



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309639-21

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<b>Development</b>	Retention of existing lockable galvanised steel gates to the lane entrance for security and access purposes.
<b>Location</b>	Rear access lane off Churchgate Avenue behind 2, 2A, 4 & 4A Vernon Avenue, Clontarf, Dublin 3
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	3990/20
<b>Applicant(s)</b>	Brian Connolly
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellant(s)</b>	Brian Hogan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	26 <sup>th</sup> May 2021
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

- 1.1. The site is within the immediate environs of the commercial core of Clontarf, approximately 15 metres west of Vernon Avenue and 40 metres north of Clontarf Road. It is accessed off Churchgate Avenue, which is a narrow lane serving St. John The Baptist Church and a terrace along its northern side. The lane also provides rear access to several properties along Clontarf Road to the south.
- 1.2. The site comprises an existing service yard / lane to the rear of 4 no. commercial properties fronting onto Vernon Avenue. It also provides access to the rear garden of no. 191 Clontarf Road to the west via a gate in the southwest corner of the site. The service yard / lane is an irregular-shaped space with a stated area of 77.5m<sup>2</sup>. It is surfaced in concrete and was mainly being used for refuse storage at the time of inspection.
- 1.3. Galvanised steel gates of c.2.7m in height and 3.0m in width have been erected at the entrance to the lane / yard. The gates open into the yard and were not locked at the time of inspection (as per the request of the Inspector). The gates are fixed to the ground and a galvanised steel frame which surrounds the sides and top of the gates. They consist of vertical steel bars which are covered by metal sheeting on the public (north) side.

## 2.0 Proposed Development

It is proposed to retain the existing lockable galvanised steel gates to the lane entrance. It is stated that the gates are being retained for security and access purposes.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 23<sup>rd</sup> February 2021, Dublin City Council (DCC) issued notification of the decision to grant retention permission. Condition No.'s 4 & 5 state as follows:

*4. The subject planning permission does not authorise or approve any security lighting or Closed Circuit Television (CCTV) cameras in the rear laneway or other developments not detailed within the statutory notices.*

*Reason: In the interests of the clarification of the scope of this permission.*

*5. In all other respects the development hereby approved shall comply with the planning permission and conditions approved under permission plan ref no. 3491/17, ABP ref no. 300162-17.*

*Reason: To provide an acceptable standard of development*

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

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

The planner's report can be summarised as follows:

- Under the previous application (P.A. Ref. 3491/17), DCC clarified that the gates would not be attached to the neighbouring property (No. 191 Clontarf Rd) and Condition no. 2 of its decision addressed the matter.
- The DCC decision under Ref 3491/17 was appealed to the Board (ABP Ref. 300162-17) and was subsequently granted permission.
- Apart from concerns about the expiration of the previous permission and additional works within the rear laneway, the issues raised by the objectors have already been addressed by DCC and the Board.
- The previous decisions had an inherent recognition that the service area would be used for purposes ancillary to the commercial premises, including restaurant use.
- The proposal complies with the conditions of the original permission and it would be untenable to refuse permission on the basis that the previous permission has expired by a number of months.
- The issues of additional CCTV and security lighting shall be addressed by condition.
- It is recommended to grant retention permission subject to the conditions outlined in the DCC decision.

### 3.2.2. Other Technical Reports

- Drainage Division: No objections subject to conditions.

### 3.3. Prescribed Bodies

None.

### 3.4. Third Party Observations

A number of observations were received, the details of which are covered in the grounds of appeal.

## 4.0 Planning History

**ABP Ref. No. PL300162.17:** On 5<sup>th</sup> March 2018, the Board upheld the decision of DCC to grant retention permission for the erection of two lockable galvanised steel gates. Notable conditions included the following:

*2. Within eight weeks of any final grant of planning permission, the developer shall submit details for the written agreement of the planning authority showing the gate support not physically bolted or fixed into number 191 Clontarf Road or written consent from the third party owner allowing fixings into their site. The gate support may be provided by supplementary bracing support as required behind the gateway.*

**Reason:** *In the interests of orderly development.*

*3. This planning permission is granted for a limited period of two years from the date of this grant at which date the permission shall cease and the structure(s) shall be removed and the land returned to its former state unless a further permission has been granted before the expiry of that date.*

**Reason:** *In the interests of the proper planning and sustainable development of the area, and so that the effect of the development may be reviewed having regard to the circumstances then prevailing.*

**E0403/17** – Relates to an enforcement file referenced under the above appeal (300162-17) which was apparently opened in respect of the gates erected on the laneway. No details are included on file.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The operative Development Plan for the area is the Dublin City Development Plan 2016-2022. The site is zoned as 'Z2', the objective for which is '*To protect and/or improve the amenities of residential conservation areas*'. The adjoining properties to the east are zoned Z3 – '*To provide for and improve neighbourhood amenities*'. The site is also located within a Zone of Archaeological Interest (019-034).

5.1.2 Section 16.3 'Landscaping' is part of the Development Standards section of the Plan. It states that gates used to define spaces and their usage all impact on the visual character of the development. These should be selected so as to be an integrated part of overall design.

### 5.2. Natural Heritage Designations

The nearest Natura 2000 site is the South Dublin Bay and River Tolka SPA, which is approximately 130 metres south of the site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The decision of DCC to grant permission has been appealed by Mr Brian Hogan, 190 Clontarf Road. The grounds of appeal can be summarised as follows:

- The applicant did not apply for or obtain permission prior to the expiration of the 2-year period permitted under condition no. 3 of ABP Ref. No. 300162-17. Therefore, the gates should have been removed and the applicant's use of the COVID-19 pandemic as an excuse for non-compliance with this condition is irrelevant.
- Condition no. 3 offered the applicant the opportunity to re-apply for permission within the 2-year period. There was no opportunity to apply for retention permission for a second time.

- The appellant contends that condition no. 3 was essentially a decision to refuse and that refusal should now be the default position after the expiration of the 2-year period.
- The gates installed are different to those outlined in the application.
- The installation of the gates has facilitated further development which is not included in the application, including lighting, cameras, storage and other equipment.
- The development has had a detrimental effect, especially on the residential amenity of local premises, and the gates and all associated equipment should now be removed.
- The gates lock an area zoned Z2 into an area zoned Z3 and is, in effect, rezoning and re-using the laneway. This also facilitates the effective expansion of a restaurant on Vernon Avenue onto the service lane area and results in disturbance including noise, fumes and smells, which is contrary to the Z2 zoning of the Development Plan.
- The gates have not been effective in terms of waste management and security during the 'trial' period afforded by the previous permission.
- Damage caused by the previous fixing to the adjoining wall has not been damaged. Additional fixings have since caused further damage and have been carried out without the adjoining landowner's consent.
- The inward opening gates pose a serious safety concerns as they conflict with emergency escape requirements and facilitate further obstructions within the laneway. Access has also been blocked to the rear of No. 191 Clontarf Road.

## 6.2. Planning Authority Response

None.

## 6.3. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows:

- The wide range of issues raised are immaterial and there are no credible reasons why the gates are not in accordance with proper planning and development.
- Many issues (e.g. Fire Egress) have no basis in fact.
- Letters of support are included from 2 of the adjoining businesses.
- The gates provide security, assist in preventing illegal dumping and maintain all necessary access to the lane.

## 7.0 **Assessment**

### 7.1. **Introduction**

7.1.1 Having considered the drawings and documentation on file, including all submissions received, and having inspected the site, I consider that the issues relating to this appeal are as follows:

- Planning history
- Nature and extent of the development
- Zoning and Policy
- Impacts on surrounding properties
- Visual Amenity
- Access and Egress

### 7.2 **Planning History**

7.2.1 I acknowledge that the previous permission was limited to a 2-year period as per condition no. 3. However, I do not consider that this precludes the applicant from making a subsequent application for retention. The expiration of the 2-year period simply rendered the development unauthorised again. At that stage there was no impediment to the applicant seeking retention permission again and, accordingly, the current appeal should be considered on its merits.

### **7.3 Nature and extent of the development**

- 7.3.1 The appeal raises a wide range of issues in relation to alleged works within the service yard. However, any additional works, including the erection of lighting and cameras etc., are not the subject of this appeal and any concerns relating to unauthorised works are a matter for the consideration of DCC under its enforcement powers.
- 7.3.2 Similarly, concerns have been raised about the use of the service lane and the associated commercial premises, particularly the restaurant. Again, I do not consider that these matters are relevant to the current appeal, which relates to the retention of the gates only.
- 7.3.3 With regard to the gates, I acknowledge that those erected on site differ to the drawings submitted. This is apparently a result of the addition of metal sheeting on the public (north) side of the gates. I consider that the appeal should be considered on the basis of the drawings submitted (i.e. without the sheeting) and, in the event of a grant of permission, an appropriate condition should clarify this issue.

### **7.4 Zoning and policy**

- 7.4.1 The appeal raises concerns that the gates facilitate a re-zoning of the service lane and an expansion of restaurant use thereon. However, consistent with the approach set out above, I consider that the development is limited to the gates only and I do not consider that this constitutes a change in zoning or use. I note from imagery available on 'Google Streetview' that the lane has been in use for refuse storage as far back as 2014 and 2009, prior to the erection of the gates. Therefore, notwithstanding the 'Z2' zoning objective to improve/protect the amenities of residential areas, I do not consider that the gates alter the established use and character of the site or the surrounding mixed-use neighbourhood.
- 7.4.2 Otherwise, the Development Plan contains limited guidance or policy on developments of this nature, and I would have no objection to the principle of the development subject to further assessment of impacts on visual amenity and surrounding properties.



## **7.5. Impacts on surrounding properties**

7.5.1 The appeal raises concerns about the adverse impacts of the development on surrounding properties. However, again I consider that the issues of concern relate to the operation of the restaurant and the management of the service lane area. I do not consider that the retention of the gates would contribute to any adverse impacts on the amenities of surrounding properties. On the contrary, I would be of the opinion that the retention of this security measure would help to contain and manage the use of the area.

7.5.2 The appellant has also raised concerns about damage of the adjoining property (No. 191) and that fixings have been carried out without the landowner's consent. On inspection of site I noted that the gates and the support frame are mainly fixed to the ground, but that some additional timber fixings have been added at the interface with No. 191. Ultimately, the issue of any damage to the property is a civil matter between the relevant parties and section 34(13) of the Planning and Development Act, 2000, as amended, provides that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. And while the Inspector in the previous case (ABP Ref. 300162-17) did not consider it necessary to attach a condition preventing encroachment on the adjoining property, I note that the Board subsequently did (condition No.2). In the interest of consistency, a similar condition should apply in the event of a grant of permission in this case.

## **7.6. Visual Amenity**

7.6.1 The southern side of Churchgate Avenue is largely characterised by a line of several storage/garage doors of a similar scale to the subject gates. The gates proposed for retention are utilitarian in design, accentuated by the raw galvanised steel finish, but visually acceptable in their context. They are slightly recessed from the building line to Churchgate Avenue, rendering them unobtrusive from the majority of the street and from Vernon Avenue. The gates provide some screening and containment for the refuse storage area associated with the commercial premises, which is a positive impact for the public realm on Churchgate Avenue.

## **7.7. Access and Egress**

7.7.1 The appellant's concern that the gates block access to No.191 Clontarf Road is a civil matter between the relevant parties. In this regard section 34(13) of the

Planning and Development Act, 2000, as amended, provides that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

7.7.2 While the appellant raises concern that the gates impact on emergency escape requirements, the information submitted as part of the application indicates that the lane has no fire escape function as relevant properties use Vernon Avenue as their means of escape. Ultimately, the issue of emergency escape is evaluated under a separate legal code and thus need not concern the Board for the purposes of this appeal.

## 7.8 **Conclusion**

Having regard to the above, I have no objection to the retention of the gates subject to conditions. While the previous permission was granted for a temporary 2-year period, I do not consider that such a restriction is still warranted in light of the foregoing.

## 8.0 **Appropriate Assessment**

Having regard to the minor nature of the proposed development, and to the location of the site in a serviced urban area and the separation distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

I recommend that retention permission should be **granted**, subject to conditions, for the reasons and considerations as set out below.

## 10.0 **Reasons and Considerations**

Having regard to the pattern and character of development in the area, the design and scale of the development to be retained, and the provisions of the Dublin City Council Development Plan 2016-2022, it is considered that, subject to compliance

with the conditions set out below, the development to be retained would not seriously injure the visual amenities of the area or the residential amenity of surrounding properties, and would not endanger public safety by reason of a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 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. 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 in accordance with the agreed particulars.

**Reason:** In the interest of clarity

2. Within eight weeks of any final grant of planning permission, the developer shall submit details for the written agreement of the planning authority showing:

(a) The gate support not physically bolted or fixed into number 191 Clontarf Road or written consent from the third-party owner allowing fixings into their site. The gate support may be provided by supplementary bracing support as required behind the gateway.

(b) The metal sheeting on the outer (north) side of the gates removed to correspond with the drawings submitted with the application.

**Reason:** In the interests of orderly development.

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Stephen Ward  
Senior Planning Inspector

26<sup>th</sup> May 2021

