesbury Road. The contents of each of the observations have been read and noted.

4.3. Internal Planning Report

- 4.3.1. A report from the Engineering Department, Drainage Division states that there is no objection to the proposed development subject to complying with the Greater Dublin Regional Code of Practice for Drainage Works.
- 4.3.2. A report from the Conservation Officer notes the concerns raised in the observations on file but considered that if the proposed development were for a block of student accommodation or an educational building, the impact would be more considerable and permanent. It is considered that the relatively transparent nature of the netting and the reversible nature of such materials is acceptable. While the formal relationship exists between the houses on Ailesbury Road and their mews buildings,

such a relationship does not exist with the Dublin Mountains. The netting will not impact on views on the principal elevations of the protected structures. As such a grant of planning permission is recommended.

4.3.3. The planner's report notes that the subject proposal would increase the height of the netting by an additional 4 metres and the width of the netting by an additional 6 metres and would be permanently fixed in place. And it is noted that the netting granted under Reg. Ref. 3441/15 (see below) is not adequately containing footballs within the confines of the College. And notwithstanding the fact that the netting is high, it is required in order to provide adequate safety for students using the adjoining pitches and adjoining residents. It would also be approximately 45 metres from the protected structures and 4 metres from the mews buildings. The visual impact from the proposal would not significantly increase and would not impact on the character and setting of the protected structure to any material extent. It is therefore recommended that planning permission be granted for the proposed development.

4.3.4. Dublin City Council therefore granted planning permission for the proposal on the 4th October, 2017.

5.0 Planning History

5.1. Details of a number of planning applications associated with the College are attached in a pouch at the rear of the files. The relevant applications are briefly summarised below:

Under Reg. Ref. 3441/15 Dublin City Council granted planning permission for the minor realignment of the senior playing pitch and its resurfacing together with a new synthetic playing pitch, the provision of athletic facilities (running track, long jump facilities etc.) and the provision of an 8 metres high retractable ball stop netting to the north of the junior pitch together with other works. Dublin City Council issued notification to grant planning permission subject to 9 conditions.

Under Reg. Ref. 2215/17 Dublin City Council granted planning permission for the resurfacing of an existing grass pitch to provide for an all-weather pitch and the provision of associated fencing around the pitch ranging in height from 1.2 to 2.4 metres with protective padding and the provision of railings and granite piers,

signage, drainage works and diversion of services at the subject site. Permission was granted subject to 9 conditions. Details of pre-application consultations for an extension to the swimming pool block and the provision of three new classrooms are also contained on file.

6.0 Grounds of Appeal

- 6.1. The decision was appealed on behalf of Ms. Eithne Blake of No. 15 Ailesbury Road by O'Connell Mahon Architects. The grounds of appeal set out the background to the proposed development and it is stated that the appellant reluctantly agreed to permit a retractable smaller ball stop net associated with the junior rugby pitch under Reg. Ref. 3441/15. This proposal results in permanent nets being erected on site on a much larger scale. The current proposal overrides conditions associated with the original grant of permission under 3441/15. It is suggested that the existing arrangements on the northern boundary with the retractable net was adequate for the purposes of a junior rugby pitch. Now it is contended that the pitch is being used for senior rugby which requires higher and wider nets. It is suggested that if senior rugby is being played on the pitch it is open to the applicant to realign the pitch rather than override the undertakings under 3441/15. It is suggested that under Ref. 3441/15, the Planning Authority adopted a reasonable balance between the needs of the applicant and the potential impacts on the appellant.
- 6.2. It is suggested that the vista to the Dublin Mountains will be impacted upon from the rear of the appellant's structure and this is a legitimate consideration in the assessment of the impact. Any policy for managing the protected structure should be based on the impact of the cultural significance. Reference is made to various ICOMOS Charters which should inform the Board's decision. Reference is also made to paragraph 13.8.1 of the Architectural Heritage Protection Guidelines for Planning Authorities which notes that when dealing with applications for works outside the curtilage and attendant grounds of a protected structure which have the potential to impact on their character, similar consideration should be given as for the development that lies within the attendant grounds. When dealing with applications for works within the attendant grounds, the Planning Authority should consider if there are important views of or from the structure that would be damaged by the proposed development and these include distant views. Clearly based on these

Guidelines, views from the protected structure are within the ambit of protection particularly when views and vista are clearly part of the original design concept. It is argued that due and proper consideration has not been taken of the planned vista to the south. It is suggested that the netting does have a significant negative impact on views as it represents an ugly permanent intervention on views southwards from the house.

- 6.3. It seems evident that the proposal represents an inappropriate intensification of the use as the pitch was originally designed for junior rugby use. Furthermore, it is suggested that the current use also includes hurling and as such no nets including those proposed will be adequate to contain such activity.
- 6.4. While the planning report considers that the development can be reversed, the grounds of appeal suggest that there is no real prospect for reversing the intervention. While the netting is relatively transparent, it nonetheless has a significant visual impact which is deemed to be ugly and oppressive according to the grounds of appeal. Neither the conservation officer's report nor the planner's report address the matter of the retraction of nets which was the central issue in the parent permission Reg. 3441/15. The incorporation of retractable nets was reluctantly accepted by the appellant in the case of the original use. It is understood that retractable nets are available and are reliable.
- 6.5. A set of photomontages are submitted which clearly demonstrate the negative visual impact arising from the proposal. It is suggested that the Conservation Report submitted with the application:
 - Failed to address the scope of the protected interest which includes a planned vista to the southern landscape and fails to address many of the concerns highlighted in this appeal.
 - Fails to question the alleged underperformance of the applicant's original approved design.
 - Fails to recognise the proposed increased dangers associated with the use of the pitch for hurling.
 - Fails to recognise the prospect or view from a protected structure in terms of the cultural significance.

- Fails to recognise the ugly and oppressive impact from the proposal.
- Fails to address the fact that the existing nets are retractable and the reversibility of same.
- Overrides the balance of interest in favour of the applicant as opposed to the appellant.

The original observations submitted to the Planning Authority on 11th September, 2017 in respect of the current application and the 18th September, 2015 in respect of the previous application are attached. Photomontages depicting the potential impact are also submitted as part of the appeal.

7.0 Appeal Responses

7.1. Planning Authority's Response to the Grounds of Appeal

In its response dated 15th November, 2017 Dublin City Council stated that it had no further comment to make and considered that the planner's report on file adequately deals with the proposal.

7.2. Applicant's Response to the Grounds of Appeal

- 7.2.1. In respect of views to the Dublin Mountains, it is stated that there are many occasions where important views are protected in the Dublin City Development Plan. This is not the case in the context of the appellant's property, and it is contended that in designing the dwellings on Ailesbury Road, preserving the views of the Dublin Mountains was not an important design consideration. It is suggested that the alignment of the road was purely simply based on the shortest distance between the railway station at Sydney Parade over the Dodder to Donnybrook. The fact that views of the Dublin Mountain remain open from the subject site is due to the fact that no development took place to the rear of the houses on Ailesbury Road. It is also suggested that the orientation of the dwelling is towards Kilternan and therefore only oblique views of the mountains are available. The applicant has in fact benefited from the use of the lands as sportsfields to date.

- 7.2.2. With regard specifically to the impact of the netting, it is not accepted that the netting in question is oppressive and will have a significant visual impact. It is suggested that the submitted images are completely inaccurate. Firstly, it is stated that the existing views submitted do not show the current netting which is currently permitted to be erected on site and therefore the photomontages do not properly compare existing and proposed. A more appropriate assessment would include for contrast purposes the netting as erected on site. Secondly, the images show a third support pole in the middle of the netting which is neither proposed by the applicant nor permitted by the Planning Authority. It is also suggested that the colour and texture of the netting shown is also inaccurate making it appear much denser and darker than it will be in reality. It is suggested that the opaque nature of the netting will not have a material impact over and above that which is permitted on site. The proposal will also ensure that the appellant nor the neighbours will suffer interference from balls being kicked into the garden. The netting will only be seen as thin lines in silhouette against the sky. There is no interruption in terms of views. It is suggested that the mesh of the netting has been exaggerated and thus the visual impact would not be so significant.
- 7.2.3. It is argued that there have been numerous technical difficulties with retracting the netting when the pitches are not in use. Thus it was determined that non-retractable netting would be the most appropriate. In the context of protected structures on Ailesbury Road, it was considered that the omission of a third support pole was much more beneficial in terms of the potential impact on protected structures.
- 7.2.4. In conclusion reference is made to the conclusions of the conservation officer's report when assessed by the Planning Authority.
- 7.2.5. It is also stated that the netting is necessary to ensure the health and safety of the neighbours on Ailesbury Road and it is not considered that there will be any significant visual impact arising from the netting which would affect the character and setting of the protected structures.
- 7.2.6. A separate report was submitted by Rob Goodbody, Historic Building Consultant. It suggests that the third party has relied a great deal on various ICOMOS Charters and other conservation guidelines suggesting that the view of Dublin Mountains is an integral part of the design concept behind the development of houses on Ailesbury Road. It is argued that this is not the case. It is a simple fact that the Dublin

Mountains can be seen from any point in Dublin. In a very small number of instances building development took place to take advantage of these views. However, Ailesbury Road was not one of these instances. Views of the mountains is purely fortuitous as the contiguous lands to the south of the appellant's property has remained free from development.

- 7.2.7. The response goes on to assess and analyse the photomontages submitted with the application. It is suggested that View No. 1 demonstrates that there will be no significant impact arising from the netting as seen from ground level to the rear of the protected structure.
- 7.2.8. In View No. 3 it is stated that the netting itself does not appear prominent or significant in view.
- 7.2.9. In Views Nos. 4 and 5 the netting has been greatly exaggerated. A photograph is contained in the report which it is argued clearly demonstrates that the netting offers no interruption of views of buildings, trees or any other items.

8.0 Observation

8.1. Observation of Seamus McCrosain of No. 13 Ailesbury Road

- 8.1.1. This observation supports the grounds of appeal and notes that a condition in the original permission (Ref. 3441/15) requires that the nets be retracted when not in use. This is considered to be a fair and balanced compromise. The current application is for permanent netting which will never be taken down. It is also suggested that the applicant ignored the special condition and did not retract nets when not in use. It is also suggested that games were played at St. Michaels where the netting was not in use at all. A grant of planning permission in this instance would see that a reasonable and appropriate condition irrespective of the previous application would be ignored. This would offer a dangerous planning precedent. It is suggested that the junior pitch is suitable for junior rugby only and not senior rugby or hurling. In the case of hurling a much tighter and stronger netting would be required thereby greatly increasing the visual impact. The current application also seeks to increase the area of coverage by 100%. It is suggested that the school should never have realigned the junior pitch as the previous alignment existed for

over 40 years without issue. If the proposal is to incorporate increased netting, surely it should be retractable when not in use.

- 8.1.2. The original letter of objection to the Planning Authority is also submitted. Details of correspondence between the observer and the school are also attached as part of the observation.

9.0 Development Plan Provision

- 9.1. The subject site is zoned Z15 – institutional which has the zoning objective to “protect and provide for institutional and community uses”. The development plan notes that Z15 lands are generally large blocks of land consisting of buildings and associated open space and generally include community related development including schools, colleges, residential institutions and health care institutions.
- 9.2. Policy SN19 of the development plan seeks to enhance and improve the provision of playgrounds, play spaces, playing pitches and recreational spaces in residential areas and in the city centre in accordance with the City Council’s standards and guidelines.
- 9.3. St. Michael’s House and the dwellings on Ailesbury Road are protected structures and the houses on Ailesbury Road are located in a residential conservation area. There is a zone of archaeological interest to the north-west of the site.

10.0 Assessment

I have read the entire contents of the file, have had particular regard to the issues raised in the grounds of appeal and the observations submitted and have carried out a site visit to the site and its surroundings. I consider the critical issues in determining the current application and appeal before the Board are as follows:

- Impact on Surrounding Views
- Impact on the Setting and Integrity of Protected Structures
- Contravention of Extant Permission under Reg. Ref. 3441/15

10.1. Impact on Views

In assessing the proposed development, the Board should have regard to the fact that there is an extant permission for netting behind the goals on the northern boundary of the school under Reg. Ref. 3441/15. I acknowledge that Condition No. 2 of this planning permission requires that the netting shall be retracted below the height of the boundary wall other than when games/training are in progress on the subject pitch. It appears however that the retractable netting has malfunctioned on a consistent basis and this results in either (a) the netting not being hoisted or (b) erected over periods of time when the fields are not in use. The netting in my view while noticeable, does not block or significantly obscure views southwards from the protected structure towards the Dublin Mountains. It cannot be reasonably argued in my view that the appellant currently enjoys pristine and uninterrupted views of the Dublin Mountains from the rear windows of No. 15. The intervening area between the Dublin Mountains and the appellant's rear garden accommodates large tracts of developed land including the mews development to the rear of the appellant's garden. Views from some of the taller buildings associated with St. Vincent's University Hospital are also readily visible from the appellant's rear garden. The incorporation of transparent netting therefore in my view will not block or terminate a vista from the upper floor windows of the appellant's dwelling. It should also be noted that the appellant's rear garden is well landscaped and this will assist in screening views of the proposed netting particularly at ground level in the rear garden.

The applicant in his response to the grounds of appeal, points out that there are no listed or protected views or prospects in the current City Development Plan in the vicinity of the site. It is therefore not an objective of Dublin City Council, or any other Authority for that matter, to protect the views and prospects southwards from the appellant's dwelling. If a policy or stance were to be adopted whereby all development would be prohibited which impacted on private or individual views which are not protected in the statutory development plan, it would in my view, hinder and restrict any future development in the vicinity of the said views to an unacceptable extent. Finally, in relation to this matter I would also agree with the applicant and in particular the report from the Historic Building Consultant that there is no evidence to suggest that Ailesbury Road was designed and laid out specifically to maximise views southwards from the Dublin Mountains. While the orientation of

the dwellinghouses facing onto Ailesbury Road do offer southward views towards the Dublin Mountains that there is no evidence to suggest that the overall design and layout of the road was predicated on maximising the views towards the Dublin Mountains as suggested by the appellant in the grounds of appeal.

10.2. Impact on Setting and Integrity of Protected Structure

The buildings facing onto Ailesbury Road are protected structures and Ailesbury Road is located within a designated Residential Conservation Area. However, the Board will note that the proposed netting is not located within the curtilage of a protected structure nor is it located within the designated Residential Conservation Area. The netting is located within lands which are zoned for institutional use and the proposed netting is visually associated with the football field and the primary school in general. Furthermore, the netting is located some 45 metres from the rear of No. 15 Ailesbury Road and the intervening lands incorporate more substantial structures including modern type mews development facing onto a laneway separating the subject site from the appellant's site.

Having regard to the transparent nature of the proposed netting within an existing urban setting together with the separation distances involved, I do not consider that it can be reasonably argued that the proposed netting in this instance would have a significant or material impact on the setting and integrity of the protected structures on Ailesbury Road. I would reiterate that any assessment of potential impacts must be made in the context of the fact that there is an extant permission for existing netting on the subject site and the proposed development in this instance merely relates to an increase in the height and width of the netting. I do however also acknowledge that the extant permission relates to retractable netting and therefore would not be as visually prominent as the permanent netting proposed in this instance. While the proposed netting in this instance would be a permanent installation, I nevertheless consider that the impact is nonetheless considered to be acceptable.

10.3. Contravention of previous Planning Permission under 3441/15

The grant of planning permission for the original netting under Reg. Ref. 3441/15 does not in itself preclude any re-evaluation of operations on site. It is a reasonable expectation and indeed an important part of any school curriculum that sport

activities are practiced as part of the physical educational programme set out in the curriculum. The appellant argues that in this instance that an intensification of use has taken place with senior rugby and hurling being played on the pitch in question which is referred to in the grounds of appeal as a junior pitch. I do not consider that it can be reasonably argued that any such intensification is material in planning terms. Whether or not the subject pitch is used for the playing of senior rugby, junior rugby or indeed hurling is not material in terms of planning. If a situation arises where balls (be it a rugby ball, a sliothar or any other type of ball) is consistently being kicked /puked beyond on the boundary of the school premises, it is appropriate that some form of protective netting is put in place to address this. I consider that it would be beneficial to both the school and the appellants that sports balls are not being lost and consistently landing into the rear gardens of the houses on Ailesbury Road.

11.0 Conclusions and Recommendation

Arising from my assessment above therefore I consider the expansion in height and width of the existing netting, albeit on a permanent basis is beneficial for the continued sporting activities within the school and due to the transparent nature of the netting I do not consider that the said netting would significantly or materially impact on views from the rear dwellings on Ailesbury Road and would not impact on the setting and integrity of the protected structures on Ailesbury Road to the north of the subject site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, 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.

13.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Reasons and Considerations

It is considered that the proposed development subject to conditions set out below will not seriously injure the amenities of the area or of property in the vicinity, will not adversely impact to a material extent on existing views and will not damage the integrity or setting of protected structures in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

15.0 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 the 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. Prior to the commencement of development, the applicant shall submit details of the proposed netting including the colour of the netting to be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual and residential amenity.

3. Site development and building works shall be carried out between the hours of 7 a.m. to 6 p.m. Monday to Friday inclusive and between 8 a.m. to 2 p.m. on Saturdays and not at all on Sundays or Public Holidays.

Deviations from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: To safeguard the residential amenities of property in the vicinity.

4. The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleansing works to be carried out on the adjoining public roads. The said cleaning works shall be carried out at the developer's expense.

Reason: To ensure that the adjoining road are kept in a clean and safe condition during construction works in the interest of orderly development.

5. 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.

Paul Caprani,
Senior Planning Inspector,
23rd February, 2018.