



An
Bord
Pleanála

Inspector's Report 300162-17

Development	Retention of gates to lane entrance.
Location	Off Churchgate Avenue, rear 2, 2A, 4 and 4A Vernon Avenue, Clontarf, Dublin 3.
Planning Authority	Dublin City
Planning Authority Reg. Ref.	3491/17
Applicant(s)	Brian Connolly
Type of Application	Retention permission
Planning Authority Decision	GRANT with conditions
Type of Appeal	Third Party
Appellant(s)	Brian Hogan
Observer(s)	None
Date of Site Inspection	09/02/18
Inspector	John Desmond

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1.0 Site Location and Description

- 1.1. The application site located adjacent a bustling neighbourhood centre at the junction of Vernon Avenue and Clontarf Road, within an old suburban area adjacent the coast.
- 1.2. The application relates to an existing service yard or lane to the rear of 4no. commercial properties fronting onto Vernon Avenue, which is accessed via Churchgate Avenue. The service yard / lane is an irregular-shaped space providing access to the rear of the said four commercial buildings, in addition to the rear garden of no.191 Clontarf Road to the west.
- 1.3. Steel gates of c.2.7m in height have been erected at the entrance to the lane / yard, which open outwards onto the public road (Churchgate Avenue). The gates were not locked at the time of inspection. The lane, which is surfaced in concrete, was in use as a refuse storage area at the time of inspection.
- 1.4. Churchgate Lane is a narrow cul-de-sac providing access to a terrace of old cottages, the rear of properties fronting onto Clontarf Road, a mews dwelling to the rear of one of the said properties and St John the Baptist's Catholic Church and, it would appear, to the Holy Faith Secondary School, in addition to the said service yard / lane.

2.0 Proposed Development

- 2.1. It is proposed to **RETAIN** the erection of two lockable steel gates to a rear service lane accessing onto the public road (Churchgate Avenue).

3.0 Planning Authority Decision

3.1. Decision

GRANT permission with 6no. conditions. The following conditions are of note:

No.2 – Requires submission of revised details (supplementary support bracing suggested) for agreement showing gate support not physically attached to no.191 Clontarf Road, or of written consent of said owner.

No.3 – 2-year permission.

No.4 – gates not to swing outwards.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The first report (15/09/17) advised that a temporary permission be granted to enable the development to be monitored and recommended that further information be sought requiring the applicant to investigate alternative measures to retain gate without being physical attachment to no.191 Clontarf Road.

The second report (20/10/17) recommended that permission be granted subject to 6no. conditions, consistent with the decision of the Planning Authority.

3.2.2. Other Technical Reports

Drainage Section (23/08/17) – no objection subject to standard condition.

3.3. **Third Party Observations**

A letter of objection was received from Brian Hogan on behalf of his mother, the owner of nos.190 and 191 Clontarf Road. The main points of the object are repeated in the appeal and are summarised below.

4.0 **Planning History**

E0403/17 – Refers to enforcement file opened in respect of gates erected on the laneway. No details are on file.

5.0 Policy Context

5.1. Development Plan

The application site is zoned *Z2 to protect and / or improve the amenities of residential conservation areas*.

Within zone of archaeological potential.

5.2. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary SPA 004024 (c.0.1km to south).

North Dublin Bay SAC 000206 (c.0.9km to the east).

North Bull Island SPA 004006 (c.0.9km to east).

6.0 The Appeal

6.1. Grounds of Appeal

The main grounds of the third-party appeal by Brian Hogan may be summarised as follows:

- The Planning Authority did not fully consider the appellant's objection in the planning assessment, but focused only on the issue of attachment of the structure to his mother's property.
- Fire and public safety – the gates block the emergency escape accesses from the premises which lead onto the lane, and access for emergency vehicles needed to fight fires, etc.
- Lack of independence of DCC – The Authority instructed the applicant to fit gates and therefore were not independent in assessing the application.
- Damage – The applicant should be required to fully restore the damage caused to the property through the affixing of the gates thereto by bolts.
- Planning laws – Granting of retention rewards the applicant for breaching planning laws.

- Creates a hostile and aggressive environment.
- Waste management – disputes that the applicant's that illegal dumping of rubbish on the land necessitates the gates. The rubbish on the lane is generated by the businesses and shops storing waste bins in the laneway. The appellant previously raised concern about waste generated and stored on the lane in his submissions on planning applications for shops and restaurants, but was assured that the businesses would manage their waste. It never has been and the gates will not resolve this.
- DCC has not given permission for the gates to be locked and the applicant did not seek permission for them to be locked.
- The gates will block the appellant's access and right of way from the rear of 191 Clontarf Road onto Churchgate Avenue, through which he brings his boat on a trailer and a car trailer (map attached).
- Breaches the Roads Act 1993 - The lane constitutes a road under the Roads Act 1993 and cannot be closed off, except (according to s.73) by the local authority under specified circumstances following set procedures.

6.2. Applicant Response

The response from Brian Connolly c/o Ryan & Lamb Architects (18/12/17) may be summarised as follows:

- The fly-tipping / dumping of rubbish is self-evident from correspondence between DCC and the applicant.
- Controlled access to the lane will eliminate the problem, allowing for implementation of management of waste.
- Many of the issues raised by the appellant are not relevant and cannot be adjudicated on by DCC or ABP, being civil in nature.
- The lane does not provide fire escape and the gates do not prevent egress.

6.3. Planning Authority Response

None received.

7.0 Assessment

The main issues arising under this case can be addressed under the following headings:

- 7.1 Principle / policy
- 7.2 Access issues
- 7.3 Encroachment
- 7.4 Visual impact
- 7.5 Other matters
- 7.6 Appropriate Assessment

7.1. Principle / policy

- 7.1.1. I could locate no specific policies or objectives under the Development Plan related to the proposed development and none are referred to in the Planner's report or by the third-party appellant.
- 7.1.2. The site is located on lands zone objective Z2 *to protect and / or improve the amenities of residential conservation areas*, notwithstanding that the service lane is in use associated with five commercial buildings within this bustling neighbourhood centre, including providing rear access and for the storage of refuse bins. The lane also provides rear access to a residential property (no.191 Clontarf Road) in the ownership of the appellant's mother. That property has direct access to Churchgate Avenue via a garage.
- 7.1.3. I see no issue with the proposed development in principle.

7.2. Access issues

- 7.2.1. The appellant objects to the gates on the grounds that they block access to the rear of no.191 Clontarf Road. This is a civil matter. In this regard section 34(13) of the Planning and Development Act, 2000, as amended, provides that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

7.2.2. The appellant claims it is a road under the Roads Act 1993 and cannot be closed off, except (according to s.73) by the local authority under specified circumstances following set procedures. There is nothing to suggest (and it would appear unlikely) that this is a public road over which there is a public right of way such as would necessitate the procedures under s.73 of the Act to be carried out. There is no report from the Council's Roads Department.

7.2.3. In response to the appellant's concerns, the applicant submits that the lane does not provide fire escape and the gates do not prevent egress. It also would appear that the lane is not sufficient in width to accommodate a fire truck or other emergency vehicle, even if the lane were no in use for refuse storage.

7.3. **Encroachment**

7.3.1. The appellant has objected to the affixing of the gate structure to the adjacent garage structure to the west (no.191 Clontarf Road) and requests that the affixing structures be removed and any damage rectified / repaired by the developer.

7.3.2. This is a civil matter between the relevant parties and condition no.2 attached to the of the Planning Authority's decision, whilst not unreasonable, is unnecessary in view of the provisions of s.34(13) of the Act, as referred to above.

7.4. **Visual impact**

7.4.1. The gates proposed for retention are indicated as almost 2.7m in height, similar to that of the adjacent residential garage. They are utilitarian in design, accentuated by the raw galvanised steel finish, but visually acceptable in their context. They are slightly recessed from the building line to Churchgate Avenue, rendering them unobtrusive from the majority of the street and from Vernon Avenue. That gates provide some, albeit limited, screening from the refuse storage area associated with the commercial premises, is a positive impact on the properties on Churchgate Avenue.

7.5. **Other issues**

7.5.1. The gates open outwards onto the public road, potentially impacting on road safety and public rights of way. This is not acceptable but may be addressed by condition.

7.5.2. The securing of this small service lane by entrance gates reduces the potential for anti-social behaviour, including fly-tipping, which has allegedly occurred.

7.5.3. The site is within the zone of archaeological potential, but as no subsurface works are proposed and do not appear to have been carried out in the construction, no archaeological issues arise.

7.6. **Appropriate Assessment**

7.6.1. Having regard to the small-scale nature of the development proposed for retention, which is located within a built-up area, it is not considered that the proposed development would be likely to have a significant effect, directly or indirectly, individually or in combination with other plans or projects on any European site. I consider no Appropriate Assessment issues to arise.

8.0 **Recommendation**

8.1. I recommend that permission be **GRANTED** subject to the conditions set out under section 10.0.

9.0 **Reasons and Considerations**

Having regard to the nature, scale and location of the development proposed for retention, it is considered that proposed development would not seriously injure the amenities of property in the vicinity, would be consistent with the zoning objective pertaining to the site, Z2 '*To protect and/or improve amenities of residential conservation areas*', and would be in accordance with the proper planning and sustainable development of the area, subject to compliance with conditions set out below.

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. Within four weeks of this decision the gates shall be amended so as to open inwards onto the property, only, and not outwards onto the public road.

Reason: To avoid obstruction of the public road in the interest of public safety.

John Desmond
Senior Planning Inspector

16 February 2018