



An
Bord
Pleanála

Inspector's Report

ABP-309743

Development	Pedestrian access from private residence to a public road (Torquay Road)
Location	9 Fey Yerra Wood, Leopardstown Road, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0976
Applicant(s)	Emma and Eoin McDonald
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third-Party
Appellant(s)	David + Mildred Gorman and others. Westminster Lawns + Torquay Wood Residents Association
Observer(s)	None
Date of Site Inspection	3 rd May 2021
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site relates to a one-off detached dwelling which is part of a cul-de sac development on the former grounds of Bellevue House which remains as a detached dwelling to the south. The site, together with the cul-de sac development is accessed off a private road on the north side of Leopardstown Road.
- 1.2. The stated site area is 0.046 hectares and contains a contemporary two-storey house of c.255 sq.m. It is surrounded by low density housing. It is situated at the end of a short cul-de-sac. It is the only dwelling on the southern side and faces a single row of two storey south facing houses. The northern side of the road is landscaped and incorporates a visitors parking bay. All the houses have provision for 2 off-street parking spaces. Ruskin House, an infill house is also in the former grounds of Bellevue adjoining the site to the south east.
- 1.3. The site also has frontage onto the end of the cul-de-sac - Torquay Wood – to the north east. This is a short road of detached houses and part of a larger residential enclave between Leopardstown Road to the south, the N11 to the East and the N31 to the North and in an area where there are a number of local services and facilities.
- 1.4. There is a difference in ground levels of around 1.35m each side of the site boundary where it adjoins Torquay Wood.

2.0 Proposed Development

- 2.1. Permission is sought for the removal of a section of the wall and fence at the interface of the boundary wall with the public path at Torquay Wood for the purpose of construction of a new pedestrian gate. The gate is proposed to be timber and incorporates an over panel to tie in with the fencing. Concrete steps are proposed with landing, walls and handrails to facilitate access.
- 2.2. A detailed cover letter explains the purpose of the proposal is to facilitate safe direct access for the family by walking or cycling to local facilities. Car parking in Torquay Wood is not intended and the current arrangement of off-street parking (capacity for two cars) within the curtilage of the existing house will continue. Bin collection will remain from Fey Yerra Wood. It is emphasised that the gate is not for the purpose of facilitating additional on-street parking access.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission subject to 4 conditions of a standard nature.

3.2. Planning Authority Reports

3.2.1. Planning Report: The report refers to :

- Development Plan policy on urban design and connectivity.
- The proposal is considered acceptable in principle. It is considered that given the site circumstances, the relatively minor scale of the development and the design which is in keeping with the existing boundary treatment that the visual impact is acceptable.
- Noting the Board's permission for the extant dwelling and condition 7 restricting pedestrian access(ref PL06D.247882) , it is the planning authority's strong view that the proposal would increase permeability for residents of the applicant site to other areas in the immediate vicinity including public open space to the east and is in line with the County Development Plan policy on permeability and would facilitate safer walking routes to local amenities for the occupants of the dwelling on foot. In this regard it is noted that a section of the access road between the site and Leopardstown road has no footpath.
- With regard to the party wall this is a civil matter and in any case a wall over 2m in height requires planning permission none of which appears to have been sought. It is noted that the affected boundary wall is shown within the red line of the applicant's site plan.

3.2.2. Other Technical Reports

- Drainage Division - No objection.
- Transportation Planning : No objection subject to conditions.

4.0 Planning History

4.1. There is a lengthy planning history associated with the development on the original grounds of Bellevue to the south off Leopardstown Road and the consequent two

cul-de-sac developments with access off Leopardstown road. An Bord Pleanala ref 215789 refers to permission for 20 number residential units arranged as follows: five number three bedroom duplex apartments and 13 number two bedroom apartments all arranged in a three storey block adjoining two number four bedroom townhouses. No conditions regarding interconnection. This proposal addressed reasons for refusal for development in the case of An Bord Pleanala ref 211386.(not built)

- 4.2. An Bord Pleanala ref 247882 refers to permission for the existing houses on the subject site. Condition 7 restricts pedestrian access from the site to Torquay Wood.
- 4.3. PA Ref. D08B/0072 refers to refusal of permission for modifications to existing house. Refused for reasons relating to overbearing impact on the adjoining dwelling.
- 4.4. D11A/0054 refers to permission granted at Fey Yerra Wood for 7 houses and D13A/0016 for an additional house and for amendments to previously approved house.
- 4.5. D18A/0805 refers to permission for retention of modifications to subject dwelling.

5.0 National Policy & Context

5.1. National Planning Framework 2018

- 5.1.1. NPO 54: Reduce our carbon footprint by integrating climate action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions.
- 5.1.2. National Strategic Outcome 7 aims to enhance amenities and heritage. One key stated measure is:
 - Implementation of planning and transport strategies for the five cities and other urban areas will be progressed with a major focus on improving walking and cycling routes, including continuous greenway networks and targeted measures to enhance permeability and connectivity.

5.2. Climate Action Plan 2019

5.2.1. Managing transport is a key element of the current Climate Action Plan which is set to be reviewed annually. The plan has set a decarbonisation target for 2030 (Reduce CO2 eq. emissions from the sector by 45–50% relative to 2030 pre-NDP projections) and requires transport to step-up a level. This means a significant ramp-up in EVs from their current numbers (circa 10,000), increased penetration of cleaner, alternative fuels, and an irreversible shift to low-emission mobility. These changes will need to be underpinned by policy tools. Modal Shift policies are identified as critical to the success of the targets. It states that

‘ We want to make sure that we provide good public transport, cycling and walking infrastructure, so people are less reliant on their cars, and we can cut congestion. We have already committed to an additional 500,000 public transport and active travel journeys daily by 2035.’ (p.90)

5.2.2. **Climate Action and Low Carbon Development Bill 2021** if ratified gives further strength to meeting these targets within a clear and measurable framework.

5.3. Development Plan

- The objective for the site is ‘To protect and/or improve residential amenities.’ (A)
- The development plan advocates densification of the suburbs in line with national strategy. (Section 2.1.3.4)
- **Chapter 8** sets out urban design standards e.g. section 8.1.1.1 and 8.2.3.1 refer to connectivity and permeability. - as cited in planning authority report.

6.0 Natural Heritage Designations

6.1. The nearest European sites are South Dublin Bay SAC (site code 00210) and South Dublin Bay and River Tolka Estuary SPA (site code 004024) about 3.2km northeast of the site.

7.0 Environmental Impact Assessment - Preliminary Examination

7.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any 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.

8.0 The Appeal

8.1. Grounds of Appeal by Westminster Lawns Torquay Wood Residents Association

- 8.1.1. This appellant party is opposed to the principle of interconnection between the dwelling in Fey Yerra Woods and Torquay Woods on the following grounds
- It contravenes condition 7 of the permission for the dwelling on the site which states : 'No access shall be taken from the subject site, whether vehicular or pedestrian onto the adjoining housing development to the north -east (Torquay Wood estate) Reason: In the interest of residential amenity and of pedestrian safety.'
 - There is no material change in circumstance that alters this condition.
 - The planning authority has inappropriately applied permeability criteria to this private residence.
 - There is no historical link between the two roads and no basis for permitting a private link.
 - There is no planning gain for the residents of this cul-de-sac of at least 40 years.
 - The development is considered an interference with residential amenity, quiet enjoyment and safety arising from the traffic , car parking and pedestrian movements.
 - Access for private dwelling from a private road has very limited benefits of connectivity.
 - It is not consistent with development plan policy ST5 which requires new development to maximise permeability and connectivity for pedestrians and

cyclists to create attractive and direct links to adjacent road and public transport networks. .

- This will not increase connectivity as it will not improve access to the Luas and Leopardstown routes. Improvement of Access to the N11 is negligible
- The gate facilitates car parking at the end of Torquay Wood cul-de-sac which is likely to be used given that visitor parking is limited in Fey Yerra.
- The generation of on-street parking in Torquay Wood could result in a blind spot for residents turning cars and this poses a threat to safety.

8.2. Grounds of Appeal by David and Mildred Gorman, /Daniel and Linda Kitchen, Paul and Ann Waldron, Seamus and Mary Halford, Patrick and Patricia O'Connor, Ronan and Julie O'Brien, Niall Treston and Claire Phelan, Eamon and Mary Egan, David and Jean Barber, Bernard and Marguerite Hamill.

8.2.1. A second third party appeal has been lodged by the Kieran O'Malley and Co. Ltd on behalf of the above named residents of Torquay Wood who are opposed to the proposed pedestrian access. The following points are made:

- Condition 7 restricting access to Torquay Wood remains in force
- The proposal would impact on the amenities and safety of Torquay Wood as it would generate additional parking and traffic within the cul-de-sac and where the amenity is derived from the peace and quiet in this small enclave where there is no through traffic. Permission for the access would change this character.
- Limiting access would be difficult to enforce and is an unsatisfactory given the history of unauthorised development as evidenced by the application for retention.
- The existing access and private road network is a safe and pleasant environment for the residents in Fey Yerra. Access via Leopardstown Road to local amenities is also safe and adequate.
- The existing trellis was erected by the residents of Torquay Wood to strengthen the boundary and address the visual impact of the subject dwelling that does not visually engage with the cul-de-sac. It was previously a pleasant vista of trees and its introduction has significantly changed the character of the area. Before and after photographs are attached.
- The absence of consent to later this fence would render the application invalid.

- A doorway would materially alter the effectiveness of this boundary and would seriously compromise the amenity, privacy and security of all the properties along Torquay Wood.
- The Board is requested to reaffirm its condition no.7 as attached in case PL06D.247882.

8.3. First Party Response

8.3.1. The applicant submitted a response 17th April and the followings points re made:

A pedestrian gate was not proposed by the applicant in the original application for the dwelling and the merits were not part of the appraisal.

- Family needs and circumstances including the disposal of one car now form the context for the proposal.
- The proposal has wider social community benefits and accords with permeable networks policies and patterns.
- There is historical connectivity.
- The coming and going of a single family is not likely to manifest in any significant vehicular traffic or discomfort for the entire estate. It is in fact pointed out that there is no footpath along the existing vehicular access road to Fey Yerra and this further supports a direct link to a public footpath as proposed.
- It restated that is not a public access as it is solely for private family use. Secure locking will e provided.
- The fence was erected by the residents but on the applicant's boundary and without notice wehre it fronts a public road that is in charge of Dun Laoghaire Rathdown County Council (correspondence cited as evidence) The residents therefore have no legal claim to the ownership of the footpath, the road, or the section of wall of no.9 fronting the footpath. It is, in theory, development that may be subject to enforcement proceedings.
- The applicants would rather engage in a positive and pro-active manner. They have been open and agreeable and having acted with integrity and responsibility in the construction of their home. The proposed development will be constructed to ensure pedestrian safety.

8.4. **Planning Authority Response**

- Grounds of appeal do not raise new matters which would justify a change in attitude.

9.0 **Assessment**

9.1. **Issues**

- 9.1.1. This appeal relates to a proposal for a pedestrian gateway linking the private curtilage of a single dwelling in one cul-de-sac development to a public footpath in another adjacent cul-de-sac. The residents in the adjoining housing development in Torquay Wood are strongly opposed in principle to this linkage and this is supported by the residents in the wider area as represented by the local residents' association. The issues relate to impact on residential amenity primarily by reason of traffic and car parking. Other issues relate to safety, disturbance, loss of privacy and interference with private property.

9.2. **Principle**

- 9.2.1. The development plan provides for interconnectivity in housing development as set out in Policy UD1 in section 8.1.1.1 of the Development Plan and further stated in section 8.2.3.1. This is strongly mandated in national policy both in general terms in the most recent National Planning Framework and in more precise terms in measures to reduce car dependency in the most recent Climate Action Plan 2019. In this case I note from both map of the locality and as verified on inspection that the provision of the pedestrian gate will enable a more direct route via Torquay Wood via the pedestrian route to Leopardstown Grove and Leopardstown Avenue from where a range of facilities can be accessed. (e.g. Tennis club, shops, restaurant all to the north of the site and away from National Primary or Regional routes which typically by their nature are frequented with heavy traffic. While I accept that this relates to only one dwelling, I consider the provision for such access is acceptable in principle. Furthermore, while I accept that condition 7 of Board's previous order granting permission was based on restricting such access, I note the planning authority's strong view and I consider that in light of policies on providing connectivity which have been recently underlined as critical elements Climate Action Plan and as also

provided for in the NPF that this condition should be revisited. I consider the proposal in terms of access and transport planning to accord with the principles of proper planning and sustainable development. This is I accept predicated on meeting development management criteria with respect to particular impacts on the immediate environs.

9.3. Impact on Residential Amenity

Traffic and car parking

9.3.1. The residents are most concerned about the use of pedestrian gate by visitors in cars. This raises issues of additional traffic and parking and potential for obstruction and traffic hazard. I do not consider the traffic associated with a secondary pedestrian access for a house already with off street parking and visitor parking is likely to be at a level that would constitute a traffic hazard. Nor do I consider the characteristics of Torquay Wood to contribute to a traffic hazard in the event of parking. I note the Transportation Planning Division raises no concerns in this regard. I further note that the applicant explains that this is for family use and direct non-vehicular access to facilities – which, having visited the environs, I am satisfied is quite credible and reasonable.

9.3.2. The objecting residents further state that the stated reason for the Board's imposition of restricting access was 'to protect amenities' and this is now being eroded. They are concerned about the disturbance and nuisance associated with both vehicular and pedestrian traffic in this quiet cul-de-sac. For reasons stated above and in the context of the wider benefits to the community, I do not consider the nature of use to unduly detract from the amenities of the area.

Loss of privacy

9.3.3. There is concern about the loss of privacy as a consequence of the access. However the proposed gateway is an extension to a public footpath on a public road and is very much in the public realm. I do not consider the associated pedestrian use in this context could result in any meaningful loss of privacy.

Visual amenity

9.3.4. The residents object to the interference with the existing fence which is stated to have been erected by the residents of Torquay Road. I note that the planning authority query the planning status of the fence as there is no evidence of

permission. The proposed gate is in a boundary that fronts the public road and the boundary is within the site as outlined in red and within the applicant's legal interest. The appellants have not submitted any evidence of ownership of the relevant boundary. The interference with private property is a civil matter between the parties.

9.3.5. With respect to visual amenities I consider the gateway to be modest and unobtrusive and by itself would not detract from the visual amenities of the area. I also note the overall design visually integrates with the existing fence and does not detract from the visual amenities of the area, although trellis fencing may present problems over the longer term. While owning the boundary, the applicant did not erect the fence. There is a possibility that the fence is unauthorised and in this context the detailed design may need adjustment as it has been designed to integrate with the fence. I consider a condition addressing the detailed design can address this and should not prevent the development being permitted.

9.3.6. On balance I consider the proposed to be a positive development in the context of measures to reduce car dependency and to accord with transport and land -use policies as advocated in the NPF. I do not consider the proposal development to unduly detract from the residential amenities of the area or to warrant a refusal of permission. I am also satisfied that the applicant has sufficient legal interest for the purpose of the planning application and that the application is valid.

9.4. **Appropriate Assessment**

9.4.1. Having regard to the nature and scale of the proposed development and 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 I do not consider that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

10.0 Recommendation

10.1. I recommend that planning permission for the proposed development be granted based on the following reasons and considerations, as set out below.

11.0 Reasons and Considerations

Having regard National policy on carbon reduction as set out in the Climate Action Plan 2019 which relies in part on modal shift to cycling and walking as a critical element to achieving its targets and having regard to the nature of the proposed development and its potential to provide for more direct access to local facilities by means of walking and cycling and thereby reduce car use in the area the Board is satisfied that the proposed linkage is acceptable in principle. Furthermore having regard to the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 and to the scale of the developemtn, it is considered that, subject to compliance with the conditions set out below, the proposed development would integrate in a satisfactory manner with the existing development in the area, would not seriously injure the residential amenity of adjacent properties, would not detract from the character or visual amenities of Torquay Wood and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars

Reason: In the interest of clarity

2. Details including samples of the materials, colours and textures of all the external finishes to the proposed entrance gate, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. Water supply and 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.

4. Site development and building works shall be carried out only between the hours of 0730 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority

Reason: To protect the amenities of the area.

Suzanne Kehely

Senior Planning Inspector

13th May 2021