



An  
Bord  
Pleanála

## Inspector's Report ABP-309562-21

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<b>Development</b>	Install pedestrian gate to lane to rear of house.
<b>Location</b>	12 Daneswell Place, Dublin 9
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3847/20
<b>Applicants</b>	Linda and Paul Brennan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Parties vs. Grant
<b>Appellants</b>	<ol style="list-style-type: none"><li>1. Patricia McKenna and Martin Gillen</li><li>2. Iona and District Residents' Association</li></ol>
<b>Observers</b>	<ol style="list-style-type: none"><li>1. Fionn and Sonya MacCumhall</li><li>2. Bernadette Ryan</li></ol>
<b>Date of Site Inspection</b>	8 <sup>th</sup> May 2021
<b>Inspector</b>	Stephen J. O'Sullivan

## **1.0 Site Location and Description**

1.1. The site is in a suburban part of Dublin c 2km north of the city centre. It has a stated area of 200m<sup>2</sup>. It consists of the curtilage of a terraced house on a recently built street called Daneswell Place. That street is currently a cul-de-sac with a single access point from Botanic Road. The land on the opposite side of Daneswell Place from the site is enclosed by hoardings. The back of the site is bounded by part of a concrete block wall. There is a lane on the other side of that wall that runs behind the curtilages of houses on Iona Road. That lane has two openings onto Iona Road. There is a gate across the western one which was open at the time of inspection. There are sharp bends on the lane. There are numerous gates along it from the curtilages of the houses along Iona Road including pedestrian gates and vehicular gates from garages. There are no gates from any of the newer houses on Daneswell Place whose curtilages adjoin the lane.

## **2.0 Proposed Development**

2.1. It is proposed to provide a gate from the back garden on the site to the lane to the south. The gate would be 1.1m wide and 2.6m high.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 6 conditions, none of which significantly modified the proposed development.

Condition no. 6 said that the proposed development should not interfere with the structural integrity of the existing domestic boundaries and shall be certified by a competent structural engineering firm.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The proposal is a minor alternation to an existing boundary wall. The proposal will allow ease of access from the site to Iona Road for pedestrians. The submitted

objections have been taken into account. The lane is wide at c7m with good sightlines. No parking or pedestrian activity occurred there at the time on inspection. There is no reasonable planning concern that would warrant a refusal of permission for a minor development such as this one. The wall to be breached has no architectural or historic merit and does not warrant conservation in its entirety. The structural integrity of the wall is not a planning matter. Non-conformance with parking bye laws fall outside the remit of a planning application. A grant of permission was recommended

### 3.3. Third Party Observations

Several submissions were made that objected to the proposed development on grounds similar to those made in the subsequent appeals and observations.

## 4.0 Planning History

Reg. Ref. 0295/20 – the council made a declaration on 12<sup>th</sup> October 2020 under section 5 of the planning act that the provision of a pedestrian gate from the site onto the lane to the south would not constitute exempted development because it would be an access onto a public road that was more than 4m wide.

PL29N. 246124, Reg. Ref. 3666/15 – the board granted permission on 8th August 2016 for a development of 131 homes on a site that includes the current appeal site.

Condition 7c) of that permission stated –

*The boundary work shall not interfere with the structural integrity of the existing domestic boundaries and shall be certified by a competent structural engineering firm. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.*

**Reason:** *In the interest of the residential amenities of the area*

Condition 23 required the proposed area of public open space to be provided before any of the authorised dwellings were occupied.

The council refused to extend the period of this permission because it did not consider that authorised development was substantially complete.

Reg. Ref. **3444/14** – The council refused permission in November 2014 for 147 homes on a site including the current appeal site for reasons based on the proximity to the site boundaries resulting in insufficient amenity space and poor aspect; that the height of 5 and 6 stories would contravene the development plan; and that the design would be out of character with the area.

## **5.0 Policy Context**

### **5.1. Development Plan**

The Dublin City Development Plan 2016-2022 applies. The site is zoned Z1 – to protect, provide and improve residential amenities. Section 16.10.2 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**

None.

## **6.0 The Appeals**

6.1. The grounds of the appeal from Patricia McKenna and Martin Gillen can be summarised as follows-

- The proposed development is not a standalone development and is integrated with the overall development at Daneswell. It should have been presented as a modification of the original permission Reg. Ref. 3666/15, PL29N. 246124 which is due to expire on 21<sup>st</sup> September 2021. Most of the authorised development has not been completed and the council refused an extension of duration of the permission.

- The house at 12 Daneswell Place is therefore in breach of the conditions of the said permission including condition no. 23 regarding the provision of open space before any dwellings were made available for occupation.
- The council was wrong to find that the proposal is minor and that there is no reasonable planning concern that would warrant a refusal of permission. A previous application under Reg. Ref. No. 3444/14 that would have provided access here was not granted after concerns were raised by residents and this proposal was subsequently abandoned. The council's decision on the current application did not consider this history and the previous concerns remain relevant. The council failed to consider the modification of the parent permission and the precedent for other houses to seek access to the lane. The council did not properly consider the planning implications and consequences or the problems that may arise for the residents of 1 to 25 Iona road who have garages and accesses to the lane and may be at risk of security, parking, deliveries and safety. The 16 properties on Iona Road do not have access through a boundary wall because no such wall exists. The existing properties have garages to the rear and are not comparable to the proposed pedestrian access and that laneway has provided such access from the Edwardian era.
- The applicant did not propose to provide access to the lane under 3666/15 and the residents were not on notice that such modifications would be proposed. The planning system requires certainty and such retrospective changes are unacceptable.
- The council did not consider that the proposed development is a material contravention of the zoning of the area and a threat to the amenities of residents. Neither did it consider whether the proposed development would contravene condition no. 7 of the parent permission which governs the boundary treatment along the lane.
- The council did not carry out a proper assessment and erred in considering the proposed development to be minor and did not properly consider the matters raised in the 3<sup>rd</sup> party submissions and the issue of retrospective changes. The planner's inspection took place during lockdown and its

observations regarding the absence of parking or pedestrian movement along the lane are not typical.

- The objectors live at No11 Iona Road which is overlooked by the houses at Daneswell Place and they are concerned that those houses would have access to the lane. The council planner's conclusion that increased pedestrian activity will improve security is totally unsustainable. The development is contrary to the zoning to protect and preserve residential amenities.
- The appellants reject the council planner's conclusion that the structural integrity of the wall is not a planning matter. It is illogical and does not address condition no 7 of the parent permission.
- The council should not have granted permission without a structural assessment of the boundary wall. The wall appears to be structurally unsound, as shown by the photographs submitted with the appellants' submission to the planning authority. The proposed works involve digging down four steps behind the wall and will impact on its integrity and will put the entire wall at risk and threaten a nearby telephone pole that may be providing a service. There was no analysis on the soil structure on the applicants' side. The council has a duty to ensure that the proposed development does not pose a risk to residents or the wider community or residents' property.
- The council erred in law and fact in grant permission for the proposed pedestrian access.

6.2. The grounds of the appeal for the Iona and District Residents' Association can be summarised as follows-

- The lane is a long standing access route for residents in certain houses on Iona and Botanic Road providing essential rear access for parking, as only 2 of the 13 houses have dedicated parking facilities, and bin storage, as only 3 of the 13 houses have bin storage. The lane was developed with the sole purpose of being used by the residents of 1-25 Iona Road and 23-31 Botanic Road. The lane was originally private with the council taking part of it in charge at some point. It was designed solely for use by residents. This is evident from the narrow width at its eastern end which is suitable for only one

vehicle. Altering the lane from its intended purpose would need careful consideration. A grant of permission in this case would set a precedent for the other adjoining houses at Daneswell Place to gain access.

- The lane is not suitable for such increased activity by pedestrians, cyclists or vehicles. It has two bends which inhibit visibility creating a dangerous situation for pedestrians. The narrow width has resulted in damage to the garages along it. The proposed provision of a pedestrian access may result in more vehicular traffic on the lane and parking there. This would lead to an obstruction of the lane. Even without extra vehicles the insertion of a pedestrian would restrict the ability of a driver to safely navigate the lane if a pedestrian or cyclist was emerging.
- The appellants are concerned about the stability of the boundary wall. No assessment was included with the application. The precedence set by a grant of permission and the higher ground on the side of Daneswell Place exacerbate the risk to the wall. It was a condition of the parent permission that the boundary wall would not be interfered with. The current proposal contravenes that condition.
- The appellants welcome the integration of residents of Daneswell Place into the community, but their development was granted as a gated community. The proposed access would be private and would not facilitate access between that development and the wider area.

### 6.3. Applicant Response

The applicant's response can be summarised as follows-

- The purpose of the gate is for pedestrian access and not to allow cars to park or other traffic. There are already 2 parking spaces at the front of 12 Daneswell Place. The rear gate would allow better access to the applicants' childrens' school without having to go around the major and hazardous junction at Hart's Corner. Pedestrian permeability is to be welcomed and improves security and surveillance on the lane. As such it is in line with MT11 of the development plan and DMURS.

- The laneway is public and under the council's control. There is no reason why the applicants should not have the same enjoyment of the lane as other residents whose property adjoins the lane. The wall to be breached is wholly in the same ownership as 12 Daneswell Place, and so it not properly described as a boundary wall. A solicitor's letter to that effect is submitted. The lane is relatively wide at 7-8m and there is good visibility at the location of the proposed gate. The proposed access will not affect safety. There are several accesses where the lane is narrower that do not give rise to hazards. If the lane were less than 4m wide the proposed access would be exempted development under article 9(1)(a)(ii) of the planning regulations.
- The applicants are only seeking access from their own property. Any applications for access from other properties would have to be considered on their own merits.
- The gate would not affect drivers capacity to navigate the lane. One would like to think that drivers on the lane would be careful and that pedestrians would have priority over cars as children currently walk, cycle and play there.
- The wall has concrete blocks over a concrete mass base and is generally in good condition. It has no architectural merit. Any works to it will be properly carried out.
- The applicant had no act or part in the original planning application for Daneswell Place under 3666/15, or the previous one under 3444/14. This is a stand alone application to works to a single private dwelling.

#### 6.4. **Planning Authority Response**

None received.

#### 6.5. **Observations**

The observation from Bernadette Ryan states that the lane has long provided access to her houses at Nos 1 and 3 Iona Road, that latter of which operates as a Bed and Breakfast. Guest with rented cars frequently need a guaranteed exit at 5am for early



flights. There is no guarantee that residents from Daneswell Place would not park cars that block the lane or use it for deliveries.

The observation from Fionn and Sonya MacCumhaill objected to the proposed development on various grounds including those which had been raised in the appeals. The additional grounds can be summarised as follows-

- It is not clear that the legal title to the laneway has been transferred to the council. It has only been partially taken in charge. The applicant may not have adequate legal interest to make the application. The council does not maintain the lane. Neither is it clear that the applicants are the registered owners of 12 Daneswell Place. The residents' right to take the lane back from the council should not be extinguished.
- Condition no. 6 of the council's decision requires an after the fact stipulation regarding the structural integrity of the wall which would not prevent damage. The ownership of the wall needs to be clarified and the relevant consents acquired.
- If the gate at the south-western entrance is closed then the lane becomes a cul-de-sac making it dangerous for pedestrians and cyclists if cars have to reverse out.

## **7.0 Assessment**

7.1. This report deals with an application for permission and appeals under Part 3 of the Planning and Development Act 2000, as amended. It addresses whether the proposed development would be in keeping with the proper planning and sustainable development of the area and whether the board should grant permission for it. There are separate procedures for enforcement set out in Part 8 of the act. They provide access to the courts for persons affected by unauthorised development. They do not involve the board. It is not the purpose of the procedures set out in Part 3 of the Act to replicate or circumvent the enforcement procedures and the role of the courts set out in Part 8. The proposed development is therefore considered on its own merits. This report does not attempt to ascertain or resolve the status of the works carried out under PL29N. 246124. Reg. Ref. 3666/15 and notwithstanding the assertions in the appeal from Ms McKenna and Mr Gillen, I would advise the board

that it would be beyond their power to do so while carrying out its duty determine the applicant and appeal before it. Attributions of motives regarding differences between the developments proposed under 3666/15 and 3444/14 would not support any particular decision on the current case.

- 7.2. The applicants have asserted that they have the necessary legal interest in land to carry out the development as they own the site including the relevant part of the boundary wall and the lane is a public road. The council agreed with their assertion, which is relevant inasmuch as the council is also the roads authority for the area. The assertion is consistent with what was observed on the site and on the lane at the time of inspection. Therefore, while the board cannot conclusively determine any dispute with regard to legal interest in land in the course of a planning appeal, there are insufficient grounds to conclude that application and appeals should not be given further consideration due to any lack of legal interest in land by the applicants notwithstanding the queries raised in the appeals and observations.
- 7.3. Decisions on planning applications and appeals do not form binding precedents in a way in 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. Nevertheless, in this case the site is part of a row of recently built houses several of whom also have gardens that abut the lane. It would therefore be reasonable and prudent to be mindful of the likelihood of similar proposals being made in the near future and to consider the possibility of a cumulative impact. The applicants have given a clear and simple reason as to why the proposed gate would be of benefit to them. It would allow their children to get to school more safely and more conveniently on foot or on their bikes while avoiding the complex and heavily trafficked junction at Hart's Corner. The facilitation of such sustainable travel patterns and pedestrian permeability would be a public good that was in keeping with the proper planning and sustainable development of the area. Similar considerations would apply to all the other houses at Daneswell Place, so a consideration of the possible cumulative impact of the proposed development with similar proposals in the future would strongly support a grant of permission in this case.
- 7.4. The wall that would be breached by the proposed development is a concrete block wall on a mass concrete base. I note condition 7c) of the grant of permission made

by the board in PL29N. 246124, Reg. Ref. 3666/15 and condition 6 of the council's decision in this case. However I would advise the board that there is no basis to conclude in this case that the wall at the back of the appeal site is unusually vulnerable to collapse, or that such collapse would have unusually deleterious consequences in this location. There is a residual level of risk that arises from any activity in any location, but the assertions in the appeals and observations (including those made to the planning authority and the accompanying photographs) about the structural integrity of the wall would not justify refusing permission in this case. I would tend to agree with the comments in one of the observations that condition no.6 is superfluous and would have no practical effect. It is not recommended that a similar condition be imposed on any grant of permission the board might make.

7.5. The sharp bends and varying width of the lane give clear signals to drivers that they need to severely restrict their speeds and maintain awareness while travelling along the lane as it is a space shared with vulnerable road users. It is these constraints on vehicles that keep the lane safe. In this context the proposed pedestrian gate would not give rise to any hazard whatsoever. There is no reason to conclude that the residents that would use this gate would be any more or less likely to obstruct the lane than other persons who use the lane. The assertions regarding traffic hazard or obstruction in the appeals and observations would not justify refusing permission for the proposed development.

7.6. 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 and observations are not accepted. The proposed development would be in keeping with the Z1 residential zoning that applies to the 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 proposed development would be in keeping with the zoning objective Z1 'to protect, preserve and improve residential amenity' 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. The proposed development would be acceptable with regard to the safety and convenience of road users and would not injure the character of the area or the amenities of property in the vicinity. It would therefore be in keeping with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The proposed development shall be carried out in accordance with the plans and particulars submitted with the application.

**Reason:** In the interests of clarity

2. Drainage arrangements, including the 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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Stephen J. O'Sullivan  
Planning Inspector

9<sup>th</sup> May 2021