



An
Bord
Pleanála

Inspector's Report ABP 303136-18

Development	Alterations to widen pedestrian gate, walls and piers at the front to provide for vehicular access and off-street parking in front garden and associated landscaping and conservation works.
Location	36 Kenilworth Square, Dublin 6. (Protected Structure)
Planning Authority	Dublin City Council
P. A. Reg. Ref.	3929/18
Applicant	Gleaston Ltd.,
Type of Application	Permission
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Date of Site Inspection	7 th February, 2019.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. No 32 Kenilworth Square is a mid-nineteenth century, detached, three bay, two storey over garden level house located on Kenilworth Square West and it has a total stated floor area of four hundred square metres. It and an adjoining similar property (No 31) to the north side are the set piece houses at the centre along the west side of the square. Granite capped, brick faced front boundary walls and piers on granite plinths are located along the front boundaries. Cast iron pedestrian entrance gates are located at the centre of the frontage of both houses. In front of the entrance in the central bay there are granite staircase with side flights to each side and cast-iron railings. The front garden area at No 32 has a gravel surface and slabs leading from the pedestrian entrance gate to the granite staircase.
- 1.2. Rathgar Avenue is to the rear of the original plot which has been subdivided by a block stone wall. At the time of inspection, construction works were being carried on the section which has frontage onto and off which there is a vehicular access gate.
- 1.3. Paid and residents' permit parallel parking is available on both sides of Kenilworth Square West.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for

3.0 Decision

3.1. Decision

By order dated, 6th November, 2018, the planning authority decided to refuse permission based on the following reasons:

1. *“The proposed works would seriously injure the architectural character of both the streetscape and the setting of a pair of Protected Structures (Nos 31 and 32 Kenilworth Square West) and would give rise to the loss of original historic fabric and character. The proposed works would contravene Dublin City Development Plan 2016-2022 Policy CHC2 ad Section 16.10.18 and, 13.4.3 of the Architectural Heritage Protection*

Guidelines 2011 (sic) and would therefore be contrary to the proper planning and sustainable development of the area.”

2. *“The removal of on street car parking space to accommodate a private vehicular access is contrary to the Dublin City Council policy and would reduce the supply of on street carparking available to residents on the street. The proposed development would directly contravene Policy MT 14 of the Dublin City Development Plan 2016-2022 which seeks to retain on street parking as a resource for the city as far as is practicable. The proposal is therefore contrary to the proper planning and sustainable development of the area and in addition, would set an undesirable precedent for similar sites throughout the city.”*

3.2. Planning Authority Reports

- 3.2.1. **The Planning Officer** indicates a recommendation for refusal of permission based on the application of the relevant policies and objectives of the CDP the reasoning within the comments and recommendations within the reports of the Conservation Officer and the Transportation Planning Division. (See 3.2.2 – 3.2.4 below)
- 3.2.2. **The Conservation Officer** The report of the conservation officer indicates that the proposed development would cause wholesale loss of historic fabric and, would cause adverse effect on the character and setting of No 32. It is noted that the house is paired with No 31 where the original pedestrian gate is *in situ*, that owing to the subdivision of the plot to facilitate development of two house at the rear, from the perspective of conservation, the removal of the rear vehicular access for the original dwelling is regrettable. The conservation officer also notes incremental loss of fabric and character by removal and/or widening of entrances on Kenilworth Square to the detriment of the character and setting of the structures and the streetscape.
- 3.2.3. Observations on the proportion and detail of existing decorative and unusual wrought iron pedestrian gate enhancing the streetscape are included and it is stated that any enlargement would alter the appearance and the proportions of the gate resulting in a loss of character.

- 3.2.4. **Transportation Planning Division.** The report of the division indicates a recommendation for refusal of permission on grounds that the private vehicular entrance would reduce the supply of on street parking available which would be in direct contravention of Policy MT14 of the CDP which seeks to retain on street parking as a resource for the city and because the proposed development would set undesirable precedent for similar development.

4.0 **Planning History**

- 4.1.1. There is no record of any planning history relating to the entrance arrangements and front boundary for the subject site. However, there is a prior grant of permission, under P. A. Reg. Ref. 4782/04 for demolition and reconstruction of extension to each side and an overhanging extension at the landing level to the rear and for construction of a new single storey extension at the rear. Subsequently permission for retention of additional floor area to the extension permitted under P. A. Reg. Ref. 4782/04 was granted under P. A. Reg. Ref. 2446/17.
- 4.1.2. The site's subdivision so that it is divided in to two planning units with, at the rear, a wall facilitating development of two mews dwellings with access onto Rathgar Avenue with partial demolition of the front boundary wall and three off street car spaces was permitted under P. A. Reg. Ref. 2506/16 along with a single storey shed at the rear of the original dwelling. Under 4600/17 permission was granted for reduction and reconfiguration at the rear of the dwellings and in the rear gardens allowing for provision of external stairs and an increase in the rear garden area of the original house.

5.0 **Policy Context**

5.1. **Development Plan**

The operative development plan is the Dublin City Development Plan, 2016-2022 (CDP) according to which the site is subject to the zoning objective Z2: *"To protect and/or improve the amenities of residential conservation areas."*

No 32 Kenilworth Square is included on the record of protected structures (Ref 4129)

According to section 16.2.2.4 it is the policy of the planning authority to ensure that front boundary development will not result in loss or insensitive of alteration to boundary walls or railings and that new treatment should replicate an existing or traditional pattern which his characteristic of the immediate locality and that there is use of design and materials appropriate to the existing or proposed building and streetscape.

According to section 16.10.18 provision for parking within the curtilage of protected structures are not acceptable where there are inappropriate site conditions such as small gardens and, where terraces and streets are characterised by railings of unique significance, are of a type not found largely on the city the planning authority may seek their retention.

Policy Objective CHC2 is reproduced below:

“To ensure that the special interest of protected structures is protected. Development will conserve and enhance Protected Structures and their curtilage and will:

- a) Protect or, where appropriate, restore form, features and fabric which contribute to the special interest.*
- b) Incorporate high standards of craftsmanship and relate sensitively to the scale, proportions, design, period and architectural detail of the original building, using traditional materials in most circumstances*
- c) Be highly sensitive to the historic fabric and special interest of the interior, including its plan form, hierarchy of spaces, structure and architectural detail, fixtures and fittings and materials.*
- d) Not cause harm to the curtilage of the structure; therefore, the design, form, scale, height, proportions, siting and materials of new development should relate to and complement the special character of the protected structure.*
- e) Protect architectural items of interest from damage or theft while buildings are empty.*
- f) Have regard to ecological considerations for example, protection of species such as bats.*

Changes of use of protected structures, which will have no detrimental impact on the special interest and are compatible with their future long-term conservation, will be promoted.”

These policies and objectives are elaborated on in detail in section 11.1.5.3 in which the reinstatement or protection of the original planform, retention of historic use where possible, securing long term viable use and avoidance of harmful extensions and modifications is encouraged.

Policy CHC4 provides for the protection of the special interest and character of Dublin’s Conservation Areas. The policies and objectives are elaborated on in detail in section 11.1.5.4

According to Policy CHC8 it is the policy of the planning authority to facilitate off street parking for residential owners/occupiers where appropriate site conditions exist, while protecting the special interest of protected structures and conservation areas.

According to Policy Objective MT14 the planning authority seeks to minimise loss of on street car parking while recognising that some loss of spaces is required for, or, in relation to sustainable transport provision, access to new development or public realm improvements.

According to section 16.38.9 there is a presumption against the removal of on street parking to facilitate vehicular entrances to single dwellings in predominantly residential areas where residents are reliant on parking spaces on the street.

5.2. **Strategic Guidance.**

Architectural Heritage Protection – Guidelines for Planning Authorities, DOEHLG 2005. (The Guidelines)

According to section 13.4.3 and 13.4.4, removal or alteration of boundary features can adversely affect the character of the protected structure and the designed and landscape. Widening or alteration can alter the scale and visual impact of the gate and gate piers. Relocation of a gateway can destroy a carefully designed relationship between the entrance and main building. The cumulative impact of a series of incremental changes may not be acceptable in terms of cumulative effect on the character of a street or area.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was received from Marston Planning on 3rd December, 2018 in which it is requested that the decision to refuse permission be overturned, It is submitted that the planning authority erred in its interpretation of the impact on the architectural character of the streetscape and the individual and the pair of protected structures at Nos 31 and 32 Kenilworth Square and, in its assessment of the impact on the loss of on street carparking. The appeal also includes a detailed description and commentary on the site, the architectural heritage and the planning context and policy, and, the planning authority's assessment of the proposed development.
- 6.1.2. According to the appeal the mere loss of a gate and the widening does not result in loss of character to warrant refusal of permission. Section 13.4.3 of the Guidelines does state that permission can be granted for minor changes to boundaries. The proposal is a minor change to the boundary.
- 6.1.3. The case made in the appeal against Reason No 1 can be outlined as follows:
- Apart from the front boundary, entrance gate and granite staircase and iron railings there are notable differences in the presentation of No 31 and No 32 Kenilworth Square the accesses to the rear of which are severed in that there are mews dwellings at the rear of No 31 and under construction at the rear of No 32, with access off Rathgar Avenue. No 31 is similar in design and form to No 32 and both properties were extended and altered at the rear.
 - Of the seventeen properties, (all protected structures) on the west side of Kenilworth Square, nine have vehicular accesses and there is on street parking on both sides of the public road around the square. 311 spaces are available and there are 128 permit holders and the spaces are underutilised.
 - The pedestrian gate is "oversized". From pillar to pillar it is 2075 mm wide so the proposed widening to 3.32 metres from pillar to pillar is straight forward and materially different from proposals to widen a gate of one metre in width to 3.5 metres in width. The non-use of the decorative side panels means that the gate is widened only by 0.6 metres. The opening remains centrally located

maintaining the visual balance of the property. The entrance is 13 percent of the twenty-metre length of the site frontage.

- There is no significant loss of original historic fabric and that planning authority was incorrect in Reason one for refusal of permission on extent of loss, impact on streetscape and on architectural integrity of the house. While the gate and wall at No 31 and 32 match they are not solely at issue. There is no reference in the assessment to the new Policy CHC 8 of the CDP providing for facilitation of off street parking where appropriate conditions exist while protecting the special interest and character of protected structures and conservation areas and balance in consideration is therefore required.
- Reference by the planning authority to Policy CHC 2 which is a generic policy and section 16.10.18 of the CDP is inappropriate as it is clearly the guidelines against which the proposal within the curtilage of the protected structure should be assessed is not applied as only one of the conditions under which permission should be refused was raised.
- The decorative feature to the gate and side panels do not amount to a feature of unique significance in this regard. It is not one of a small number in that there are several examples around Victorian areas of the city so the sub clause in section 16.10.18 does not apply. The proposal meets the other conditions set out under section 16.0.18 and design criteria in chapter 16 of the CDP. The gates, pillars and cast-iron side panels will be retained and preserved. The appearance will reflect the exiting gateway.
- There is no vehicular access at the rear further to the grant of permission for the mews development.
- There is adequate space for parking in the front curtilage, at a distance that maintains the setting of the house. Further subdivision is not required. Only a section of the front boundary is to be removed (1.2 metres) and the decorative side panel features of the gate will be retained. Subdivision for two driveways is not required.
- Nine of the seventeen houses on Kenilworth Square West are severed by a vehicular entrance instead of a pedestrian opening. The proposal would be the tenth.

- The proposal would accord with the established pattern of development or an additional vehicular entrance as it is a pedestrian opening and it accords with pattern of development. It does not fall into the conditions that would disqualify consideration of the proposal and it is modest in width.
- The long-distance views from opposite corners of the square and relationship with the property is replicated. In closer views the distance (17.3 metres between each gateway, when coupled with street planting results in the symmetry not being visible.

6.1.4. The case made against Reason No 2 can be outlined as follows:

- Policy MT14 of the CDP which is reasonable where demand is high, seeks to minimise loss of on street parking and not to prohibit it. The carparking review shows that in Kenilworth Square there is extensive carparking capacity at all times of the day and there is no likelihood that it will increase as there is a lack of development land in the area. The number of spaces significantly outweighs the demand and the loss of two spaces which would be provided within the site is not a reason for rejection of the proposed development. Most houses have 7.5 to 8.5 metres frontage as opposed to twenty metres. Sightlines will reflect existing sightlines and there is traffic calming in the square and there is no traffic related case for refusal of permission.

6.1.5. As regards the concern about precedent, it is noted that Policy CHC 8 was introduced in the current CDP for the first time. And there is irrevocable evidence that a grant of permission for the current proposal would not set unacceptable precedent because there is a lack of a close relationship with the boundary and gate at No 31 and, given the unique site and two metre width of the existing wide pedestrian gate at over two metres and the simple nature of the boundary.

6.1.6. It is requested that the proposed development be considered on its own merits, and that it be concluded that the proposal accords with Policies MT14, CHC8 and CHC3 and section 16.10.18 of the CDP and that permission be granted.

6.2. **Planning Authority Response**

There is no submission from the planning authority on file.

6.3. **Observations**

- 6.3.1. A submission was received from Rathgar Residents' Association on 2nd January 2019 according which the planning authority decision to refuse permission is supported in that the proposed development seriously injure the character of Nos. 31 and 32, houses would result in significant loss of historic fabric, private open amenity space to the front of the house. There is no reason for the existing status quo of original historic fabric, walls, gates and front gardens on the west and south side of Kenilworth Square to be disturbed.
- 6.3.2. There is ample parking supply on the street available for residents' use and it should not be removed. There is extensive precedent for refusal of for off street parking at the expense of the historic context on Kenilworth Square West (No 35), Kenilworth Road, Garville Avenue, Grosvenor Place and Leinster Road among other residential roads.

7.0 **Assessment**

- 7.1. The assessment is set out below under two main subheadings corresponding to the two reasons for the decision to refuse permission by the planning authority: - (1) on grounds relating to architectural heritage protection and, (2) considerations relating to creation of vehicular entrances to individual dwellings facilitate residents with on-site parking in front gardens.
- 7.2. **Reason 1: - Architectural Heritage Protection Considerations.**
- 7.2.1. On Kenilworth Square West, Nos. 32 and No 31 constitute a set piece comprising the pair of larger and most significant houses centrally positioned overlooking the Square within the row of seventeen Victorian houses. The wider plots of these larger three bay, two storey over garden level detached houses, correspondingly have longer site frontages and boundaries than most of the houses to either side which are two bay terraced and semi-detached houses. It would appear, though it cannot be confirmed that Nos 31 and 32 were designed and constructed as a pair,

presumably by the same builder, but this has not been confirmed. There is no doubt that the houses address the square and the streetscape as a pair and that symmetry is a major feature and characteristic of special interest of the houses and their site curtilages both individually and as the pair.

- 7.2.2. The design intent in the proposal to achieve minimisation of fabric loss and assimilation of the symmetry between the site frontage and the entrance is appreciable but it is agreed with the conservation officer that the proposed interventions cannot be accepted. There is clear design intent in the pedestrian gate with the side panels and pillars revealing the main staircase and concealing the side flights, views to which are opened on approach along a centrally positioned footpath within the front gardens, which historically would have been generously planted up and enclosed with hedges on the inner side of the site frontage. This relationship is already partially, altered by the contemporary presentation of the front curtilage but the symmetry is clearly retained with the stepping stones between the gate and entrance reflecting the original relationship between gate, side panels and pillars, staircase and entrance to the house. Similarly, although the front curtilage at No 31 is landscaped and planted up as gardens, the relationship between entrance gate, staircase and entrance is also well preserved.
- 7.2.3. Notwithstanding the case made as to the greater than average width of the existing pedestrian gate and its side panels, the proportions with both the pillars, frontage length and boundary walling are appropriate. These larger sizes and longer lengths are features that indicate the significance of the pair of houses and the symmetry, inclusive of the central positions on each individual frontage and in the pair over the entire forty metres length. The proposed widening of the opening, notwithstanding the retention of a central position on the frontage to No 32, distorts and unduly adversely affects the presentation of the two houses in both the views from the streetscape and vantage points from the Square and adversely affects the integrity of the symmetry of the pair of houses which it is considered is a special and intact special interest of the two protected structures, and the west side of the Kenilworth Square.
- 7.2.4. Based on examination of the plans the width from pillar to pillar, (measured from the outer edges) is increased from 3.6 to 4.6 metres and the increase in width of the opening is increased from two metres to 3.1 metres on the twenty metres long frontage. The proposal is contrary to sections 16.2.2.4, 16.10.18 and CHC 2 (d) and

to the Guidelines according to Section 13.4.3 of which removal or alteration of boundary features can adversely affect the character of the protected structure and the designed and landscape and, widening or alteration can alter the scale and visual impact of the gate and gate piers.

- 7.2.5. Separately, the proposed removal of the original cast iron gate, interventions and additions to the cast iron to facilitate the doubling in its width, a detailed specification and method statement for which is not available with the application is not supported in that it is not demonstrated that the works involved would accord with best conservation practice.
- 7.2.6. Bearing in mind the foregoing, it is not agreed that that the proposed development can be facilitated by reference to Policy Objective CHC8 of the CDP because appropriate site conditions do not exist. The interventions required to facilitate the proposed vehicular entrance and on-site parking materially affect and are contrary to protection of the special interest and character of the subject protected structure, adjoining and surrounding protected structures and the residential conservation area.
- 7.2.7. Reason No 1 attached to the planning authority decision to refuse permission is therefore supported and it is further considered that favourable consideration of the proposed development in this regard would set undesirable precedent.

7.3. Reason Two: - Vehicular Entrances to Single Dwellings for Parking in Front Gardens.

- 7.3.1. The plots of No 32, and No 31 Kenilworth Square have been subdivided to provide for mews developments facing onto Rathgar Avenue from which the mews developments have vehicular access. As a result, of the permitted development to the rear of the application site property, the plot area retained with the original dwelling no longer has frontage onto or access from Rathgar Avenue. As a result, residents and visitors to the dwelling are reliant on the front curtilage, if approved, or, on street residential permit and pay and display parking.
- 7.3.2. There is no dispute as to the excess of supply over demand for public and residential permit parking along on both sides of Kenilworth Square West and the local residential road network in the area. It is also accepted that the current proposal, when considered in isolation, without regard to potential precedent, the removal of

two car spaces would not unduly affect the availability and convenience of on street parking for residents and for all road users.

- 7.3.3. However, it is the policy of the planning authority to retain on street parking as far as is practicable with there being scope for consideration of some loss to facilitate public transportation requirements, public realm improvements and new development as provided for under Policy MT14 of the CDP. This policy objective would therefore preclude favourable consideration of loss of on street parking to facilitate the creation of vehicular entrances to facilitate owner/occupiers' requirements for private parking in the front gardens of dwellings.
- 7.3.4. Residents on Kenilworth Square West have the benefit of a plentiful supply of on street parking conveniently located relative to the front entrances of their properties. Some of the properties on Kenilworth Square West have private off-street parking within the front curtilages whereas other residents are largely reliant on use of the on-street parking spaces. Irrespective of architectural heritage protection considerations, there is no basis on which setting aside the presumption against the removal of on street parking to facilitate vehicular entrances to single dwellings provided for in section 16.38.9 of the CDP could be justified.
- 7.3.5. Reason No 2 attached to the planning authority decision to refuse permission is therefore supported and it is further considered that favourable consideration of the proposed development in this regard would set undesirable precedent.

7.4. Environmental Impact Assessment Screening.

Having regard to the nature of the proposed development and its location in a serviced urban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.4.1. Appropriate Assessment Screening.

Having regard to the small-scale nature of the proposed development and, to the serviced inner suburban location, no Appropriate Assessment issues proposed

development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. As indicated in the observer submission, that there is considerable evidence of past interference with and removal of historic front boundary treatments, facilitating the use of former front gardens for carparking and associated uses at many of the properties around Kenilworth Square and on Kenilworth Road. However, it has been the policy of the planning authority as reflected in applications and appeals and provided for in development plans, not to authorise such development and, also not to authorise creation of vehicular entrances to single dwellings in order to provide for the retention of the supply on street residents permit, pay and display and, free parking facilities for the benefit of all road users. It can be concluded that there are no conservation or traffic and parking related policies and objectives in the CDP or circumstances relating to the current proposal that would justify favourable consideration.
- 8.2. In view of the foregoing, it recommended that the planning authority decision to refuse permission based on the two reasons attached to its order should be upheld. Draft reasons and considerations are set out below.

9.0 Reasons and Considerations

- 10.0 No 32 and No 31 Kenilworth Square are within an area subject to the zoning objective: Z2:” *Residential Conservation Area*” according to the Dublin City Development Plan, 2016-2022 and they are a set piece pair of detached Victorian houses, a strong characteristic of which is the symmetry of the houses and the features within their front curtilages at their focal position on wide plots at the centre of the seventeen houses overlooking Kenilworth Square West all of which are included on the record of protected structures. It is considered that the proposed widening of the ope of the existing pedestrian entrance gate, notwithstanding the retention of a centralised position on the frontage of No 32, distorts and adversely

affects the symmetry in the presentation of the house and the adjoining house at No 31 both in views along the streetscape and in vantage points around and, within Kenilworth Square itself and would necessitate unwarranted intervention to original historic fabric. As a result, the proposed development would adversely affect the integrity and character of the protected structure and its setting among the protected structures on Kenilworth Square West, would be contrary to the zoning objective, and would be contrary to the proper planning and sustainable development of the area.

- 11.0 It is the policy of the planning authority to retain on street parking facilities as far as is practicable, with scope for some loss to facilitate public transportation, public realm and new development requirements according to Policy MT 14 of the Dublin City Development Plan, 2016-2022. Removal of on-street parking spaces available for use by all residents and other road users to construct a vehicular entrance for a private dwelling to facilitate an owner/occupiers' requirements for private parking in the front garden would be contrary to this policy objective and would set undesirable precedent for further similar development. The proposed development is contrary to the proper planning and sustainable development of the area.

Jane Dennehy.
Senior Planning Inspector.
19th February, 2019.