



An  
Bord  
Pleanála

## Inspector's Report ABP-304506-19

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<b>Development</b>	Retention of an access gate to rear of existing boundary.
<b>Location</b>	17 Rock Road, Blackrock, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D19A/0168
<b>Applicant(s)</b>	Lisa Dolan
<b>Type of Application</b>	Permission for retention
<b>Planning Authority Decision</b>	Grant subject to conditions
<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Dolores Neville & Others Pearl Flynn
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	29 <sup>th</sup> July, 2019
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

1.1. The proposed development site is located at No. 17 Rock Road, Blackrock, Co. Dublin, approximately 750m southeast of Booterstown Train Station, where it occupies a position opposite the Blackrock Clinic between the R118 Regional Road and the DART line. It has a stated site area of 0.0074 hectares, is rectangular in shape, and comprises a two-storey, end-of-terrace dwelling house which, although fronting onto Rock Road, extends alongside the entrance roadway to the neighbouring development of Emmet Square thereby backing onto same. In this regard, Emmet Square comprises an attractive scheme of two-storey, terraced houses / maisonettes set around a formalised square, which are characterised by traditional brickwork finishes, sliding sash windows, and matching front doorway details.

## 2.0 Proposed Development

2.1. The proposed development consists of the retention of a pedestrian access gate from the rear yard area of No. 17 Rock Road onto the adjacent footpath within Emmet Square.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 3<sup>rd</sup> May, 2019 the Planning Authority issued a notification of a decision to grant permission for the retention of the proposed development subject to 3 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 – Requires the pedestrian gate to open inwards into the courtyard of No. 17 Rock Road.

Condition No. 3 – Requires the brickwork to either side of the gateway to be repointed / made good within three months of the date of the final grant of permission.

## 3.2. **Planning Authority Reports**

### 3.2.1. *Planning Reports:*

Details the site context and the applicable policy considerations before stating that the proposal will be assessed in terms of its impact on the residential and visual amenities of the surrounding area. It subsequently concludes that the proposed development, subject to conditions, including a requirement that the gateway only open inwards into No. 17 Rock Road and that the brickwork to either side of same be repointed / made good within three months of the final grant of permission, will not be seriously injurious to the residential amenity of properties in the vicinity and will not have an adverse impact on traffic safety.

### 3.2.2. *Other Technical Reports:*

*Transportation Planning:* No objection, subject to conditions.

## 3.3. **Prescribed Bodies**

None.

## 3.4. **Third Party Observations**

3.4.1. A total of 2 No. submissions were received from interested third parties, the contents of which are reiterated in the grounds of appeal.

## 4.0 **Planning History**

### 4.1. *On Site:*

None.

### 4.2. *Other Relevant Files:*

PA Ref. No. 646/86 / ABP Ref. No. PL57/5/73322. Was refused on appeal on 28<sup>th</sup> July, 1987 refusing Gerard Scanlon permission for the provision of a rear entrance to No. 21 Rock Road, Blackrock, Co. Dublin, for the following reason:

- The proposed development comprises the provision of a rear entrance at a level significantly above that of Emmet Square and of a stepped approach from the public footpath in close proximity to the frontage area of houses facing directly onto Emmet Square. It is considered, therefore, that the

proposed development would be injurious to residential amenities and incompatible with the residential character of Emmet Square.

## 5.0 Policy and Context

### 5.1. Development Plan

#### 5.1.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022:

*Land Use Zoning:*

The proposed development site is located in an area zoned as 'A' with the stated land use zoning objective '*To protect and-or improve residential amenity*'.

*Other Relevant Sections / Policies:*

*Chapter 8: Principles of Development:*

*Section 8.2: Development Management*

### 5.2. Natural Heritage Designations

#### 5.2.1. The following Natura 2000 sites are located in the immediate vicinity of the proposed development site:

- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 160m northeast of the site.
- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 160m northeast of the site.

### 5.3. EIA Screening

#### 5.3.1. Having regard to the nature and scale of the development proposed, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, there is no real 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.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

#### 6.1.1. *Pearl Flynn:*

- The works in question were undertaken without the benefit of planning permission and have resulted in the destruction of part of the boundary wall of Emmet Square.
- The development to be retained will have a permanent and detrimental impact on the visual amenity, historical character, and built heritage value of Emmet Square.
- The provision of the proposed gateway will likely result in bins, bicycles & other obstacles being placed on the public footpath along Emmet Square thereby giving rise to the obstruction of local residents and other pedestrians.
- Any grant of permission for the subject proposal would set an undesirable precedent for the remaining residents along Rock Road to undertake similar development thereby destroying the character of the red brickwork walls within Emmet Square permanently.
- Permission was previously refused on appeal in 1987 for a comparable development (i.e. the provision of a rear entrance) at No. 21 Rock Road (please refer to PA Ref. No. 646/86 / ABP Ref. No. PL57/5/73322).
- The Planning Authority has failed to give due consideration to the potential hazard posed as a result of the proposed gateway during dark winter evenings.
- The applicant's rationale for undertaking the subject works seems trivial in light of the detrimental impact on the wider appearance of Emmet Square.
- In recent months, the residents of Emmet Square have been informed by the Local Authority that any replacement of their front doors must be made on a 'like for like' basis. Accordingly, it is submitted that the same treatment should be warranted with regard to the existing brickwork walls in the square and,

therefore, the section of wall in question should be reinstated / restored and protected against any further such works.

- The change in level between the rear courtyard of the subject site and the adjacent pathway within Emmet Square has always been in place and thus the applicant would have been aware that there was no exit onto the square when purchasing the property.

*6.1.2. Dolores Neville & Others:*

- The gateway was installed without the benefit of planning permission and with complete disregard for the Local Authority and the residents of Emmet Square.
- Any grant of permission for the subject proposal would set an undesirable precedent for comparable development not only in Emmet Square but throughout the borough.
- Other residents of Rock Road have been refused permission for works (without already having undertaken same) and, therefore, the decision to grant permission issued by the Council is indicative of significant inconsistency and poor planning.
- The effect of the Council's decision to grant permission for the subject works is to relegate the existing houses within Emmet Square as being compatible and consistent with the rear entrances of those properties along Rock Road.
- The gateway proposed for retention is out of character and visually incompatible with Emmet Square.
- The development, as has been carried out and completed, does not accord with the plans and particulars lodged with the application.
- The application documentation refers to the location of the development at No. 17 Rock Road whereas the works in question were carried out in Emmet Square.
- The development proposed for retention serves to prohibit the Local Authority from carrying out its basic statutory function as regards the maintenance and upgrading of Emmet Square as allowances will now have to be made for other

residents who may wish to open accesses through their rear boundary walls onto Emmet Square.

- There are concerns that the proposed gateway will result in bins etc. being placed along the public footpath without due regard to the wishes of residents within Emmet Square.
- Permission was previously refused on appeal in 1987 for a comparable development (i.e. the provision of a rear entrance) at No. 21 Rock Road (please refer to PA Ref. No. 646/86 / ABP Ref. No. PL57/5/73322).

## 6.2. Applicant Response

- Contrary to the appellant's (Ms. Neville) assertions, the applicant contacted the Local Authority prior to the commencement of works and was erroneously informed by e-mail dated 29<sup>th</sup> March, 2019 that *'if the gate if (sic) for pedestrian access only it is actually exempt from planning permission and therefore you can go ahead with the gate'*. It was on foot of this assurance that the gateway in question was constructed. The Council has since accepted responsibility for this error and had the applicant not been in receipt of the aforementioned correspondence the gateway would not have been constructed without the benefit of planning permission.
- The applicant can see no basis to the appellant's assertion that the effect of the decision to grant permission would be to relegate the existing houses within Emmet Square as being compatible and consistent with the rear entrances of those properties along Rock Road.
- The planned completion of the gateway has been postponed pending the receipt of a grant of permission. This work will ensure that the gate complements the surrounding area and architecture.
- The address of the application site is 17 Rock Road, not Emmet Square. Furthermore, the wall in question forms the boundary of the applicant's property and is not in the ownership of either of the appellants.

- The applicant can see no basis to the suggestion that the retention of the proposed gate would prohibit the Local Authority from carrying out its statutory functions.
- The appellants' concerns as regards the exercising of adequate control over the entrance in terms of refuse bins etc. is misplaced. The gateway will open inwards into the yard area and not onto Emmet Square. Furthermore, the suggestion that the applicant will be incapable of exercising due caution when exiting the property through the gate is entirely unsubstantiated. There are several pedestrian accesses in the surrounding area which open onto the public footpath and the applicant fails to understand how she could be more liable to cause injury by using her gateway than any other resident in the vicinity.
- The purpose of the access is to allow the applicant to store her bins within her yard in order to ensure that they do not obstruct the surrounding footpaths / pathways. It is not proposed to store bins in Emmet Square and any such claim is without foundation.
- Having resided in the property in question for over a year, it is clear to the applicant that the rear access to be retained is a necessity for modern living rather than a mere convenience. In this respect it is submitted that each individual has a responsibility to recycle, to reduce their carbon footprint, and to commit to environmental change. Storing bins and bicycles within her yard will allow the applicant to recycle her waste and to cycle to work. Furthermore, it is simply not practical to carry bins and bicycles through the existing narrow house and down the steps within the rear yard as part of everyday life.
- Although the complainants claim to speak for all of the residents of Emmet Square, this would seem to be contradicted by the fact that the grounds of appeal have been signed by the appellants only.
- Once complete, the access will be in keeping with its surroundings (albeit the property has been adapted for modern living).
- The rear access is considered to be a minor alteration to the property, although it is essential to the enjoyment of same.



### 6.3. **Planning Authority Response**

- 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.

### 6.4. **Observations**

None.

### 6.5. **Further Responses**

None.

## 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeals are:

- Impact on residential and visual amenity
- Pedestrian / traffic safety considerations
- Procedural issues
- Appropriate assessment

These are assessed as follows:

### 7.2. **Impact on Residential and Visual Amenity:**

7.2.1. The principle concerns raised in the grounds of appeal primarily relate to a desire to preserve the established character and built heritage value of Emmet Square which is of some architectural interest in that it comprises an attractive and well-maintained scheme of traditional two-storey, brickwork, terraced dwelling houses / maisonettes set around a central landscaped square. In this regard I would advise the Board that the individual dwellings within Emmet Square are characterised by traditional brickwork detailing, sliding sash windows, and matching front doorways whilst the general absence of more modern interventions, save for some minor external

additions / changes such as the installation of alarm systems, electrical cabling, and satellite dishes, provides for a notable level of consistency within the wider scheme thereby contributing to its overall pleasant character and sense of place. In support of these concerns, it has been submitted that the access gate proposed for retention will have a detrimental impact on the visual amenity, historical character, and built heritage value of Emmet Square by reference to its siting within a section of previously uninterrupted brickwork walling which serves to bound Emmet Square. Moreover, with a view to avoiding any undesirable precedent for further comparable development, reference has also been made to the decision of the Board issued on 28<sup>th</sup> July, 1987 in respect of ABP Ref. No. PL57/5/73322 wherein permission was refused for an entrance onto Emmet Square to the rear No. 21 Rock Road on the basis that said development would be injurious to residential amenity and incompatible with the residential character of Emmet Square.

- 7.2.2. With regard to the overall principle of the proposed development and its impact (if any) on the residential amenity of neighbouring properties, with particular reference to Emmet Square, in my opinion, it is of relevance in the first instance to note that the rationale for the provision of the gateway in question would seem to derive from the applicant's desire to improve the usage of her rear yard area which backs onto Emmet Square. In this respect it should be noted that given the terraced nature of No. 17 Rock Road, and as the existing dwelling house fronts directly onto the public footpath, there is presently a requirement for items such as refuse bins and bicycles (which are likely to be stored within the rear yard area of the property) to be carried through to the front door of the house. The inconvenience of such an arrangement is perhaps exacerbated by the increased obligation in recent years to ensure the separation of general, recyclable & compositable waste and the associated need for greater bin storage. It has also been submitted that due to the change in levels through the site, it is simply not practical to carry bins and bicycles through the existing narrow dwelling house and down the steps within the rear yard area as part of everyday life. Accordingly, the case has been put forward that the provision of the access to be retained is a necessity for modern living in that it will allow the applicant to securely store her bins on site thereby ensuring that they do not obstruct the surrounding footpaths / pathways whilst providing for a reasonable level of modern convenience.

- 7.2.3. Having considered the foregoing, on balance, I am amenable to the principle of the proposed rear access given the restricted nature of the application site and the difficulties in moving larger items through the existing residence. Furthermore, I would suggest that the provision of such an access would serve to guard against any potential piecemeal storage of items such as refuse bins along the public footpath to the benefit of the wider area.
- 7.2.4. In terms of the overall design and visual appearance of the access gate, I would advise the Board that due to the change in ground levels between the application site and the adjacent footpath within Emmet Square it has been necessary to remove the full height of the wall at the location of the access gate in order to achieve adequate head clearance. In this respect the subject access differs from those other gateways within Emmet Square which were constructed as an integral part of the original housing development and thus benefit from level access onto the footpath thereby allowing for a fully enclosed brickwork surround. Whilst this differentiation in style is perhaps regrettable, it is necessary as a result of the specific site context. Furthermore, it should be noted that the existing gateway remains in an unfinished state with the damaged brickwork supporting the gate surround (in addition to that from which the new step has been formed) requiring repair and / or replacement and repointing. In addition, it is my opinion that the use of a simple timber door serves to heighten the 'unfinished' appearance of the works and that the painting of same in an appropriate colour scheme would be more in keeping with the surrounding pattern of development fronting onto Emmet Square.
- 7.2.5. Whilst I would acknowledge the legitimacy of the appellants' concerns as regards the desirability of preserving the integrity and character of Emmet Square, I would advise the Board that none of the properties concerned have been designated as protected structures in the Development Plan whilst Emmet Square itself is not within any Architectural Conservation Area. Moreover, given the limited scale and nature of the works proposed for retention it is clear that the visual change arising as a result of same will be particularly localised. Notwithstanding that the proposed development will be the only example of such an access from those properties along Rock Road which back onto Emmet Square, and although permission was previously refused on appeal for a seemingly comparable form of development, in the context of the current Development Plan for the area, and noting the changing trends / demands of

modern living, in my opinion, the limited scale of the proposal will not detract to an undue extent from the established character of Emmet Square, subject to the imposition of suitable conditions as regards the repair & repointing etc. of the brickwork and the painting of the access gate / doorway.

### **7.3. Pedestrian / Traffic Safety Considerations:**

- 7.3.1. With regard to the suggestion that the proposed access will pose a risk to pedestrian safety, whilst I would acknowledge that the submitted drawings detail the gateway as opening onto the public footpath, this would not appear to be the case on site. In any event, this matter can be suitably addressed by way of a condition requiring the gateway to open inwards into the courtyard of No. 17 Rock Road.
- 7.3.2. Furthermore, I am unconvinced that the provision of the proposed gateway will result in bins, bicycles & other obstacles being placed on the public footpath along Emmet Square thereby giving rise to the obstruction of same. Indeed, it could equally be stated that the new gateway will serve to discourage items from being placed on the public road / footpath and will function in a manner similar to the front doorways of the existing properties in Emmet Square.

### **7.4. Procedural Issues:**

#### *7.4.1. The Unauthorised Nature of the Works Proposed for Retention:*

With regard to the appellants' concerns pertaining to the unauthorised works undertaken on site, in the first instance, it should be noted that the subject application would seem to have been purposely lodged in order to regularise same. Secondly, the Board has no function in respect of issues pertaining to enforcement (including compliance with any conditions that may be attached to a grant of permission) and the pursuit of such matters is the responsibility of the Planning Authority.

#### *7.4.2. The Adequacy of the Public Notices and the Application Documentation:*

Concerns have been raised as regards the adequacy of the documentation submitted with the planning application, including the public notices, given that it refers to the location of the development as No. 17 Rock Road whereas the appellants are of the opinion that the works in question have been carried out within Emmet Square. In response, the applicant has asserted that the address of the

application site is No. 17 Rock Road, not Emmet Square, and that the access gate proposed for retention has been inserted into a wall which forms the boundary of their property and is not in the ownership of either of the appellants.

Having reviewed the available information, I am satisfied that the location of the development proposed for retention has been correctly referenced in the application documentation. Moreover, it is my opinion that such procedural matters, including the adequacy (or otherwise) of public notices and the subsequent validation (or not) of a planning application, are generally the responsibility of the Planning Authority which in this instance took the view that the submitted documentation satisfied the minimum regulatory requirements. It should also be noted that the Board is not empowered to correct any procedural irregularity which may have arisen during the Planning Authority's assessment of the subject application. In any event, the right of interested third parties to make a submission on the subject application and to subsequently appeal the decision of the Planning Authority would not appear to have been prejudiced in this instance.

#### **7.5. Appropriate Assessment:**

- 7.5.1. Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

#### **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention be granted for the proposed development for the reasons and considerations and subject to the conditions set out below.

#### **9.0 Reasons and Considerations**

- 9.1. Having regard to the residential zoning of the site, and the surrounding pattern of development, it is considered that, subject to compliance with the conditions set out below, the development proposed to be retained would not seriously injure the

residential or visual amenities of property in the vicinity 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, completed and retained 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 and the development shall be retained and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Within three months of the date of this order, the following works shall be completed to the written satisfaction of the Planning Authority:
  - a) All damaged brickwork to either side of the access gate, in addition to that within the step formed onto the public footpath, shall be suitably repaired / replaced and repointed / jointed.
  - b) The timber gate and its supporting structure shall be painted in an appropriate colour scheme.

**Reason:** In the interests of visual and residential amenity.

3. The access gate to be retained shall only open inwards into the courtyard of No. 17 Rock Road and shall not be permitted to open across the public footpath within Emmet Square.

**Reason:** In the interest of traffic and pedestrian safety.

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Robert Speer  
Planning Inspector

30<sup>th</sup> July, 2019