



An
Bord
Pleanála

Inspector's Report

ABP-304738-19

Development	Replacement of garden wall with a new wall & installation of gate.
Location	239, Templeogue Road, Dublin 6w.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD19B/0135
Applicant(s)	Frank and Maura Martin.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to Conditions.
Type of Appeal	First Party vs. Condition only.
Appellant(s)	Frank and Maura Martin.
Observer(s)	Residents of Hyde Park & 15 Others.
Date of Site Inspection	28 th August 2019.
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located on the northern side of the Templeogue Road opposite Our Lady's Secondary School. It is midway between the junctions of Templeogue Road with Springfield Avenue and Fortfield Road. It is c.300m south-west of Bushy Park and c.200m north of the Dodder River which runs to the rear of the school.
- 1.2. Templeogue Road, at this section, is single carriageway with a bus lane on both sides of the road. The houses are a mix of mature semi-detached and detached dwellings set back from the road with well-established gardens and large front driveways.
- 1.3. The appeal site comprises a recently extended two storey two-bay detached dwelling with a pitched roof. The dwellings either side of the subject site are both detached dwellings. The rear boundary wall adjoins a planted grass verge and Hyde Park Road to the north.
- 1.4. Hyde Park road is a narrow cul de sac with a grass verge, footpath and dwellings located along the northern side of the road only. There are no parking controls in place along this cul de sac with the exception of double yellow lines at the entrance to Hyde Park which is located opposite Terenure College.
- 1.5. The appeal site has a stated area of 0.069792Ha.

2.0 Proposed Development

- 2.1. Permission is sought for the replacement of an existing rear garden boundary wall with a new wall 1.9m in height. Finishes proposed include a sand cement render and precast concrete capped concrete block wall.
- 2.2. It is also proposed to install a painted timber 'pass gate' fronting onto Hyde Park at the rear. The gate measures 0.9m in width, is inward opening and adjoins a planted grass verge.
- 2.3. The application was accompanied by a covering letter and engineer report which refers to the structural stability of the existing boundary wall to the rear of the property and safety concerns.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to **grant** permission subject to 6 conditions. Condition 3 states the following;

'The proposed pedestrian gate accessing Hyde Park on the proposed rear garden wall shall be omitted. The wall shall extend along the entire extent of the rear boundary.'

Reason: *In the interest of safeguarding the existing residential and visual amenity of the residents of Hyde Park and in accordance with the proper planning and sustainable development of the area.'*

3.2. Planning Authority Reports

3.2.1. Planner's Report

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Area is zoned RES 'To protect and/or improve residential amenity'. Considers the proposal is acceptable in principle.
- Notes the height of the existing 1.4m high rear garden wall with a 1.9m high wall to the rear which is acceptable.
- Notes the existing residential and visual amenity experience by the residents on Hyde Park, and the potential for increased traffic and/or movements via the proposed pedestrian gate on Hyde Park. Considers due to the heavy traffic experienced on Templeogue Road to the front of the property and the impact the proposed gate would have on the landscape verge on Hyde Park that the gate would have a negative impact on the residential and visual amenity of Hyde Park and considers that the gate should be omitted.

The decision was in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

- **Transport Department** – No objections subject to conditions.

- **Water Services** – No objections subject to conditions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

18 no. third-party submissions, including petitions and accompanying photographs, were submitted from the following parties;

- Residents of Hyde Park c/o Eileen Aasen, 10 Hyde Park
- Anne Gogarty, 2 Hyde Park
- Paddy and Joan Rafferty 5 Hyde Park
- Keith and Charlotte Cairns, 6 Hyde Park
- David Massey, 7 Hyde Park
- Ursula Cahill, 8 Hyde Park
- Eileen and Goran Aasen, 10 Hyde Park
- Barbara and Robin McNaughton, 11 Hyde Park
- Imelda Hurley, 12 Hyde Park
- Sinead and Dermot O’Callaghan, 13 Hyde Park
- Paula Quigley, 14 Hyde Park
- Fiona McNamee, 15 Hyde Park
- Gerard and Michele Hinds, 16 Hyde Park
- Joan and Michael Nolan 1 Fortfield Cottages, Hyde Park
- Sinead Ryan, 2 Fortfield Cottages, Hyde Park
- Celine Fitzpatrick 3 Fortfield Cottages, Hyde Park
- Jane and Gareth Morgan 4, Fortfield Lodge, Hyde Park
- Cllr. Pamela Kearns, South Dublin County Council

Objections to the proposal received by the planning authority have been forwarded to the Board and are on file for its information. The issues raised are similar to those raised in the third-party observations to the appeal, summarised in section 6 below.

4.0 Planning History

Appeal Site

P.A. Reg.Ref. SD18B/0162: Permission **granted** (13/06/2018) for Demolition of existing garage and utility room (36.3sq.m) and replacement with a single storey extension (31.9sq.m); alterations to front facade to remove existing enclosed porch and integrate entrance area with proposed extension with finishes to match existing; reorganisation of internal ground and first floors including alterations to rear door, windows and removal of chimneys serving first floor bedrooms; conversion of attic to study (20.7sq.m) incorporating 3 'Velux' windows in the roof; and all ancillary landscaping and site development works. This permission has been implemented.

Adjoining Sites

No.227, Templeogue Road

P.A.Reg.Ref. SD05B/0136: Permission **granted** (April 2005) for demolition of the existing two storey extension to the side and rebuilding it with a new roof that extends the existing house roof line and pitch and change to the size of the windows. 2) Demolition and rebuilding of an existing single storey extension to the rear. 3) Construction of a new pedestrian gate in rear boundary wall to Hyde Park and associated site works.

Condition No. 2 states;

'The proposed rear garden access doorway into Hyde Park shall be omitted from the proposed development.'

Reason: *In the interests of visual and residential amenity of residents of Hyde Park.'*

No. 243, Templeogue Road

P.A.Reg.Ref.89B/980: Permission **granted** (October 1989) to erect a door/entrance to rear.

No. 245, Templeogue Road

Reference made in submissions to **P.A.Reg.Ref.92A/0129** where permission was **refused** in 1992 for the erection of a gateway to the rear onto Hyde Park. However, I can find no evidence of the application.

5.0 Policy Context

5.1. Development Plan

Under the County Development Plan 2016 – 2022, the site is zoned '**RES: To protect and/or improve residential amenity**'.

Chapter 2 refers to housing and **Chapter 11** refers to Implementation. The Council has also produced guidance in the form of 'House Extension Design Guide'.

Section 2.4.1 of Chapter 2 considers residential extensions.

Policy H18 Objective 1 states: '*To favourably consider proposals to extend existing dwellings subject to the protection of residential and visual amenities and compliance with the standards set out in Chapter 11 Implementation and the guidance set out in the South Dublin County Council House Extension Design Guide, 2010 (or any superseding guidelines).*'

5.2. Natural Heritage Designations

None of relevance.

5.3. EIA Screening

- 5.3.1. Having regard to the nature the proposed development, the nature of the receiving environment, and proximity to 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

A first party appeal against condition no.2 has been lodged by Avison Young on behalf of the applicants. In summary, it states;

- Submit that the decision to omit the proposed gate in this case is unwarranted given the scale of the proposed development and its intended occasional use.
- Contends that the bespoke proposal to improve the residential amenity of the applicant as well as surrounding residents has not been adequately considered by the planning authority.
- The decision to refuse permission for the gate due to a perceived issue relating to traffic has no relation to the nature of the proposed gate.
- The planning authority and the observers provided no evidence as to a reason why the proposed gate should be omitted.
- Contend that the matters raised by the observers as well as the Planning Authority are without grounds and that the proposed gate can improve the area for all involved.
- *Purpose of the gate* - Is primarily for use for bicycles and to allow for items stored in the rear garden to be removed without being brought through the house,
- It is not intended that the gate be used as a tradesmen entrance, and willing to accept a condition requiring that no vehicles relating to No.239 Templeogue Road are parked along Hyde Park.
- *Precedent* – The planning authority and observers refer to the refusal of permission for a similar pedestrian gate with access to/from Hyde Park, but that the current proposal should be assessed on its own merits.
- *Additional Movements / Traffic* – Query why the planning department have assumed that there will be an undue increase in traffic when the Transportation of the planning authority have no such concerns.

- *Parking along Hyde Park* – Third party concerns in relation to parking has not been addressed by the planning authority, and some form of parking control along Hyde Park would be welcomed.
- *Inadequate Road Width along Hyde Park* – Issues raised in third party submissions, note that a grass verge at Hyde Park is in the control of the planning authority. Submit that this area could be used to widen the road and address concerns of residents.
- *Anti-social behaviour* – Third party concerns in relation to anti-social behaviour are not recorded by the Garda Síochána. The applicant has installed CCTV, and that the provision of a pedestrian gate would provide the perception of activity and therefore discourage anti-social behaviour.
- *Grass Verge* – Assert that there would be no damage to the existing grass verge outside the appeal site if a new pedestrian gate is provided, given its occasional use. Applicant willing to accept a condition requiring the payment of a special development contribution relating to the upkeep of the grass verge immediately outside of the rear of No. 239 Templeogue Road.

6.2. Planning Authority Response

The planning authority confirmed its decision and considered that the issues raised by the appellant have been considered in the Planner's Report.

6.3. Observations

15 no. third party observations were submitted from the following parties;

- Residents of Hyde Park c/o Eileen Aasen, 10 Hyde Park
- Paddy and Joan Rafferty 5 Hyde Park
- Keith and Charlotte Cairns, 6 Hyde Park
- David Massey, 7 Hyde Park

- Ursula Cahill, 8 Hyde Park
- Eileen and Goran Aasen, 10 Hyde Park
- Barbara and Robin McNaughton, 11 Hyde Park
- Imelda Hurley, 12 Hyde Park
- Sinead and Dermot O'Callaghan, 13 Hyde Park
- Paula and Des Quigley, 14 Hyde Park
- Fiona and Diarmuid McNamee, 15 Hyde Park
- Gerard and Michele Hinds, 16 Hyde Park
- Sinead Ryan, 2 Fortfield Cottages, Hyde Park
- Celine Fitzpatrick 3 Fortfield Cottages, Hyde Park
- Jane and Gareth Morgan 4, Fortfield Lodge, Hyde Park

To avoid unnecessary repetition, I have grouped similar issues which have been described in detail, and which can be summarised as follows;

- No objective justification for the proposed gate and that it is unnecessary.
- Negative impact on residential amenity and devalues properties.
- Activities arising adjacent to existing pedestrian gates are causing traffic hazards.
- A new gate will result in an intensification of parking.
- Loss of existing planting along and damage to the existing grass verge, which is maintained by the Parks Departments in conjunction with Hyde Park residents and contributes to the visual amenity.
- Letter from the Parks Department June 1993 stated that they were opposed to the opening of accesses in the boundary wall adjoining Hyde Park.
- Commitments given by applicants regarding the use of the rear access and maintenance of the affected area in Hyde Park are unenforceable and therefore meaningless.

- Reference by applicant to precedence at Hyde Park Dalkey for a road of 5.5m having access on both sides of the road bears no resemblance to Hyde Park Terenure.
- A further gate will represent another ad-hoc style opening in a random location and will diminish the uniform nature of the boundary wall at Hyde Park. This will reinforce the view that Hyde Park can be treated as a 'back lane way'.
- Concerns regarding safety/security for residents along Hyde Park, existing gates act as a focal point for antisocial behaviour and littering.
- Precedent for refusals of permission for similar gates onto Hyde Park, any approval for a new pedestrian gate would create an unwelcome precedent.

6.4. Further Responses

None.

7.0 Assessment

7.1. The first party has appealed Condition no. 2 only. Having regard to the facts that residential development is permitted in principle in this location, I am satisfied that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case. Accordingly, I recommend the Board should use its discretionary powers under Section 139 of the Planning and Development Act 2000 (as amended), and issue the Planning Authority directions to retain, remove or amend the Condition no.2.

7.2. *Nature of Development*

7.2.1. From the outset, I note that the proposed pedestrian gate which has been omitted by condition no. 2 of the grant of permission, is very minor in scale. Concerns raised in third party submissions, and in observations to the appeal relate to the nature of the proposed use of the gate, arising primarily from experiences relating to other existing pedestrian gates onto Hyde Park from the rear boundary walls of properties along Templeogue Road.

- 7.2.2. The applicant has clearly stated in the grounds of appeal that the proposed gate is intended for occasional use only, and primarily for use for bicycles, and that it is not intended to be used as a tradesmen entrance or for deliveries. I see no reason not to accept the applicant's justification for the proposed gate as bone fides.
- 7.2.3. It is noted that the recent redevelopment works to the house permitted under P.A.Reg.Ref.SD18B/0162 resulted in the loss of an external access point to the rear garden. The appeal site which is accessed from Templeogue Road adjoins a bus corridor and bus stop and is a heavily trafficked route. I would also note from my site inspection the location of a number of other similar pedestrian gates along the rear boundary walls of properties along Templeogue Road onto Hyde Park. These gates are very discrete and did not appear to be intensively used.
- 7.2.4. I am satisfied, that in the circumstances, the provision of a pedestrian gate along this rear boundary wall is justified in this instance.

7.3. *Traffic, Parking & Safety*

- 7.3.1. There is a concern among residents along Hyde Park Road that it is being used for construction related activities and parking in connection with properties located along Templeogue Road.
- 7.3.2. I also note the proximity of Hyde Park to adjoining schools, and that there is no controlled parking along Hyde Park. I tend to agree however, with the applicant that the issue of parking along Hyde Park, and particularly for construction traffic and parking is an issue for the planning authority to resolve in consultation with the residents of Hyde Park.
- 7.3.3. In relation to traffic safety issues, the narrow width of Hyde Park, and the limited turning area at the end of the cul de sac, are also cited as concerns by the observers. However, the Transportation section of the planning authority had no objection to the proposed development.
- 7.3.4. At the time of my inspection early afternoon midweek, when the nearby schools were open I did not observe any issues with parking. I also note that each house along Hyde Park includes a driveway.
- 7.3.5. I am satisfied therefore, that the proposed pedestrian gate will not give rise to a traffic hazard.

7.4. *Impact on Residential Amenity*

- 7.4.1. The houses along Hyde Park Road include a variety of front boundary treatments which afford some privacy along their southern boundaries. The contention by the planning authority and concerns raised in the third-party submissions and reiterated in the observations to the appeal, that the access gate will impact on residential amenity are in my opinion overstated.
- 7.4.2. The rear boundary wall of the appeal site and proposed pedestrian gate is directly overlooked by house no. 10 Hyde Park, which provides passive surveillance of the existing boundary wall, grass verge, and planted area. I am not convinced that the proposed entrance gate to a private dwelling will give rise to antisocial behaviour, and nor did I see any evidence of litter on the day of inspection.

7.5. *Impact on Visual Amenity*

- 7.5.1. The existing grass verge and planting on the southern side of Hyde Park creates a very attractive feature along the road. I note from the file that this grass verge area while maintained by the residents along Hyde Park, is in the ownership of planning authority, and that the application does not appear to have been referred to the Parks Department of the planning authority for comment. The Parks Department did not comment on the previous application under P.A.Reg.Ref. SD05B/0136 which required the omission of the proposed pedestrian gate to the rear of house no. 227 Templeogue Road.
- 7.5.2. Notwithstanding, the observers to the appeal included a letter from the Parks Department of Dublin City Council dated June 1993, stating that they were opposed to the opening of accesses in the boundary wall which was issued to the residents of Hyde Park at that time. In my opinion the contents of this letter have been given far too much weight in the current appeal, and any objection to the proposed development is not supported by any policies in the current county development plan or by the Parks Department of the planning authority.
- 7.5.3. I noted from my site inspection that the grass verge area onto which the pedestrian gate is proposed, has been recently planted with a variety of species and is well maintained. I do not accept that the provision of a pedestrian gate would result in a significant loss of the existing grass verge and or planting.

7.5.4. While the applicant has indicated that they are willing to accept a condition requiring the payment of a special development contribution relating to the upkeep of the grass verge immediately outside of the rear of the appeal site, I consider this entirely unnecessary.

7.6. *Precedent*

7.6.1. In relation to the matter of precedent, I would note that each planning application is assessed on its own merits, having regard to the relevant planning considerations and site context. I am satisfied that the proposed entrance gate in this instance does not set an undesirable precedent.

7.7. *Summary*

7.7.1. I am satisfied that the proposed pedestrian gate is justified, will not give rise to a traffic hazard or result in a negative impact on the residential or visual amenities of the area.

7.8. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, 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.

8.0 **Recommendation**

8.1. Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 as amended, to REMOVE condition number 2.

9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the South Dublin County Development Plan 2016-2022,
- (b) the minor nature and scale of the development proposed, and
- (c) the pattern of development in the area,

the Board did not consider that particular circumstances arose that would necessitate the omission of the pedestrian gate.

Susan McHugh
Planning Inspectorate

4th September 2019