



An
Bord
Pleanála

Inspector's Report

ABP-309559-21

Development	Retention: Permission of pedestrian gate to rear for access of public laneway.
Location	49, Furry Park Court, Howth Road, Killester, Dublin 5, D05 V9T4
Planning Authority	Dublin City Council North
Planning Authority Reg. Ref.	3842/20
Applicants	Matt and Maureen Hedigan
Type of Application	Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party vs. Grant
Appellants	Henriette Durville, David Hogan, Niamh Kavanagh and Paul Torsney
Observer(s)	None
Date of Site Inspection	26 th July 2021
Inspector	Máire Daly

1.0 Site Location and Description

- 1.1. The subject development to be retained refers to a rear access pedestrian gateway which provides access to a rear laneway from the rear garden of the single storey semidetached dwelling house site at no.49 Furry Park Court. The subject site which has an area of 0.02ha is located in a small housing development off the Howth Road in Killester, north Dublin City.
- 1.2. The laneway onto which the rear entrance opens provides access to Furry Park Road to the east and also serves the garages to the rear of the semi-detached and terraced houses from nos.113 to 127 Furry Park Road. These dwelling houses are located on sites with long back gardens (c. 30 metres) stretching back to the subject laneway. The laneway also serves the rear of the dwelling adjacent to the subject site at no.259A Howth Road through an existing vehicular access gate. An existing pedestrian gate also exists to the rear of no. 48 Furry Park Court which provides access onto the laneway from that property. A concrete block wall of c. 2 metres in height runs along the eastern rear boundary of these dwellings.

2.0 Proposed Development

- 2.1. Permission is sought to retain a timber pedestrian gate of height c. 2 metres and width 1.1 metre, set into the concrete block boundary wall (c. 2 metres in height) to the rear of no.49 Furry Park Court, Killester, Dublin 5.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided to grant permission subject to three conditions all of which were standard in nature.

3.2. Planning Authority Reports

- 3.2.1. **Planning Reports**

- The laneway to the rear of nos. 47, 48 and 49 Furry Park Court, no. 259 A Howth Road and nos. 113 to 127 Furry Park Road is already accessible to ten of the eleven houses which back onto this laneway (no access indicated to the rear of no.47 Furry Park Court).
- The provision of a pedestrian gateway to an existing rear access laneway, which is taken in charge by Dublin City Council would not constitute a significant intensification of use.
- The pedestrian gate proposed for retention should have no adverse impact on the either the privacy of neighbouring properties or the operation of the rear laneway.
- The issue of the right of access to a private laneway is an issue for resolution between the owner of the laneway and the applicant but is not relevant to the planning considerations of this application.

3.2.2. **Other Technical Reports**

- Drainage Division – DCC Report dated 22/12/20 – no objection subject to conditions.
- Transportation Planning Division – no response received.

3.3. **Prescribed Bodies**

- Irish Water – no response received.
- Irish Rail – no response received.

3.4. **Third Party Observations**

3.4.1. Five objections to the proposed development were submitted to the Planning Authority. The issues raised can be summarised as follows:

- The laneway, while managed by DCC is not for the public use and does not provide a public right of way.
- The laneway is solely for the benefit of specified dwelling houses i.e. 113-127 Furry Park Road and 259a Howth Road and this has been the position since 1937 and is reflected in the title to these properties.

- DCC have previously prohibited access to the laneway from other houses apart from those listed above.
- The existing pedestrian access to the rear of no.48 Furry Park Court should also be closed.
- The lane is not suitable for intensification.
- The construction of this pedestrian access has led to increased pedestrian and vehicular traffic into the laneway including the parking of vehicles obstructing the established rights of way.
- Concerns in relation to impacts on existing home insurance policies which cover the lane and possible claims from trespassing on the lane.

4.0 Planning History

Subject site:

- DCC Ref. 1585/92 – 1993 – Permission granted for 50 no. residential units consisting of 34 no. two and three bed flats and maisonettes in five no. three storey blocks and 16 no. three bed houses in 5 no. two storey terraces on site of circa 2.4 acres with access off Howth Road. (Furry Park Court)

Adjoining sites:

- DCC Ref. WEB1119/19 – 2019 - Permission granted at no. 259A Howth Road for conversion of an existing detached garage to rear, together with a single-storey extension to north side of existing dwelling to form ancillary family accommodation.
- DCC Ref. E0788/20 - Enforcement Proceedings currently underway for the rear gate at no.48 Furry Park Court.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Dublin City Development Plan 2016-2022 applies. The site is zoned Z1 – *to protect, provide and improve residential amenities.*

5.1.2. Section 16.2.2.3 of the plan refers to alterations and extensions to houses. It says that the council will only grant permission when it is satisfied that they would not have an adverse impact on the scale and character of the house and would not have an unacceptable impact on the amenities of adjacent residences.

5.2. Natural Heritage Designations

5.2.1. None relevant.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of the appeal from Henrietta Durville and Others can be summarised as follows:

- As part of the original development on site (DCC Ref. 1585/92) the dwellings at nos. 47, 48 and 49 Furry Park Court did not have pedestrian access to the laneway through their rear boundary walls and this was not envisaged as part of the development.
- A condition attached to the original permission prohibited any extensions to the rear of the houses at Furry Park Court without a prior grant of permission.
- Pedestrian gates at both nos. 48 and 49 Furry Park Court have been constructed without planning permission and are not exempt works. No. 48 is currently the subject of enforcement proceedings.
- The subject gate allows for access to the rear laneway which is in charge of DCC but is a private laneway.
- The laneway in question is outlined on the Title Deed map of property owners of 113-127 Furry Park Road and the section of laneway where the gate is located is shown to be in the ownership of the properties at no. 117 and 119 Furry Park Road.
- A right of way exists since 1937 for the owners of 113-117 Furry Park Road as indicated on the Title Deed maps submitted and for the owner of no. 259A Howth Road to use the laneway.

- As a result of the private ownership of this lane, a number of property owners along the laneway have separate public liability insurance in place to insure their interest in this laneway.
- There have been occasions where the foul water drains in the lane have blocked up and residents contacted DCC to seek help with unblocking the drains but were advised by DCC that the laneway is in private ownership and it was up to the residents who own the laneway to maintain the drainage system.
- There was never any intention to allow access from the development at Furry Park Court to this laneway and this is reinforced by the conditions attached to the original permission which state '*walls shall be erected on the external site boundaries before any work commences on site*'. No pedestrian accesses were included in these walls.
- The owners of no.49 Furry Park Court use the laneway for vehicular use and park their car there also, this has intensified the use of the laneway and has had a significant impact on other residents. The laneway was also used to facilitate building works to the rear of the property in 2020. The extension to the rear of no.49 was constructed without planning permission and is at odds with the conditions on the original permission DCC ref. 1585/92.
- No consultation response was received from the Transportation Department of DCC. This should have been necessary.
- The planning authority in their assessment should have established the legal status of title to allow for this development.
- The issues of ownership, rights of way and intensification of use were not fully investigated.

6.2. Applicant Response

6.2.1. The applicant's response can be summarised as follows:

- The applicant has suffered severe visual impairment in recent years (medical letter attached) and had the gate installed to allow him more convenient and faster access to St. Anne's Park where he walks frequently.

- He did not realise he required planning permission for same and on receipt of a warning letter from DCC, he then applied for retention permission.
- Although noted that the original permission for Furry Park Court did not contain access to the laneway, this should not be taken to mean that no access can ever be applied for.
- It is understood that lands that are taken in charge by the council (as is the case for the current laneway) are then conveyed or transferred to the local authority or otherwise deemed to be public.
- It is unclear if the section of laneway apparently within the ownership of no. 119 on the map extract provided by the appellants was in fact ceded at some later date when the laneway was taken in charge.
- The applicant does not use the lane for vehicular access. The applicant's car is parked within the secure, gated access to the front of the house and he has never driven down the laneway.
- Any issues with nuisance parking in the laneway are extraneous to this planning application and not relevant.
- If the Local Authority were of the opinion that the lands in question were in private ownership then one would expect that the applicant would be requested to provide documentary evidence of the permission of the landowner. This was not requested.
- The planner's report gave sufficient consideration of the matter and stated that the development would not constitute a significant intensification of use and would actually serve to improve pedestrian linkages and access to local amenities.

6.3. Planning Authority Response

- None received.

6.4. Observations

- None received.

7.0 Assessment

7.1. The main issues that arise for consideration in relation to this appeal can be addressed under the following headings:

- Principle of Development
- Impact on Access and Parking
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The applicant seeks to retain a pedestrian entrance on the rear boundary wall of their property at no.49 Furry Park Court. The entrance is comprised of a single gateway onto the laneway to the rear which in turn provides access onto Furry Park Road to the south. The site is zoned for residential development and there is no objection to the principle of development. The gate/ entrance is only suitable for pedestrian traffic and is not for motorised vehicle use.

7.3. Impact on Access and Parking

7.3.1. I note that the main issue raised in the third-party appeal received relates to the ownership and right to access the laneway to the rear (east) of the subject site. The submitted third party appeal states that the property rights of those houses located along nos. 113 to 127 Furry Park Road extend to include sections of the existing private laneway to their rear (west) and that this is evidenced in titles of deeds for each property. The applicant has submitted a response to third party concerns on this matter. I note that no correspondence from the Roads Section of DCC has been received on the file, however it has been stated by both the appellants and applicant that the laneway has been taken in charge by the Council. The area planner also makes reference to this in their report. The appellants state that a right of way exists for the owners of 113-127 Furry Park Road and the proprietor of no.259A Howth Road to use the laneway but that this right of way is not enjoyed by the property owners of nos. 47, 48 and 49 Furry Park Court. I would point out that issues concerning ownership of or title to specific lands and / or acts of trespass are not, planning issues and are therefore out with the remit of this appeal. If planning permission is granted and if the appellants 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. This section of the Act states that a person shall not be entitled solely by reason of a permission under this section to carry out any development. It should also be noted that decisions on planning applications and appeals do not form binding precedents in a way that court judgments can. A grant or refusal in this case would not require the board or the council to make a similar decision in any future case if they had reasons to come to a different conclusion.

- 7.3.2. The gate for which retention is sought is located in the rear boundary wall of No. 49 Furry Park Court and provides access to a laneway to the rear which is taken in charge by DCC. The laneway ranges in width from c.2.5 m to 3 m wide and provides access to the garages of the properties from nos. 113 to 127 Furry Park Road. Some garages are located at the end of each of the gardens of these respective properties.
- 7.3.3. The laneway also provides access to a vehicular entrance at no. 259A Howth Road and pedestrian entrances at nos. 48 and 49 Furry Park Court. Therefore, out of the 12 no. properties that back onto the laneway, 11 no. have rear accesses of some form (garage, vehicular access or pedestrian) onto the laneway. No. 47 Furry Park Road would appear to be the only house that does not have some form of access onto the laneway. The appellants argue that there was never any intention to allow access from the development at Furry Park Court to this laneway and this is reinforced by the conditions attached to the original permission which stated, '*walls shall be erected on the external site boundaries before any work commences on site*' (DCC Ref. 1585/92). The appellants highlight that no pedestrian accesses were included in this wall.
- 7.3.4. While I acknowledge that the original permission for the development of Furry Park Court did not include for access onto the rear laneway from no.49, that is not to say that permission for same could not be applied for down the line, as has occurred in the current case. The applicant has given a clear and simple reason as to why the access gate is of benefit to them. It allows him to access St. Anne's Park in a more convenient manner, which requires a shorter walking distance (6 min as opposed to 13 min) and given that same applicant has suffered severe visual impairment in recent years, the reduction in travel distance involved and the fact that he no longer must walk along the heavily trafficked Howth Road to get to the park would alleviate significant risk and challenge. The facilitation of such sustainable travel patterns and

pedestrian permeability would in my opinion be a public good that is in keeping with the proper planning and sustainable development of the area.

- 7.3.5. The appellants contend that on several occasions the proprietor of No.49 has parked his vehicle on the rear laneway when accessing the house from the rear gateway. This vehicle has in turn blocked the laneway to the rear of the site and impeded access for residents who have legal title over the laneway. The applicant has denied same stating that he has never driven his car down same laneway and parks his vehicle to the front of his property given that secure parking is provided here by virtue of the gated development that is Furry Park Court. On site visit I noted that a car was parked to the rear of no. 115 Furry Park Road but same vehicle had moved by the time I had finished my inspection. This would lead me to believe that the laneway is often frequented by cars and I noted that there is no restriction on the lane to stop any cars accessing it from the east off Furry Park Road. There is no reason to conclude that the residents that would use the subject gate would be any more or less likely to obstruct the lane than other persons who use the lane. Therefore in my opinion the assertions regarding traffic hazard, obstruction or intensification of the laneway in the appeals would not justify refusing permission for the proposed development.
- 7.3.6. The proposed development would not threaten the privacy, security or amenity of any of the other houses in the vicinity. The assertions to the contrary in the submitted appeals are not accepted. The proposed development would be in keeping with the Z1 residential zoning that applies to the site.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the minor nature and scale of the development proposed for retention, its location within an existing built up and serviced urban area and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, either individually or in combination with other plans or projects, on a European site.

8.0 Recommendation

- 8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

The development proposed for retention would be in keeping with the zoning objective Z1 'to protect, provide and improve residential amenities' that applies to the area under the Dublin City Development Plan 2016-2022. It would contribute to the pedestrian permeability of the area and support travel by sustainable modes. It is considered that, subject to compliance with the condition set out below, the development proposed for retention would not seriously injure the amenities of adjoining or adjacent dwellings or the amenities of the area, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be 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.

Reason: In the interest of clarity.

2. The gate is for pedestrian use only and shall be used solely to serve the dwelling at number 49 Furry Park Court.

Reason: In the interests of residential amenity

3. 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.

Máire Daly
Planning Inspector

03rd August 2021