



An
Bord
Pleanála

Inspector's Report ABP-302462-18

Development	Permission for retention for a previously approved (D08A/1032) vehicular entrance and associated site works
Location	Miltown Lodge, 26c Churchtown Road Lower, Dublin 14
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D18A/0456
Applicant(s)	Kevin O'Hara
Type of Application	Permission
Planning Authority Decision	Grant subject to Conditions
Type of Appeal	Third Party
Appellant(s)	Ronald McCourt & Others
Observer(s)	None
Date of Site Inspection	8 th November 2018
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.025ha is located on Churchtown Road Lower and is occupied by a two storey end f terrace dwelling. The site is bounded by a wall with vehicular entrance to the front, and a wall and planting to the northern side boundary and a recently constructed fence along the western common boundary. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file.

2.0 Proposed Development

2.1.1. The application submitted to DLRCC on 16th May 2018 sought permission for the retention of a previously approved (D08A/1032) vehicular entrance and associated site works.

2.1.2. In response to a request for further information the applicant submitted the following as summarised on the 17th July 2018:

- Details relating to the ownership of the site indicating the date of purchase and a copy of the Property Registration Authority showing a transfer of 26c to the applicant. Registration Authority of Ireland and details of the dealing number have also been submitted.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. DLRCC issued a notification of decision to grant permission subject to 4 generally standard conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The **Case Planner** in their first report requested the following further information as summarised. Further information was requested on the 16th July 2018.

1) Site ownership indicated in drawings may not accurately show the applicant's ownership. Applicant requested to address this issue.

3.2.3. The Case Planner in their second report and having considered the further information submitted recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by DLRCC reflects this recommendation

3.2.4. Other Technical Reports

3.2.5. **Drainage Planning** – No objection

3.2.6. **Transportation Planning** – No objection subject to conditions relating to the proposed access, SUDs and construction works / activities

3.3. **Prescribed Bodies**

3.3.1. No reports recorded on file.

3.4. **Third Party Observations**

3.4.1. There are several observations recorded on the planning file from Ronald McCourt, The Captains Lodge, 26a Churchtown Road Lower and Margaret Griffin, 27 Lower Churchtown Road and Patrick Cohen, 23 Lower Churchtown Road.

3.4.2. The issues raised relate to the proper planning and sustainable development of the area, traffic safety and legal interest in particular ownership of boundary walls that were *unlawfully demolished* and that form part of the land folio of 26a Lower Churchtown Road and not 26c Lower Churchtown Road.

4.0 **Planning History**

4.1. The following previous planning application is referred to in the planning application:

D08A/1032 – DLRCC granted permission for inter alia a new vehicular entrance subject to 5 generally standard conditions.

5.0 Policy Context

5.1. Development Plan

5.2. The operative Development Plan is the Dun Laoghaire Rathdown County Development Plan 2016-2022. The site is zoned Objective A where the objective is *to protect and/or improve residential amenity*. Chapter 8 deal with the Principles of Development including vehicular entrances and hardstanding areas.

5.3. Natural Heritage Designations

5.3.1. The site is not located within a designated Natura 2000 site.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The detailed third party appeal has been prepared and submitted by Ronald McCourt, The Captains Lodge, 26a Churchtown Road Lower and may be summarised as follows:

- The appeal is challenging the title acquired by the applicant in this case i.e. the full ownership of the property is in dispute and is currently before the courts.
- There is a legal challenge to beneficial title in the High Court. Copy of proceedings attached. The decision of DLRCC that the further information was adequate is ultra vires and outside their remit as this is a civil matter.
- The map submitted by way of further information and relied upon by DLRCC is not as it is purported to be. The original map supplied directly contradicts this map. DLRCC have been misled.
- The Board is asked to rectify matters and overturn the planning granted until the Courts rule in these matters.
- There are further matters not considered by DLRCC in their decision such as a protected structure, traffic (pedestrian and motorists) etc, but they are

secondary to the legal process which must take place before any planning decision can be considered.

- The appeal was accompanied by a detailed report prepared by Black & Company Solicitors.

6.2. Applicants Responses to the Appeal

6.2.1. The first party response to the appeal has been prepared and submitted by William Doran, Architect and Planning & Project Management Consultant and may be summarised as follows:

- Detailed planning history pertaining to appeal site provided
- Detailed history of receivership and sale of the appeal site to the applicant.
- Submitted that while there may be litigation ongoing in the Courts challenging issues of title, it does not involve the applicant who has paid for the subject property and is the current beneficial owner.
- The litigation is a matter for the Courts to decide, it is not a function of An Bord Pleanála to deal with in the present appeal.
- DLRCC Transportation Planning have no objection to the scheme. This is reflected in the previous permissions (D08A/1032 and D08A/1033) where DLRCC were satisfied the proposed development did not constitute a traffic or pedestrian hazard.

6.3. Planning Authority Response

6.3.1. 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.

6.4. Observations

6.4.1. There are no observations recorded on the appeal file.

6.5. Further Responses

6.5.1. 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 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
- Legal Interest
- Traffic Impact
- Protected Structure
- Other Issues

8.0 **Principle**

8.1. Under the provision of the Dun Laoghaire Rathdown County Council 2016 – 2022 the site is zoned Objective A which seeks to protect and / or improve residential amenity. Having regard to the zoning objective for the site together with permissible uses I am satisfied that the principle of the proposed development comprising the retention of a vehicular opening serving an existing residential dwelling is acceptable at this location subject to compliance, with the relevant policies, standards and requirements set out in plan.

9.0 **Legal Interest**

9.1. I note the detailed concerns raised by the appellant with regard to title and the response of the applicant to same. The Board is asked to rectify matters and overturn the planning decision to grant permission until the Courts rule in these matters.

9.2. As pointed out by the applicant litigation is a matter for the Courts to decide and is not a function of An Bord Pleanála. In this regard I would draw attention to Section 34(13) of the Planning Act that states, that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted for the retention of the entrance as constructed and should the appellant or any other party consider that the planning permission granted by the

Board cannot be implemented because of landownership or title issue, then Section 34 (13) of the Planning and Development Act 2000 is relevant. However, notwithstanding the foregoing, given the fact that the matter is currently before the courts the Board may wish to defer making a decision on this case until the matter has been concluded.

10.0 Traffic Impact

10.1. With regard to traffic impact I am satisfied given the location of the appeal site serving an existing dwelling that the retention of this vehicular entrance would not conflict with traffic or pedestrian movements in the immediate area or have a significant material impact on the current capacity of the road network in the vicinity of the site. I consider the proposal to be acceptable and I am satisfied that the entrance would not endanger public safety by reason of traffic hazard or obstruction of road users.

11.0 Protected Structure

11.1. The appellant make reference to the impact of the scheme on a protected structure. There is no evidence of any protected structures(s) proximate to the appeal site. The proposal is not incongruous and could not reasonably be construed as being visually intrusive. The entrance is not out of character with the area, does not dominate the frontage of the dwelling or set a poor precedent for similar type development in the area.

12.0 Other Issues

12.1. **Appropriate Assessment** - Having regard to the nature and scale of the proposed development comprising the retention vehicular entrance and associated site works, within an established urban area, 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.

- 12.2. **EIA Screening** – Having regard to the nature and scale of the proposed development comprising the retention vehicular entrance and associated site works in a serviced urban area there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 12.3. **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 proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

13.0 Recommendation

- 13.1. It is recommended that permission be **GRANTED** for the reasons and considerations set out below.

14.0 Reasons and Considerations

- 14.1. Having regard to the zoning objective for the area as set out in the Dun Laoghaire Rathdown County Development Plan 2016-2022, the established pattern of development in the area and the nature, scale and design of the proposed vehicular entrance to be retained it is considered that, the proposed development would not seriously injure public safety or the visual the amenities of the area and would therefore be generally 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 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. The footpath in front of the proposed vehicular entrance shall be ditched and strengthened at the Developers own expense including any moving / adjustment of any water cocks / chamber covers and all to the satisfaction of the appropriate utility company and Planning Authority. With regards to the ditching and strengthening of the footpath the Developer shall contact the Road Maintenance & Control Section of Dun Laoghaire Rathdown County Council to ascertain the required specifications for such works and any required permits.

Reason: In the interest of public safety.

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, 13th November 2018