



An
Bord
Pleanála

Inspector's Report ABP-301721-18

Development	. Permission for retention of a steel mesh fence and associated structural posts erected along the western edge of Berth 1
Location	Site (c.0.03 ha) at Berth 1, East Pier, Dun Laoghaire Harbour, Co Dublin (A Protected Structure)
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/0206
Applicant(s)	Dun Laoghaire Harbour Company Ltd
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Dun Laoghaire Harbour Company Ltd
Observer(s)	n/a
Date of Site Inspection	30 th July 2018
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.03ha is located at Berth 1, East Pier, Dun Laoghaire Harbour (Protected Structure) which is a projecting berth attached to the East Pier; the eastern breakwater of the harbour. The East Pier is mainly used for non-marine activities and is a popular public amenity area. Berth 1 was constructed in circa 1965 and is located on the inner side of the harbour between the East Pier and Carlisle Pier. It extends 14m north westwards from the East Pier towards the Carlisle Pier and is c 75m in length and is located 175 from the landward end of the East Pier. A set of photographs of the site and its environs taken during the course of the site inspection is attached. I also refer to the site photos available to view throughout the appeal.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of a steel mesh safety fence and associated structural posts erected along the western edge of Berth 1 and measuring approximately 2.2m in height and 73m in length.
- 2.2. The application was accompanied by Planning Report, Appropriate Assessment Screening Report and a report entitled “An evaluation of risk mitigation measures taken by the Dun Laoghaire Harbour Company to address swimming risks off the East Pier 2018”.

3.0 Planning Authority Decision

3.1. Decision

3.2. DLRCC refused permission for the following reason:

The proposed retention of the existing steel mesh fence at Berth 1, East Pier, Dún Laoghaire Harbour, Co Dublin, as a result of its height and poor design, will have a negative visual impact on the character of the Protected Structure and the wider Harbour Candidate Architectural Conservation Area, and is contrary to SLO 13, Policy AR1 and AR17, and Section 8.2.11.2(iii) of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 with respect to

works to and in close proximity to a Protected Structure. The proposed development would, therefore, be contrary to the proper planning and development of the area.

3.3. Planning Authority Reports

3.3.1. Planning Reports

3.3.2. The Case Planner, although acknowledging that the principle of the development was acceptable was in agreement with the Conservation Division that the type of fence for which retention was sought (i.e. Kylemore security fencing), lacks any quality of design and is at odds with the character of the Protected Structure and wider Harbour cACA. Refusal was recommended. The notification of decision to refuse permission issued by DLRCC reflects this recommendation

3.3.3. Other Technical Reports

3.3.4. **Conservation Division** – Recommended planning permission be refused for the following reason:

Having regard to Specific Local Objective 13 and Policy AR17 of the Dun Laoghaire Rathdown County Development Plan 2016 – 2011, it is our view that the steel mesh fence has a negative visual impact on the Harbour which is a candidate Architectural Conservation area and as such would be contrary to the proper planning and sustainable development of the area.

3.3.5. **Transportation Planning** – No objection

3.4. Prescribed Bodies

3.5. **An Taisce** – The fence impacts negatively on the Protected Structure and the heritage setting of the Harbour.

3.6. Third Party Observations

3.6.1. There is one observation recorded on the planning file from Aine O'Dwyer. The issue raised relate to visual impact, type of fencing is not durable in a marine environment, excessive response to the problem and that a warning sign would be sufficient.

4.0 Planning History

- 4.1. **ABP PL06D.244306** (Reg Ref D13A/0682) – DLRCC granted permission for a new urban beach, floating pool facility and all associated works at Berth 1, East Pier, Dun Laoghaire Harbour. The decision was appealed by a third party. An Bord Pleanála granted permission subject to 20 no conditions.
- 4.2. It is noted from the Case Planners report that an **Enforcement Notice** was issued in relation to the erection of fencing along Berth No 1, which detracts from the character and special interest of the Protected Structure of the East Pier, without the benefit of a valid planning permission.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned Objective “W” where the objective is *to provide for waterfront development and harbour related uses*. The East Pier is a designated Protected Structure (RPS Ref No 307). Chapter 6 Built Heritage Strategy of the Development Plan sets out the following Policies:

Policy AR1: Record of Protected Structures - It is Council policy to:

- i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS).*
- ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.*
- iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of the Arts, Heritage and the Gaeltacht ‘Architectural Heritage Protection Guidelines for Planning Authorities’ (2011).*
- iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.*

Policy AR17: Development within a cACA - It is Council policy that development proposals within a candidate Architectural Conservation Area will be assessed having regard to the impact on the character of the area in which it is to be placed.

5.1.2. **Section 8.2.11.2(iii) Archaeological and Architectural Heritage - Development in Proximity to a Protected Structure** states that any proposal for development will be assessed in terms of the following:

- The proximity and potential impact in terms of scale, height, massing and alignment on the Protected Structure, to ensure that harmony produced by particular grouping of buildings and the quality of spaces and views between them is not adversely affected.
- The quality and palette of materials and finishes proposed.
- Works to the Protected Structure should take place in tandem with the proposed development to ensure a holistic approach to the site.
- Impact on existing features and important landscape elements including trees, hedgerows and boundary treatments.
- Impact of associated works including street furniture, car parking, hard landscaping finishes, lighting and services

5.1.3. Appendix 12 Dun Laoghaire Urban Framework Plan sets out two specific local objectives relating to the overall Harbour are as follows:

SLO 13: *To facilitate the continued development of the Harbour, ensuring at all times that the historic significance and natural beauty of this public amenity is protected, in advance of the preparation of the Dún Laoghaire and Environs Local Area Plan (LAP). Following the adoption of the Dún Laoghaire and Environs LAP, the future development of the Harbour will thereafter be guided by the principles and objectives of the Plan and that of Policy E14*

SLO 136: *In order to promote, preserve and protect the natural, marine and built heritage of Dún Laoghaire Harbour, this Council will review the Dún Laoghaire Harbour Heritage Management Plan 2011, with a view to considering same for inclusion in the County Development Plan 2016-2022, as appropriate.*

5.1.4. The site is also located within the **Harbour Candidate Architectural Conservation Area** (cACA). The site is also located within the proposed **Dun Laoghaire and Environs Local Area Plan** (LAP).

5.2. **Natural Heritage Designations**

5.2.1. The site is not located within a designated Natura 2000 site. The closest site is the **South Dublin Bay SAC**.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1. The first party appeal has been prepared and submitted by Stephen Little & Associates on behalf of the applicant and may be summarised as follows:

- The application has not been assessed appropriately in relation to its context i.e. that it is not intended to be a permanent fixture and is solely in place for reasons of public safety. The applicant intends to remove this fence when the permitted “Urban Beach” development is completed (ABP PL06D.244306 (Reg Ref D13A/0682) refers). Permission was granted for on 13th May 2015 and has not been implemented to date.
- The discrepancy on the fence height is noted. Stated that the fence is 2.2m in height rather than 2.4m as stated in the public notices. Submitted that this was accepted as immaterial by the Planning Authority and the application was validated.
- The fence was erected to address serious health and safety concerns regarding an ongoing problem with teenagers jumping off Berth 1 into the Harbour to swim. In one reported incidence it took at least 12 Gardai to remove 200 young persons (some under the influence of alcohol) on 20th June 2017. The following morning Dun Laoghaire Harbour Company erected temporary heras fencing to discourage further occurrences. By lunchtime it had been thrown onto the harbour and the Gardai were called to remove the crowd and provide protection to maintenance crew. Over the following weeks the fencing was repeatedly removed requiring a more robust solution.

- The fencing was initially erected as emergency works to prevent a clear, present and serious risk to public health and safety at Berth 1. Submitted that the installation of a robust physical fence structure that isolates people from the hazard is at this time the most appropriate preventative and protective measure to reduce risk of severe injury to an acceptable level.
- The fence is likely to give rise to some visual impact, but that in the context of a working harbour this is not considered significant. As the works are reversible the impact is temporary pending the delivery of an alternative solution and therefore the integrity of the Protected Structure remains intact.
- The principle of the development has been accepted by the Planning Authority.
- The fence is localised to Berth 1 because there is a means of exit from the water available here, that is not afforded at other locations along the East Pier.
- Considered that to retain the fencing would not result in any permanent material harm to either the character or appearance of the proposed structure harbour or wider cACA.

6.2. **Planning Authority Response**

- 6.2.1. DLRCC refers to the previous planners report and state that the grounds of appeal do not raise any new matter which in the opinion of the Planning Authority would justify a change of attitude to the proposed development.

6.3. **Observations**

- 6.3.1. There are no observations recorded on the appeal file.

6.4. **Further Responses**

- 6.4.1. There are no further responses recorded on the appeal file.

7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Built Heritage
- Other Issues

8.0 Principle

8.1. Under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 the site is wholly contained within an area zoned Objective “W” where the objective is to provide for waterfront development and harbour related uses. The erection of a steel mesh fence and associated structural posts along the western edge of Berth 1 in order to mitigate a *significant public health and safety concern for the Harbour Company* is considered an acceptable development in principle subject to the acceptance or otherwise of site specifics / other policies within the development plan.

9.0 Built Heritage

9.1. Dun Laoghaire Rathdown in their single reason for refusal stated that the retention of the fence would have a negative visual impact on the character of the Protected Structure of East Harbour and the wider Harbour Candidate Architectural Conservation Area be reason of its height and poor design. I have considered Objective SLO 13, Policy AR1 and AR17, and Section 8.2.11.2(iii) of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 as referenced in the reason for refusal and I would set out the following.

9.2. Intervention either minor or major is often required to enable a protected structure to survive, particularly as a result of a new usage or as in this case as a result of a significant health and safety issue. The works to be retained did not involve demolition or alterations to the East Pier nor do they alter the original plan form. The

works proposed are limited to the western edge of Berth 1 and as observed on day of site inspection the approach used ensured that as little damage as possible was done to the pier. Further I am satisfied that none of the works to be retained preclude the possibility of return to the original state. I also accept that the fencing was erected in direct response to a significant public health and safety concern. It would appear that this location was particularly inviting to the public by reason of proximity to stairs providing a relatively easy exit for swimmers from the harbour.

- 9.3. On balance I consider the erection of this fencing in the short term to be acceptable as it facilitates a modern solution to a serious health and safety problem. However, I have difficulty with this solution becoming a permanent feature on the harbour landscape as the fence to be retained is a generic security type fence which is at odds with the architectural character of the Harbour. I agree with the Case Planner that there are other types of fencing that would be more appropriate for management of public spaces of the quality and significance of Dun Laoghaire Harbour.
- 9.4. As set out in Section 3.2 of Appendix 12 of the Development Plan any interventions in the Harbour must at all times be of the highest design standard, maximise public access to the waterfront and be sympathetic to the historical character and fabric of the numerous Protected Structures located in the Harbour environs. While I note the applicants intention to remove this fence when the permitted “Urban Beach” development is completed (ABP PL06D.244306 (Reg Ref D13A/0682) refers). Permission was granted for same on 13th May 2015 but has not been implemented to date. While this is a reasonable proposal I am concerned that there is no indication as to when these permitted works are due to commence or any estimated time for completion and therefore to grant permission for retention of the steel mesh fencing without a defined time for removal could result in the fence remaining in situ indefinitely. Having regard to the sensitive nature of the harbour it is therefore recommend that permission be granted on a temporary basis only for 18 months to allow for a review of the development having regard to the circumstances then pertaining and in the interest of architectural heritage and visual amenity.

10.0 Other Issues

- 10.1. **Development Contributions** – Dun-laoghaire Rathdown County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th December 2015. The scheme states that in the case of “retention permissions” *all retention permissions will be charged a multiple of 1.25 times the rates outlined in the Schedules*. Further the reduced rate for temporary permissions is *33% of normal rate for permissions of up to 3 years*. Accordingly, the proposed development, as recommended is NOT exempt from the payment of a Section 48 Development Contribution.
- 10.2. **Appropriate Assessment** - Having regard to the nature and scale of the proposed development, and its distance 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.

11.0 Recommendation

- 11.1. It is recommended that **temporary permission** for retention of the steel mesh fence and associated structural posts erected along the western edge of Berth 1 be granted subject to conditions for the reasons and considerations set out below.

12.0 Reasons and Considerations

- 12.1. Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and the established character and pattern of development in the harbour area and the nature, scale and design of the steel mesh fence and associated structural posts erected along the western edge of Berth 1 to be retained it is considered that, subject to compliance with the conditions set out below that the development would not materially or adversely affect East Pier, a Protected Structure (RPS Ref No 307) or the wider Harbour Candidate Architectural Conservation Area and would not seriously injure the amenities of the area or of

property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

13.0 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. This permission shall be for a period of 18 months from the date of this order. The steel mesh fence and associated structural posts erected along the western edge of Berth 1 shall then be removed unless, prior to the end of the period, permission for its retention shall have been obtained.

Reason: To allow for a review of the development having regard to the circumstances then pertaining and in the interest of architectural heritage and visual amenity.

3. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the

matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Mary Crowley

Senior Planning Inspector

31st July 2018