



An
Bord
Pleanála

Inspector's Report ABP-301882-18

Development	PROTECTED STRUCTURE: Planning permission is sought for the erection of a single storey garage to rear of 20 Dartry Road, with existing vehicular access from lane retained.
Location	Rear 20, Dartry Road, Dublin 6
Planning Authority	Dublin City Council South
Planning Authority Reg. Ref.	4030/17
Applicant(s)	Gary Traynor & Rose Anne Kenny.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Callie & Aidan Gleeson & others.
Observer(s)	None.
Date of Site Inspection	29 th of August 2018.
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The subject site includes a two storey over basement, semi-detached dwelling which fronts onto Dartry Road, Dublin 6. The dwelling is a protected structure. On-site parking is available from Dartry Road, to the front of the dwelling and this entrance is also associated with the adjoining dwelling, No 19. Access to the rear is via a shared laneway located three dwellings north along the side of No 17.
- 1.2. Access at the rear of No.17- No. 20, the subject site, is through a locked gate and there is currently artificial grass and goal posts between the gate and the rear of the subject site. There is an existing garage fronting onto the existing play area.
- 1.3. There is an existing outhouse at the back of the rear garden of No 20 with additional hard surfaced area adjoining the rear accessed by iron gates.

2.0 Proposed Development

- 2.1. The proposed development would comprise of:
 - The erection of a single storey garage,
 - Removal of the existing iron gates and replacement with roller shutter door,
 - All other associated works.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission subject to 7 no conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information as summarised below:

- A letter was submitted from the applicant's solicitor's outlining the vehicular movement along the lane for the applicants and the previous owners of 20 Dartry Road, including established access and use of the laneway for their boat.
- Submission of a copy of the statutory declaration of the previous owner of the subject site in relation to the right of way over the rear access.
- Confirmation that the vehicular access is established and therefore a sweep path analysis is not required for the proposal.

3.2.2. Other Technical Reports

Conservation Officer- No submission.

Roads & Traffic Division- No objection subject to conditions.

Drainage Division- No objection to proposal.

3.3. Prescribed Bodies

None submitted.

3.4. Third Party Observations

An observation was submitted from the grounds of appeal and the issues raised have been summarised by the grounds of appeal.

4.0 Planning History

Reg Ref 2402/17

Permission refused for a two storey mews dwelling (81m²) to the rear of the site for reason of the scale of the proposal and the impact on the adjoining residential amenities.

Reg Ref 5169/08

Permission granted for internal and external alterations.

Reg Ref 2024/88

Permission granted to retain the alterations to the recreational building at the rear subject to a condition that it shall only be ancillary to the dwelling and not used as a single dwelling or for any industrial or commercial use.

Reg Ref 4107/82

Permission granted for the erection of a recreational building subject to condition that it may only be used as ancillary to the main dwelling.

Reg Ref 2168/82

Permission refused for a 2 storey recreational building to the rear of the dwelling.

5.0 Policy Context

No 20 Dartry Road, is a protected structure and therefore the following policy and guidance are relevant.

5.1. **Architectural Heritage Guidelines for Planning Authorities**, 2004. Development guidelines for Protected Structures and Areas of Architectural Conservation.

5.2. **Dublin City Development Plan 2016-2022**

The site is zoned in Z2 *"To protect and/or improve the amenities of residential conservation areas"*.

Section 16.10.12 Extensions and alterations to dwellings.

Protected structure and Conservation Areas.

Policy CHC2: To ensure that the special interest of protected structures is protected.

Policy CHC4: To ensure the protection of Dublin's Conservation Areas.

Section 16.10.18: Parking in the curtilage of Protected Structure and in Conservation Areas.

Appendix 24: Protected Structures and Buildings in Conservation Areas.

5.3. **Natural Heritage Designations**

None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from the residents of No 17, No 18 & No 19 Dartry Road and the issues raised are summarised below:

Current use, width of laneway and safety issues on the Stable lane.

- With the agreement of all four properties (No 17-20) artificial grass was laid on the road to the rear and along Stable Lane. Prior to the artificial grass being laid there was a natural lawn, when the applicants moved in.
- Between 2006 and 2010 the applicants used the rear access for a boat no more than twice a year.
- If Stable Lane was open to traffic it could no longer be used for amenity use.
- Stable lane has an unsuitable surface for vehicular traffic.
- DCC guidelines state that laneways must have a minimum carriage way of 5.5m where no verges or footpaths are provided. The plans submitted indicate the width is 5.7m although it is only 5.2m. The gate at Stable Lane is only 2.96m.
- There was no submission of a sweep path analysis.
- The narrow width is extremely dangerous for cars to access and regress.

Accessibility and safety on the laneway leading from the Stable Lane to Dartry Road.

- The laneway which leads from Stable Lane is also very narrow and at its widest point is only 2.48m wide.
- There is not sufficient space for a car to pass a pedestrian or bicycle along the path.

Legal Entitlement to use the lane.

- The documents submitted to the further information do not establish a right of way and whilst the applicants have used the lane for moving a boat and trailer, they do not have any right or entitlement to do so.

- A Northern Ireland car has been infrequently parked to the rear of the since the further information request.
- The applicant's motorbike was never parked to the rear of the site.

The proposed development is inappropriate in its context

- The dwelling is a protected structure and therefore Section 15.10.2 of the development plan is applicable which requires development to respect the character of the building.
- The residential conservation status on the site does not permit unsuitable new development.

Zoning

- The site is located on Z2 lands and the proposal does not comply with the objective to protect residential amenities

Purpose and Use of the new structure

- The applicant has a long front garden at No 20 which has ample parking space.
- The applicants state that the erection of a garage will have no impact on the traffic although this is incorrect as it is not used currently.

Inaccuracies in the documentation submitted.

- There was never any vehicular access to the rear of the property.
- The recreational building to the rear of the site was never used by grandparents as the building is ancillary to the main dwelling as per the application.
- The garage to the rear of No 18 is not used to store cars but only for bikes outdoor toys etc. and No 17 access is onto the side lane and not Stable Lane.

Lack of consultation

- Consultation with No 17-19 for access to the site would have been expected and none of the concerns relating to a previous refusal (2402/17) for a two storey mews dwelling where addressed.

6.2. Applicant Response

A submission has been made from the applicant's legal representation in response to the grounds of appeal which is summarised below:

- There was never a natural lawn to the rear of No 17-20 Dartry Road and was gravel until the artificial grass was laid in 2010.
- The fact that the applicant agreed to the laying of the artificial grass does in no way remove their right to access the rear of their property and cross over Stable Lane.
- The owners of No 17- 18 have obtained permission to construct garages and access through Stable Lane.
- The applicants site ownership map has been submitted in additional land searches on adjoining sites and Stable Lane where undertaken. Stable Lane or the lane leading to Stable Lane is not registered with the Property Registration Authority.
- The documents submitted do not discount the applicant's vehicular right of way.
- The right to access the rear of the property has been established through the submission of further information to the local authority which includes statements from the previous owners.
- An email from the previous owner of the site states that the rear laneway was used to access the site for the construction of the recreational building on the site.

6.3. Planning Authority Response

No response.

7.0 Assessment

7.1. The issues of the appeal can be dealt with under the following headings:

- Principle of development
- Access
- Built Heritage
- Appropriate Assessment
- Environmental Impact Assessment

Principle of development

7.2. The proposed development includes the construction of new single storey garage to the rear of an existing dwelling, a protected structure. The site is zoned for Z2, residential development in the current Development Plan and therefore subject to complying with other planning requirements as addressed in the following sections, the principle of the proposal is acceptable.

Access

7.3. The rear of No 20 Dartry Road is currently accessed from a laneway which runs along the side of No 17 Dartry Road to the north and Stable Lane which runs along the rear of No 17- No 20 Dartry Road. The grounds of appeal are submitted from the residents of No 17- No 20 Dartry Road who do not consider the applicant have a right for vehicular access through Stable Lane into the rear of No 20 Dartry Road. The area to the rear of the row of dwellings, No 17-20, is currently surfaced with artificial grass and used as a recreational area.

7.4. The width of the access laneway varies between 2.3m and 3m, whilst Stable Lane widens to 5.7m. The grounds of appeal draw attention to the width requirements of the development plan, 2.6m, and consider the proposed access is insufficient. As stated above, Section 16.10.18 of the development plan includes guidance for parking in the curtilage of Protected Structures and in Conservation Areas. Following further information on a request for a frequency of movement across the yard, submission of sufficient legal interest of the right of way and a swept path analysis to demonstrate safe access and regress it was confirmed that the applicant had sufficient legal entitlement for access to the rear of the site and considering the

existing use and additional analysis was not required. The report of the Road Department refer to the current use of the rear access and had no objection to the overall proposal.

- 7.5. I consider the main issue raised in the grounds of appeal relates to the applicants right to use Stable Lane to access the rear of the site. Upon site inspection, I noted the applicant could provide access to the rear, through a locked gate, and there was vehicular gates at the rear of the property which appear to be in existence for a considerable period of time. Whilst this area is currently covered with artificial grass, I note the response of the applicant to the grounds of appeal states that they had agreed in 2010 that the other residents could use this area as a recreational space. The applicant has submitted legal representation and confirmation from a previous owner that there has always been vehicular access to the rear. This aside, I note that the Development Management Guidelines for Planning Authorities advise that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land and these are ultimately matters for resolution in the Courts. As section 34(13) of the Planning and Development Act 2000, as amended, states, a person is not entitled solely by reason of a permission to carry out any development.
- 7.6. Therefore, having regard to the current use of the rear access and the nature and scale of the garage I do not consider the proposed development would have a significant negative impact on the traffic to the rear of the site.

Built Heritage

- 7.7. No 20 Dartry Lane is a protected structure. The garage is located to the rear, south west, of an existing single storey recreational building ancillary to the main dwelling. The proposed development includes minor alterations to the recreational building, blocking up a rear window and inclusion of a roof light, to accommodate the single storey garage. A roller shutter door at the entrance to the rear of the site will replace the existing iron gates.
- 7.8. The grounds of appeal consider the proposed development will have a negative impact on the character and setting of the protected structure. Policy CHC2 of the development plan requires that new developments are of a high standard which respect those features of special interest of the protected structure. In addition,

Section 16.10.18 provides guidance for parking in the curtilage of protected structures and in conservation areas where the integrity of the protected structure and/ or conservation area is protected. The proposed garage is a single storey structure c. 30m² extending to the rear of the recreational building. The garage will not be visible from the main dwelling and the design of the garage, including the roller shutter door are similar to an existing garage along Stable Lane, which I do not consider has a negative impact on the character of the area.

- 7.9. Having regard to the size of the garage, location to the rear of an existing single storey outbuilding and overall design I do not consider the proposed development would have a negative impact on the character or setting of the protected structure or the conservation area.

Appropriate Assessment

- 7.10. Having regard to the nature and scale of the proposed development within a serviced area and separation 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 the conservation objectives of any European site.

Environmental Impact Assessment

- 7.11. Having regard to the nature and scale of the garage there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

9.0 Reasons and Considerations

Having regard to the location and existing rear access to the site, the scale and nature of the proposed works, the Z2 zoning and the policies and objectives of the Dublin City Development Plan 2016-2022, in particular Section 16.10.12 residential

extensions and CHC2 protected structures, it is considered the proposed development would not seriously injure the residential or visual amenity of the area, would not cause a traffic hazard and would not detract from the character or setting of the Protected Structure or Conservation 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 out in accordance with the agreed particulars.

Reason: In the interest of clarity

2. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

3. Water supply and drainage arrangements, including the 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.

4. The external finishes of the proposed garage, including roof tiles/slates, shall be the same as those of the existing dwelling in respect of colour and texture.

Reason: In the interest of visual amenity

Karen Hamilton
Planning Inspector

17th of October 2018