



An
Bord
Pleanála

Inspector's Report

ABP-304097-19

Development	New vehicular entrance in existing front boundary wall.
Location	Orchard Lodge, off Ballinclea Road, Killiney, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0017
Applicant(s)	Philip & Clodagh Jordan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Philip & Clodagh Jordan
Observer(s)	Paul Doyle
Date of Site Inspection	18 th June 2019
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.00435ha is located south east of the Church Road / Rochestown Avenue Roundabout in Killiney, County Dublin. The site abuts Avondale / Ballinlea Road and is accessed via a recessed splayed entrance. The site is bounded to the front by a c2m high wall adjoining a recessed entrance with wrought iron double gates and a single pedestrian opening to the east. These gates provide access to three other residential properties. The other pedestrian opening on the opposite side of the double gates has been blocked up. The appeal site directly abuts the road edge and comprises of a detached bungalow with first floor accommodation. The pedestrian gate appears to be the only means of access to the site.
- 1.2. 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. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for a new splayed vehicular entrance in the existing front boundary wall.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. DLRCC issued a notification of decision to refuse planning permission for the following reason:

1. *Having regard to an objective set out within Policy ST25: 'Roads', and identified on Map 7 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022, there is a Six-Year Road Objective 'Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout)' that includes part of Ballinlea Road. This road objective would entail alteration of the existing road layout for the area. It is therefore considered, that the proposed development would be premature pending the determination of the detailed design for the road layout of the area and would set an undesirable precedent. The proposed development is*

therefore contrary to Policy ST25: 'Roads', and identified on Map 7 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 and is considered to be contrary to the proper planning and sustainable development for the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** having considered the scheme recommended that permission be refused permission for a single reason relating to the proposed development being contrary to Policy ST25: 'Roads', and identified on Map 7 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022. The notification of decision to refuse permission issued by DLRCC reflects this recommendation.

3.2.2. Other Technical Reports

- **Surface Water Drainage** – No objection.
- **Transportation Planning** – Recommended refusal for the following 2 no reasons:
 - 1) *The additional traffic turning movements generated by the proposed vehicular entrance onto Ballinlea Road for Orchard Lodge, during the operation of the proposed future Ballinlea Road (Ballinlea Road is listed as part of the six year Road Objective as part of the Cherrywood to Dun Laoghaire Strategic Route) road layout, would have a seriously adverse impact on the carrying capacity of the said road, would set and undesirable precedent for future development in the area that would further affect the carrying capacity of the road with increased turning movements, thus leading to increased queuing etc and would therefore be contrary to the proper planning and sustainable development of the area i.e. the proposed vehicular entrance onto Ballinlea Road 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 the Refusal of Permission which Exclude Compensation) of the Planning and Development Act 2000.*
 - 2) *Precedent i.e. the proposed vehicular entrance onto Ballinlea Road by itself or by the precedent that the grant of permission for it would set for*

other relevant developments, would adversely affect the use of the proposed future Ballinlea Road (Ballinlea Road is listed as part of the six year Road Objective as part of the Cherrywood to Dun Laoghaire Strategic Route) road layout by traffic i.e. Clause of the Fourth Schedule (Reasons for the Refusal of Permission which Exclude Compensation) of the Planning and Development Act 2000.

3.3. Prescribed Bodies

3.3.1. There are no reports from any prescribed bodies on the planning file.

3.4. Third Party Observations

3.4.1. There is one third party observation recorded on the planning file from Paul Doyle, Deanwood House, Orchard Court, Ballinlea Road. The issues raised relate to the position of the public notices, cars traversing the public footpath to access the new entrance, pedestrian and cyclist safety and dangerous location proximate to four point roundabout.

4.0 Planning History

4.1. There was a previous appeal on this site that may be summarised as follows:

- **ABP PL06D.224432** (Reg Ref D07A/0173) – In 2007 DLRCC granted permission for the construction of a new entrance and remodelling of the existing house to include dormer bedrooms, new entrance hall and internal alterations at Orchard Lodge. The decision was appealed by a third party on grounds of legal interest, traffic safety, residential amenity and overloaded private sewer. The Board granted permission subject to 5 no conditions. Condition No 2 required that the *proposed vehicular entrance be omitted in the interest of maintaining the historic character of the existing splayed crescent entrance which contributes to the visual amenities of the area.*

5.0 Policy Context

5.1. Development Plan

- 5.1.1. 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*. Ballinclea Road is listed as part of a six year road objective as part of the *Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout)* in Table 2.2.5 of the County Development Plan (2016-2022). Map 7 refers.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development comprising a new vehicular entrance in an existing front boundary wall serving an existing dwelling house 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The first party appeal has been prepared and submitted by the applicants Architect, Dempsey Architects and may be summarised as follows:

- **Context** – Orchard Lodge was originally the gate lodge for Orchard Court House. Over the years two further houses have been built on the lands. All three houses share an internal private road and exit onto Ballinclea Road through a semi-circular gated entrance. Orchard Lodge currently has a pedestrian entrance gate set within the wall of the semi-circle and has its

vehicles parking on a strip of ground immediately alongside its front boundary wall.

- **History** – DLRCC Reg Ref D07A/0173 granted permission for a vehicular entrance to Orchard Lodge by widening the pedestrian entrance. This was overturned on appeal ABP PL06D.224432 refers.
- **Current Parking** - A 3.2m wide x 18m long strip of ground between the back of the footpath and the boundary wall of Orchard Lodge has been used for vehicle parking by residents of Orchard Lodge for in excess of 20 years and form it to exit onto Ballinclea Road using the same exit point as the three houses. A further 12m continuation of the same strip of ground was used in the past by trucks delivering to the adjoining Beechwood Garden Nursery (now closed) through its single door, still existing.
- **Proposal** – The proposal is to form a new splayed recessed entrance to Orchard Lodge off this strip of ground to fit electrically operated sliding doors with opening indicators designed in vertically sheeted hardwood with a stone head over to match the old garden centre gate but yet to be close enough to the semi-circular entrance such that any future alterations to the public road layout will still only have to take one exit point into account albeit serving four houses.
- **Future Road Works** – Taking the foregoing into account, particularly the fact that the proposal can be accommodated within the existing established exit which will have to be facilitated within any new road layout, it is not considered reasonable that a family should be prevented from enjoying secure vehicular access to their property while the Authority still seek “determination of the detailed design form the road layout of the area” halfway through its 2016 to 2022 County Development Plan.

6.2. Planning Authority Response

- 6.2.1. DLRCC refers to the previous Planners Report and states 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.*

6.3. Observations

6.3.1. There is one observation recorded on the appeal file from Paul Doyle, part owner of adjoining lands. The issues raised may be summarised as follows:

- The applicant has not used the strip of land by the boundary for vehicular parking for parking in excess of 20 years.
- The 12 meter continuation strip has not been used for the past six years as the observer and others became legal owners of the adjoining lands over 4 years ago.
- The garden centre ceased trading as it was not viable for selling to the public as they could not park for access.
- Reference is made to the previous appeal on this site and reports and decisions therein. Submitted that the condition relating to drainage was not carried out.
- In relation to sewer capacity it is noted that the applicant presented a letter to DLRCC from the adjoining landowner (Walter Kane) who has no ownership or right whatsoever to the observer's pipe as the observer has a legal wayleave over this land. Requested that this matter is rectified.
- Requested that the decision of DLRCC to refuse permission is upheld.

6.4. Further Responses

6.4.1. 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 in the course of the planning application 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
- Visual Amenity
- Roads Objectives

- Other Issues

8.0 Principle

- 8.1. Permission is sought for a new splayed vehicular entrance in the existing front boundary wall. Under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 the site is wholly contained within an area zoned Objective A where the objective *is to protect and / or improve residential amenity* and where vehicular access to an existing dwelling house for residential purposes is considered a permissible use.
- 8.2. Therefore I am satisfied that that the principle of the development removing off site car parking to within the confine of the appeal site is acceptable at this location subject to the acceptance or otherwise of site specifics / other policies within the development plan and government guidance.

9.0 Visual Amenity

- 9.1. I refer to the previous scheme and appeal on this site where permission was sought for inter alia the construction of a new entrance in the existing splayed vehicular entrance. In that appeal the Board granted permission subject to 5 no conditions. However Condition No 2 required that *the proposed vehicular entrance be omitted in the interest of maintaining the historic character of the existing splayed crescent entrance which contributes to the visual amenities of the area.*
- 9.2. While the scheme now before the Board also seeks permission for a new vehicular entrance it is noted that the new entrance is located further west from the existing splayed entrance. Notwithstanding the revised location it is my view that the concerns raised in the previous appeal in relation to visual amenity and impact on the historical character of the area are still valid.
- 9.3. Neither the appeal site nor the front boundary wall and splayed entrance are listed in the record of Protected Structures nor are they located within a designated conservation or heritage area. While the new entrance is removed from the existing splayed entrance I share the general concerns raised by the previous Inspector in that the proposal to insert an additional vehicular entrance at this location would detract

from the symmetry, character and visual amenity of the existing splayed entrance and adjoining walls which currently exists and contributes to the streetscape and visual amenity of the area.

- 9.4. Accordingly I consider that to permit the proposed entrance at this revised location would detract from the historic character of the area, would have a significant negative impact on the visual amenities of the area together with the overall streetscape. Refusal is recommended.

10.0 Roads Objective

- 10.1. DLRCC refused permission on the grounds that the proposed development would be premature pending the determination of the detailed design for the road layout of the area.
- 10.2. I refer to Chapter 2 Sustainable Communities Strategy of the Dun Laoghaire Rathdown County Development Plan 2016-2022 where it sets out inter alia the essential policies and measures required to support the County in meeting its full potential including travel demand management. Policy ST25: Roads states that it is Council policy, in conjunction and co-operation with other transport bodies and authorities such as the TII and the NTA, to secure improvements to the County road network – including improved pedestrian and cycle facilities. The 6-Year and Long-Term Road Objectives proposed by the Council are listed in Table 2.2.5 and Table 2.2.6 and displayed graphically on the related 14 no. Development Plan Maps and also on Map No. T3.
- 10.3. Ballinclea Road is listed as part of a six year road objective as part of the Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout) in Table 2.2.5 of the County Development Plan (2016-2022). Map 7 refers.
- 10.4. The Two Year Progress Report on the Dún Laoghaire-Rathdown County Development Plan 2016-2022 (April 2018) available to view on the DLRCC Planning Website provides a brief commentary in relation to Policy ST25 Roads. Section 3.2.7 refers. It is noted that there is no stated progress or advancement in relation to the Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout). However it is noted from the DLRCC Transportation Section Report that a preliminary design and EIS has been prepared for the road upgrade.

- 10.5. DLRCC Transportation Section raise concerns that allowing a new vehicular entrance onto Ballinlea Road for Orchard Lodge would set an undesirable precedent for adjacent sites. It is further considered that the additional traffic turning movements generated by the proposed vehicular entrance onto Ballinlea Road during the operation of the proposed future Ballinlea Road layout, would have a seriously adverse impact on the carrying capacity of the said road and would therefore be contrary to the proper planning and sustainable development of the area. Transportation recommended refusal for the proposed development for two reason in relation to (1) the additional traffic turning movements generated by the proposed vehicular entrance onto Ballinlea Road and (2) precedent.
- 10.6. I share the concerns raised by DLRCC Transportation Section in relation to Policy ST25 and the Six-Year Road Objective 'Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout)' that includes part of Ballinlea Road. I agree that the proposed development would be premature pending the determination of the detailed design for the road layout of the area. Refusal is recommended.

11.0 Other Issues

- 11.1. **Appropriate Assessment** - Having regard to the nature and scale of the proposed development comprising a new vehicular entrance in an existing front boundary wall serving an existing dwelling house in a serviced 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.
- 11.2. **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.

11.3. **Legal Interest** - I note the observers concerns in relation to use and ownership of the strip of land adjoining the front boundary wall of the site together with drainage and consent / wayleave to same. Any said dispute of the ownership of lands and rights of way and way leave agreements is a matter to be resolved between the parties, having regard to the provisions of Section 34 (13) of the 2000 Planning and Development Act (as amended) where it states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should planning permission be granted 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.

12.0 Recommendation

12.1. It is recommended that permission be **REFUSED** subject to the reasons and considerations set out below.

13.0 Reasons and Considerations

- 1) Having regard to the prominent location of the site, to the established built form and character of the existing splayed entrance and adjoining high walls which are considered to be of importance to the streetscape, it is considered that the proposed development, consisting of the creation of a new vehicular entrance would constitute a visually discordant feature that would be detrimental to the distinctive architectural and historic character of this area and which it is appropriate to preserve. Therefore to permit the proposed development would seriously injure the visual amenities of the area and would be contrary to the proper planning and sustainable development of the area.

- 2) Having regard to an objective set out within Policy ST25: 'Roads', and identified on Map 7 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022, there is a Six-Year Road Objective 'Cherrywood to Dun Laoghaire Strategic Route (R118 Wyattville Road to Glenageary Roundabout)' that

includes part of Ballinclea Road. This road objective would entail alteration of the existing road layout for the area. It is considered, that the proposed development would be premature pending the determination of the detailed design for the road layout of the area and would set an undesirable precedent. To permit the proposed development would be contrary to Policy ST25: 'Roads', as identified on Map 7 of the Dún Laoghaire-Rathdown County Development Plan, 2016-2022 and would be contrary to the proper planning and sustainable development for the area.

Mary Crowley

Senior Planning Inspector

1st August 2019