



An
Bord
Pleanála

Inspector's Report ABP 302286-18

Development	The removal of existing gate (2.75m wide) and installation of new replacement electrically operated sliding gate (3.5m wide) at western entrance accessed off Victoria Terrace.
Location	Belgravia, 9A Victoria Terrace, Dundrum, Dublin 14.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D18A/0488.
Applicants	Raja Mukherji.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party V. decision.
Appellants	Raja Mukherji.
Observers	<ol style="list-style-type: none">1. Phyllis Mc Carthy.2. John Mc Carthy & Vanya Dimitrova.

Date of Site Inspection

17th October 2018

Inspector

Dáire McDevitt

1.0

Site Location and Description

- 1.1. The appeal site, Belgravia (No. 9A Victoria Terrace), is located at the end of Victoria Terrace, c. 280m north of Dun Laoghaire town centre and c.175m from Dundrum LUAS stop. Victoria Terrace consists of 10 cottages (A terrace of 9 and a single detached cottage) dating from the mid1800s off the eastern side of the Dundrum Road
- 1.2. No. 9A is a contemporary style infill development located on a generous site with an existing vehicular entrance and onsite parking. The entrance forms the end of the lane with No. 10 Victoria Terrace a modest two storey detached cottage located to the south of the entrance and No. 9, end of terrace, to the west.
- 1.3. The existing vehicular entrance has a gate with bamboo screening, accessed via a single carriage lane. Adjoining No. 10 is a gated area which is used for parking and storage of bins by No. 9 & 10. An area adjoining No. 9 and the entrance to No. 9A is used by the resident of No. 9 for parking. There are no designated parking spaces along the lane with the hall doors of the cottages opening directly onto it.

2.0 Proposed Development

- 2.1. The proposed development consists of the removal of existing gate (2.75m wide) and installation of new replacement electrically operated sliding gate (3.5m wide) at western entrance accessed off Victoria Terrace.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reason:

To permit the widening of the existing vehicular access point would contravene the provisions of Section 8.2.4.9 (vehicular entrances and Hardstanding Areas)(i)(General Specifications) of the County Development Plan 2016-2022

which states that “Vehicle entrances and exits shall be designed to avoid traffic hazard for pedestrians...”, would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports (10th July 2018)

The main concerns related to the impact on the widening of the entrance and the provision of electronic gates on traffic management and impact on users of Victoria Terrace, in particular pedestrians. It was noted that there were no material changes to the entrance from that omitted by condition under PA Ref. No. D17A/0894.

Concerns relating to pedestrian safety and residential amenity were noted as the reason for omission of the works to the entrance in 2017. The current reason for refusal refers to endangerment to public safety by reason of a traffic hazard or obstruction of road users or otherwise.

Reference to the Transportation Planning Division report and its recommendations.

3.2.2. Other Technical Reports

Drainage Division (20th June 2018). No objection.

Transportation Planning Division (27th June 2018) recommended refusal due to endangerment of public safety as a result of the substandard nature of the existing laneway – i.e the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise, as per Clause 4 of the Fourth Schedule (Reasons for Refusal of Permission which exclude compensation) of the Planning and Development Act, 2000).

3.3 Prescribed Bodies

None.

3.4 Third Party Observations

Two submissions were received by the Planning Authority. The submissions generally reflect the issues raised in the Observations. These shall be dealt with in more detail in the relevant sections of this report. The main points can be summarised as follows:

- Pedestrian safety along Victoria Terrace.
- Potential damage to property from vehicles using the lane.
- Issues of ownership of the wall.
- Planning Enforcement complaint.
- Cars waiting to enter No. 9A block entrances into the adjoining houses.

4.0 Planning History

There is an extensive Planning history associated with the site:

Planning Authority Reference No. D17A/0894 refers to a 2017 grant of permission and permission for retention of a residential extension, the widening of the existing entrance and the retention of a stone arch to the western end of the house.

Condition No. 2

This grant of permission refers solely to the provision of a residential extension abutting the existing house and the retention of a stone arch. Permission for the widening of the existing vehicular access to 3.5metres is not granted as part of this planning application.

Reason: In the interest of pedestrian safety, the residential amenity of the area and the proper planning and sustainable development of the area.

Planning Authority Reference No. D16B/0062 refers to a 2016 decision to refuse permission for a c.70.5sq.m workshop/garage abutting the existing house for reasons relating to the scale and location of the structure in proximity

to adjoining dwellings would be contrary to the zoning objective of the area which is to protect/improve the residential amenity of the area.

Planning Authority Reference No. D15A/0050 refers to a 2015 decision to refuse permission for a single storey/two storey granny flat, a c.70sq.m workshop and a c.125.6sq.m store/garage. The reasons for refusal related to 1) no justification for a detached granny flat, 2) it was not demonstrated that the 2 garages/workshop would be ancillary to the residential use on site. And 3) the description 'granny flat' does not accurately describe the nature and extent of the development.

Re: Mixed Use Nursing Home/Sheltered Accommodation:

Planning Authority Reference No. D06A/0627 (An Bord Pleanála Reference No. PL.06D.221543) refers to a 2007 grant of permission to Rector and Select Vestry of Taney Parish for the demolition of 2 houses and construction of a mixed nursing home/sheltered accommodation facilitating 3 no. 2/3 storey buildings providing 21 no. sheltered accommodation units and a 3/5 storey block comprising 64 no. nursing home bedrooms, 12 assisted care units and 51 no. sheltered accommodation units, basement car park, etc. The site included Taney Lawn Tennis Club, 9A Victoria Terrace 'Belgravia' and 'Cranford' & 'Lisheen' at Taney Park.

Planning Authority Reference No. D06A/0627/E refers to an Extension of Duration granted to 20th September 2017. This was not constructed.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022

- The site is located within an area zoned under Land Use Objective 'A'
To protect or improve residential amenity.

General Development Management Standards

Section 8.2.4.9 refers to the criteria for vehicular entrances and hardstanding areas.

Section 8.2.4.9 (i) refers to the minimum width of 3m and maximum of 3.5m required for vehicular entrances.

Automatic electronic gates into residential developments are not favoured and should be omitted. Electronic or automatic gates are not acceptable in terms of road safety unless the entrance is set back 6.0m from the back of the footway to avoid a roadway or footpath being obstructed by a vehicle while the gate is opening. In general, outward opening gates will not be considered acceptable.

Section 8.2.4.9 (ii) relates to the visual and physical impacts of vehicular entrances. In areas characterised predominately by pedestrian entrances and few, if any, vehicular entrances, proposals for driveways and on-curtilage parking will be assessed on their own merits but should be generally resisted.

5.2 Natural Heritage Designations

None of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal seeks to address the Planning Authority's reasons for refusal and is summarised as follows:

- The justification for widening the entrance is to facilitate easier access for larger vehicles, for example oil trucks (delivery), fire brigade and other emergency vehicles, if required.
- Cars parked along Victoria Terrace, day and night, cause the obstructions along the lane. Not the widening of an existing vehicular entrance.
- Diagrams submitted showing the existing and proposed scenarios.

- The use of electronic sliding gates reduces the impact on adjoining residences, as it removes the need to stop and get out of the car to open the gates.
- Reference to technical reports attached to the 2017 application.
- The decision of the Planning Authority is based on a previous decision (PA Ref. No. D17A/0894) whereby the Case Officer rejected the determination of the Transportation Section which had 'no objection' to the widening of the vehicular entrance.
- The proposed works relate to the entrance to a site in the control and ownership of the applicant.
- The proposal is in accordance with the standards and principles for residential extensions set out in the Dun Laoghaire Rathdown County Development Plan 2016-2022.
- The provision of a contemporary style gate would not detract from the amenities of Victoria Terrace nor would it detract from the residential amenities of adjoining properties.

6.2. Planning Authority Response

The Board is referred to the previous Planner's Report as it is considered that the grounds of appeal do not raise any new matters which would justify a change of attitude towards the proposed development.

6.3. Observations

Two submissions were received by the Planning Authority:

- 1) Phylis McCarty, No. 9 Victoria Terrace.
- 2) John Mc Carthy & Vanya Dimitrova, No. 10 Victoria Terrace.

There is a degree of overlap in the issues raised by all parties, the main points can be summarised as follows:

- Permission has been refused twice for the widening of the entrance, there is no change in circumstances to warrant a reversal of this decision.
- Reference to the previous application is irrelevant, no appeal was lodged at the time.

- No. 7, 8 & 9 now comprise one home (No. 9 Victoria Terrace), this adjoins the entrance in question and serious concerns relating to pedestrian safety arise as the halldoors into the houses along the Terrace open directly onto the lane. Cars waiting to enter No. 9A block the doors into the adjoining houses (No. 9 and No. 10).
- The use of the lane by vehicles raises significant traffic concerns given that the halldoors to the houses open directly onto the lane. Any traffic on this lane poses a risk. Any development which serves to increase or facilitate access by larger vehicles undoubtedly increases the safety concerns and poses greater risk to the terrace road surface and the houses located on the terrace.
- The proximity and angle of No. 9 and No. 10 makes manoeuvring of vehicles difficult, resulting in damage to property from trucks. The widening of the access into No. 9A will not address this.
- Issues of ownership of the wall and encroachment on a ramp in third party ownership.
- Planning Enforcement complaint regarding the demolition of the wall.
- Victoria Terrace is a residential area, therefore there is no need for the gate to accommodate larger vehicles.
- No details have been provided regarding the electronic gate and its mechanisms or aesthetics. An ESB pole is located within the site which would obstruct any gate sliding in that direction.
- The use of bamboo sheets and plastic attached to the existing gate makes the area unsightly and detracts from the character and setting of Victoria Terrace.
- Automated gates could be dangerous, leading to potential accidents with young children in the area.
- Reference to approval for similar gates in the area does not apply as the circumstances and scenarios are different.

The observations include copies of submissions to the Planning Authority relating to the current and previous planning applications.

6.4 Prescribed Bodies

None.

7.0 Assessment

7.0.1 Permission was granted in 2017 under Planning Authority Reference D17A/0894 for extensions and alterations to the existing house. Condition No. 2 omitted the widening of the existing vehicular access gates to 3.5metres from the development granted permission in the interest of pedestrian and residential amenity. No appeal was lodged in relation to condition No. 2 at the time. The current application relates to the widening of an existing 2.75m vehicular access and gate to c.3.5m in width.

7.0.2 The grounds of appeal seek to address the Planning Authority's reasons for refusal. The issue of appropriate assessment and environmental impact assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Traffic.
- Appropriate Assessment.
- Environmental Impact Assessment.

7.1 Traffic

7.1.1 The Planning Authority's reasons for refusal reflects the recommendation by the Transportation Planning Division. Permission was refused on the grounds that the proposal would endanger public safety as a result of the substandard nature of the existing laneway and result in a traffic hazard or an obstruction to existing users.

7.1.2 Section 8.2.4.9 sets out the Councils policy for vehicular entrances and hardstanding areas and seeks to control the use of automatic/electronic gates into residential developments where there is a setback of less than 6 metres from the back of the footway to avoid a roadway or footpath being obstructed

by a vehicle while the gate is opening. In my view, this setback is overly restrictive in this instance. The current proposal relates to an entrance at the end of a lane, the gates would not open outwards, therefore there would be no impact on the use of Victoria Terrace by vehicles or pedestrians. The principle of a vehicular entrance at this location is established. The current proposal would increase the width of the entrance to c. 3.5m in accordance with section 8.2.4.9 (i) of the Development Plan. I consider the use of electronic gates acceptable having regard to the speed of the vehicles travelling along this lane. The use of a manual gate at this location would require a driver to get out of their car and manually open the gate which could cause a further obstruction.

- 7.1.3 I note the observers have raised concerns regarding the use of the entrance and the hazards arising from vehicular traffic along this narrow lane, the area adjoining No. 9 is used for parking, this is not a designated parking space and, on the southern side of the lane, is a gated area also used for parking by the observers. The entrance which is the subject of this application relates to an established, permitted vehicular access to a property where there is onsite parking.
- 7.1.4 In my view the proposal to widen the entrance from 2.75m to 3.5m is acceptable. I consider, having regard to the levels of traffic associated with a single residential unit and the location of the existing entrance, the widening of the entrance and the use of an electronic sliding gate would not create a traffic hazard at this location, would not set an undesirable precedent and would be in accordance with the proper planning and sustainable development of the area.
- 7.1.5 The question of ownership is a legal matter and outside the scope of a planning permission. In this context, I would draw attention to Section 34 (13) of the Planning and Development Act 2000 (as amended) which reads '*A person shall not be entitled solely by reason of a permission under this section to carry out development*'.

7.1.6 Victoria Terrace is not a designated ACA, the cottages are not protected structures nor is the rubble wall. I consider the use of contemporary style gates acceptable. Specifics relating to design can be dealt with by condition if the Board consider granting permission.

7.1.7 I, therefore, consider that the grounds of appeal in relation to this matter should be upheld.

7.3 Appropriate Assessment

7.3.1 Having regard to the nature and scale of the development and proximity to the nearest Natura 2000 site, I am satisfied that the proposed development either individually or in combination with other plans and projects would not be likely to have a significant effect on any designated Natura 2000 site and should not be subject to appropriate assessment.

7.4 Environmental Impact Assessment

Having regard to the nature and scale of the development, which consists of modifications to an existing vehicular entrance in a built up urban location, there is no reason 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

I recommend that planning permission for the proposed development be granted for the following reasons and considerations and subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the nature of the proposed development and the provision of the Dun Laoghaire Rathdown County Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would integrate in a satisfactory manner with the existing built development in the area, would not detract from the character or setting of Victoria Terrace and would not result in a traffic hazard. 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. Prior to the commencement of development specific design and specifications for the proposed gates shall be submitted for the written agreement of the Planning Authority.

Reason: in the interest of clarity.

Dáire McDevitt
Planning Inspector

30th October 2018