



An  
Bord  
Pleanála

## Inspector's Report ABP-303223-18

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<b>Development</b>	Construction of pedestrian entrance gate in existing stone boundary wall from Treesdale to the rear of No. 16 Priory Drive.
<b>Location</b>	16 Priory Drive, Stillorgan, Co Dublin A94 AN82
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D18B/0421
<b>Applicant(s)</b>	Peter Walsh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Patrick Shortall
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	<a href="#">Click here to enter text.</a>
<b>Inspector</b>	John Desmond

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## 1.0 Site Location and Description

- 1.1. The site is located within an extensive suburban to the west of Blackrock, c.1.5km from the centre and 100m east of Stillorgan road. The application relates to a 2-storey, semi-detached residential property fronting onto Priory Drive, with its rear boundary to a cul-de-sac within a smaller housing estate called Treesdale. The rear boundary comprise a rough-dash rendered stone-rubble wall of c.3.5m in height.

## 2.0 Proposed Development

- 2.1.1. To construct a new pedestrian entrance gate within the existing stone boundary wall to Treesdale.

## 3.0 Planning Authority Decision

### 3.1. Decision

To **GRANT** permission subject to 5no. conditions, three of which are of standard type. Non-standard condition no.3 clarifies that the entrance shall provide access directly onto the public footpath along no.11 Treesdale. Condition no.5 requires all new pavements to be made of gravel or a designed impermeable stone system.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planner's report of 19/11/18 is consistent with the decision of the planning authority and the conditions attaching thereto.

#### 3.2.2. Other Technical Reports

Transport Planning (14/11/18) no objection subject to 2no. conditions including a non-standard condition (attaching to the decision as condition no.3, see decision above).

Drainage Planning (19/10/18) no objection subject to a non-standard condition (attaching to the decision as condition no.5, see decision above).

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

17no. letters of observation were received to file from the following residents of Treesdale housing estate (except where stated otherwise): Gareth Keating (no.6), Bronwyn Davitt (no.5), Simon & Muireann Deane (no.15), Lisa Mathews (no.42), Michael & Amanda (45), Ciara & Deirdre McCann (no.18), Conor Cooke (no.29), Paul & Jean Bauress (7), Anne Fogarty (17), Patrick Shortall (11) c/o Marston Planning Consultancy, B. O'Connor (no.31), J.P. Vesey (no.36), Catherine McEnri (no.4), M. Fogarty (no.9), Ethna Tarpey (no.2), Jude McEntire (no.41), and Gemma Chandler (no. 33 Sycamore Road).

- Impact on / damage to old stone wall (possibly 200-300 years of age) of historical significance (legend has it, it formed part of the original priory that stood on this site), a key feature of and integral to Treesdale housing estate
- Impact on privacy and security of this quiet cul-de-sac.
- The applicant has access to his back garden through his house.
- Wall is already weak. Risk to public health and safety.
- Concern that it is a precursor to a vehicle entrance for new house, with consequential traffic impacts.
- Would set undesirable precedent.
- Jackson Property were required to repair this existing stone wall in developing the land for Treesdale.
- No house on Priory Drive has access through the rear boundary.
- Potential damage to consequential more extensive length of wall, possibly leading to litigation and damages for the planning authority.
- It would allow the occupiers of 16 Priory Drive to access a house from a great distance through another housing estate on which they do not live, when they already have an access.

- If the applicant parks their car near the new gate, they will be blocking a cul-de-sac that should be kept clear at all times for ambulances, etc., a health and safety issue, and traffic congestion and traffic safety implications adding to parking by commuters and patrons of the Talbot Hotel.
- Contrary to policy AR5 of the Development Plan concerning rehabilitation and reuse of features that make a positive contribution to the character of the area.
- There is no logical reason for the pedestrian gate beyond seeking to establish access as part of a long-term strategy of seeking a vehicular access.
- The access does not achieve great access from the property to any location, with a walking distance of 215m to the N11, being the same from the proposed rear access as from the existing front access.
- Questions the applicant's ability (or sufficient right) to undertake the proposed works and the applicant should be requested to demonstrate that they are sole owners of the wall.
- The wall formed part of a walled garden within, and is the only remaining element of, the curtilage of the former Stillorgan Priory, built 1833 and demolished c.1950.
- No information provided about how the works would be carried out.

## 4.0 Planning History

**Reg.ref.D10A/0270** – Permission **GRANTED** for demolition of porch, construction of new enclosed porch and associated site works and new entrance gate (pedestrian entrance to front) at no.16 Priory Drive.

## 5.0 Policy Context

### 5.1. Development Plan

Dun Laoghaire Rathdown County Development 2016-2022

Objective A '*to protect and / or improve residential amenity*'.

Policy AR5 *Buildings of Heritage Interest*.

## 5.2. Natural Heritage Designations

South Dublin Bay and River Tolka Estuary SPA site code 004024 (c.1.6km to the northeast)

South Dublin Bay SAC site code 000210 (c.1.6km to the northeast).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The main grounds of the third-party appeal by Patrick Shortall c/o Marston Planning Consultancy may be summarised as follow:

- The appellant lives at no.11 Treesdale, immediately north of the proposed development.
- The wall through which the pedestrian entrance is proposed forms the boundary wall to no.11 and the works (within 0.32m of the appellant's property) to the wall have the potential to have implications for the structural stability and integrity of the appellants part of the wall.
- No information on how the works to this historic wall would be undertaken and the planning authority attached no conditions to ensure the structural integrity of the wall is maintained.
- There are no grounds for the Board to conclude that the works can be undertaken without impact on the wall's structural integrity.
- There is no evidence the planning authority adequately considered whether the applicant has sufficient legal interest in the wall to undertake the proposed works. The Board should clarify this issue and it should not be incumbent on the Courts to make a declaration in this regard.
- If the applicant only has a leasehold on the property the applicant would not own the land or its boundaries and would not have sufficient legal interest to undertake the works.
- The requirement by condition on parent permission to Treesdale that the developer be required to repair and make good the boundary wall as part of

the development, which strongly infers the developer had a level of control or ownership over the wall.

- The fact that the wall forms the applicant's boundary does not infer upon the applicant a legal right to seek planning permission to build a gateway.
- Pre-planning enquiry in 2017 relating to potential for gaining permission for a house in the rear garden to the property. Should permission be granted a condition should be attached or a statement made that it would be wholly inappropriate to utilise vehicular access into the application site from Treesdale.
- The development achieves no greater access to Stillorgan Road that is currently the case, which raises questions about the rationale for the development.
- The insertion of a door would materially reduce the heritage value and its positive contribution to the character of the area.
- Contravenes policy AR5 of the DLR CDP 2016-2022 to encourage the rehabilitation and suitable reuse of any structures and features that make a positive contribution to the character of the street area.

## 6.2. Applicant Response

The main points of the first-party response submitted c/o Paul Byrne Architects may be summarised as follow:

- No. 16 is a mid-terraced house with no external access garden between front and rear gardens.
- The rear boundary wall separates the application site from a cul-de-sac in Treesdale which has been taken in charge by the local authority.
- The gate will provide bicycle access to the rear garden and garden shed, which is material to the applicant's enjoyment of the property.
- It would be entirely unreasonable to refuse permission for reason that the gate is close to an adjoining property.



- The applicant intends that the works will be carried out by a competent contractor and in an appropriate fashion, however this is not a planning issue.
- The applicant has freehold interest in the property and the Board is being asked to decide on a planning issue not a legal one.
- It is unreasonable and unnecessary to propose conditions that do not relate to the proposed application.
- The site is neither within an existing or proposed ACA and the wall is not listed as a protected structure.
- The provisions of policy AR5 apply 'where appropriate' and it would be unreasonable to conclude that the proposed development would contravene this policy.

### 6.3. Planning Authority Response

None.

## 7.0 Assessment

I consider the main issues arising in this case may be addressed under the following headings:

- 7.1 Policy / principle
- 7.2 Built heritage
- 7.3 Structural issue
- 7.4 Legal issue
- 7.5 EIA Screening
- 7.6 AA Screening

### 7.1. Policy / principle

- 7.1.1. The lands are zoned objective A '*to protect and / or improve residential amenity*'. The proposed pedestrian entrance gate is ancillary to and would benefit or improve the residential amenity of the site. I do not consider the proposed pedestrian

entrance gate would have any material impact on the residential amenities of other residential property within the vicinity.

## 7.2. **Transportation issues**

- 7.2.1. The pedestrian entrance would be opened onto an existing public footpath which abuts the boundary wall at the location of the proposed entrance. The proposed development would improve pedestrian permeability and accessibility to the overall site. There would be no public benefits or significant disbenefits arising from the proposed pedestrian entrance.

## 7.3. **Built heritage**

- 7.3.1. The existing wall is a random rubble stone wall finished in a wet-dash render. It would appear to be historic, allegedly constructed 200 years ago. It contributes to the layering of built heritage and structures within the area, but it is not a Protected Structure and is not located within an adopted or proposed ACA. I am satisfied that the provision of a pedestrian entrance gate would not contravene policy AR5 to *'retain, where appropriate, and encourage the rehabilitation and suitable reuse of existing older buildings/structures/features which make a positive contribution to the character and appearance of a streetscape in preference to their demolition and redevelopment...'*.

## 7.4. **Structural issue**

- 7.4.1. There is nothing to suggest the insertion of a relatively narrow opening would materially affect the structural integrity of the existing 3.5m high stone wall.

## 7.5. **Legal issue**

- 7.5.1. The applicant submits that they have freehold interest in the property. It is not possible for the Board to determine whether this interest includes the subject boundary wall (nor is it the Board's role). The provisions of section 34(13) apply:

*'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'*

## 7.6. Other planning issues

- 7.6.1. The appellant has raised concern that the proposed development would set precedent for a vehicular entrance gate to the site and / or to a new dwelling on that site. Notwithstanding that pre-planning has taken place with the planning authority on such a proposal, no such development is before the Board for its consideration and no application has been made to the planning authority for such a development on the site concerned. Each application for development is considered on its own merit.

## 7.7. EIA Screening

- 7.7.1. The proposed development does not constitute development within the meaning of Part X of the Act. No EIA issues arise.

## 7.8. AA Screening

- 7.8.1. Having regard to the small-scale nature of the development proposed within an existing built-up area and its distance from any European site (c.1.6km) it is not considered that the proposed development would be likely to have a significant effect, directly or indirectly, individually or in combination with other plans or projects on any European site. I consider no Appropriate Assessment issues to arise.

## 8.0 Recommendation

- 8.1. I recommend that permission be **GRANTED** subject to the conditions set out under section 10.0, below:

## 9.0 Reasons and Considerations

It is considered that the proposed development would be consistent with the provisions of the Dun Laoghaire Rathdown Development Plan 2016-2022 for lands zoned objective A *'to protect and / or improve residential amenities'* and concerning built heritage, including Policy AR5, and would 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. Water supply and drainage arrangements, including the attenuation and 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

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John Desmond  
Senior Planning Inspector

11 February 2019