



An  
Bord  
Pleanála

## Inspector's Report ABP-309796-21

### Development

Alterations to the existing north-facing boundary to include: at the existing west opening, the removal of vehicular access and the installation of un-automated pedestrian gates; and the installation of set-back gate piers and automated gates, to accommodate pedestrian and vehicular access, at the existing east opening. Ancillary works comprise of making good the existing wall and railings, threshold paving and planting. The application relates to a Protected Structure.

### Location

43 Seapoint Avenue, Blackrock, Co. Dublin.

### Planning Authority

Dún Laoghaire Rathdown County Council

### Planning Authority Reg. Ref.

D20A/0609

### Applicant(s)

John and Anne O'Donnell

### Type of Application

Permission

### Planning Authority Decision

Grant subject to conditions

<b>Type of Appeal</b>	Third Party v. Decision
<b>Appellant(s)</b>	Katrina Foley Michael Anglim
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	11 <sup>th</sup> June, 2021
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located at No. 43 Seapoint Avenue, Blackrock, Co. Dublin, approximately midway between the village centres of Blackrock to the northwest and Monkstown to the southeast, where it occupies a position at the end of an attractive terrace of two / three-storey-over-basement period properties known as Trafalgar Terrace that overlooks Dublin Bay. It forms part of an 'L'-shaped grouping of buildings (composed of a combination of dwelling houses, apartment units, and a doctor's surgery / clinic) which serves to terminate the westernmost end of the terrace with several of the properties having been designated as protected structures. It is also situated within the Monkstown Architectural Conservation Area.
- 1.2. The site has a stated area of 0.144 hectares and encompasses the wider grounds of No. 43 Seapoint Avenue in addition to a shared forecourt / car parking area which is accessed via two separate openings onto the public road. A one-way (westbound) road system has recently been introduced along Seapoint Avenue with the former eastbound lane now utilised as a two-way cyclepath.

## 2.0 Proposed Development

- 2.1. The proposed development involves the alteration of the existing roadside boundary (within the curtilage of a protected structure) between the shared car parking / forecourt area to the front of the application site and the public road along Seapoint Avenue as follows:
  - The removal of the existing westernmost vehicular access to / from the site and its replacement with a pedestrian only gateway (to include the installation of un-automated pedestrian gates);
  - The revision of the easternmost access to / from the site through the provision of a new bell-mounted entrance arrangement with recessed gate piers and automated gates to accommodate pedestrian and vehicular access; and
  - Ancillary works, including the making good of the existing wall and railings, threshold paving, and planting.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 26<sup>th</sup> February, 2021 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 5 No. conditions which can be summarised as follows:

Condition No. 1 - Refers to the submitted plans and particulars.

Condition No. 2 - Requires the occupiers of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue to have full right and liberty for the free passage and use of the proposed vehicular and pedestrian entrances and the associated forecourt car parking serving those properties.

Condition No. 3 - Prohibits the use of automated electric gates at the vehicular entrance.

Condition No. 4 - Requires all necessary measures to be taken to avoid any conflict between construction traffic / activities and other road users during the works.

Condition No. 5 - Requires the applicant to prevent any mud, dirt, debris or building material from being carried onto or placed on the public road or adjoining property as a result of the construction works. In addition, any damage to the public road arising from the works is to be repaired.

### 3.2. Planning Authority Reports

#### 3.2.1. *Planning Reports:*

An initial report concurs with the recommendations of the Architectural Conservation Officer and states that the proposed development will not have a negative impact on the character or setting of any protected structure or the Monkstown Architectural Conservation Area. The requirements of the Transportation Planning Division are also noted. With respect to the concerns raised by a number of third parties as regards the applicants' standing to undertake the works and the impact of the

proposal on existing rights of way, it was recommended that the applicants demonstrate that they have sufficient legal interest to carry out the proposed development.

Following the receipt of a response to a request for further information, a final report was prepared which noted that the proposed development was intended to prevent the use of the forecourt area as public parking, to provide for increased security, and to improve the general amenity of the existing properties / households. It was also noted that access to the forecourt via the new vehicular access was to be managed by providing existing residents with an access code / key fob. Concerns as regards any interference with property rights were deemed to be outside the remit of the Planning Authority with reference being made to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of permission under this section to carry out any development*'. The report concludes by recommending a grant of permission, subject to conditions.

#### 3.2.2. *Other Technical Reports:*

*Architectural Conservation Officer:* States that there is no objection to the principal of the development and that the works are not considered to visually detract from the curtilage / setting of the protected structure while the details of the vehicular access are suitable in the context of the streetscape character of the Monkstown ACA.

*Drainage Planning, Municipal Services Dept.:* No objection.

*Transportation Planning:* No objection, subject to conditions, including a requirement that the automated electronic vehicular gates be omitted from the development.

### 3.3. **Prescribed Bodies**

None.

### 3.4. **Third Party Observations**

3.4.1. A total of 6 No. submissions were received from interested third parties and the principal grounds of objection / areas of concern raised therein can be summarised as follows:

- Interference with established rights of way / property rights.

- Insufficient legal interest to lodge the application or to undertake the works.
- Overall inconvenience and detrimental impact on existing residential amenity.
- The impact of the works on built heritage considerations, including protected structures and the Monkstown Architectural Conservation Area.
- The automated gates are contrary to the Development Plan and give rise to a traffic hazard.
- Loss of car parking and manoeuvring space.

3.4.2. Two of the submissions received express support for the proposed development.

## 4.0 Planning History

### 4.1. On Site:

PA Ref. No. PL57/5/44780. Permission was granted on 7<sup>th</sup> December, 1979 for a single vehicular entrance to the property with gates.

### 4.2. On Adjacent Sites (to the immediate south):

PA Ref. No. D21A/0452. Application by Mary Eleanor O'Donnell for permission for the restoration of the previously derelict mews (now partially renovated under planning permission D10A/0142) to provide a two-storey, pitched roofed dwelling house, and associated landscape works, including a pedestrian gate to the lane to the west of the site. The site is located within the curtilage of 43 Seapoint Avenue, a Protected Structure, and within an Architectural Conservation Area. All at 24 Trafalgar Lane, Monkstown, Co. Dublin. No decision to date.

PA Ref. No. D10A/0142 / ABP Ref. No. PL06D.236847. Was granted on appeal on 5<sup>th</sup> October, 2010 permitting Mary Eleanor O'Donnell permission for the renovation and redevelopment of the existing derelict mews and adjacent structure to provide one dwelling house at 24 Trafalgar Lane, Monkstown, Co. Dublin.

### 4.3. On Adjacent Sites (to the immediate west):

PA Ref. No. D95A/0028 / ABP Ref. No. PL06D.095972. Was granted on appeal on 15<sup>th</sup> September, 1995 permitting K. Foley & M.C. Durcan permission for the erection of a new extension to rear of 3 No. existing apartment units and internal alterations at No. 39 Seapoint Terrace, Seapoint Avenue, Blackrock, Co. Dublin.

## 5.0 Policy and Context

### 5.1. National and Regional Policy:

- 5.1.1. The 'Architectural Heritage Protection, Guidelines for Planning Authorities, 2011' provide detailed guidance in respect of the provisions and operation of Part IV of the Planning and Development Act, 2000, as amended, regarding architectural heritage, including protected structures and Architectural Conservation Areas. They detail the principles of conservation and advise on issues to be considered when assessing applications for development which may affect architectural conservation areas and protected structures.

### 5.2. Development Plan

#### 5.2.1. **Dún Laoghaire Rathdown County Development Plan, 2016-2022:**

##### *Land Use Zoning:*

The proposed development site is zoned as 'A' with the stated land use zoning objective 'To protect and / or improve residential amenity'.

##### *Other Relevant Sections / Policies:*

##### *Chapter 6: Built Heritage Strategy:*

##### *Section 6.1.3: Architectural Heritage:*

##### *Policy AR1: Record of Protected Structures:*

It is Council policy to:

- i. Include those structures that are considered in the opinion of the Planning Authority to be of special architectural, historical, archaeological, artistic, cultural, scientific, technical or social interest in the Record of Protected Structures (RPS).
- ii. Protect structures included on the RPS from any works that would negatively impact their special character and appearance.
- iii. Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the Department of

the Arts, Heritage and the Gaeltacht 'Architectural Heritage Protection Guidelines for Planning Authorities' (2011).

- iv. Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.

(The proposed development site includes No. 43 Seapoint Avenue, Blackrock, Co. Dublin, which has been designated as a protected structure (RPS No. 365). It also forms part of a larger grouping of protected structures along situated Seapoint Avenue).

Section 6.1.4: *Architectural Conservation Areas (ACA)*:

Policy AR12: *Architectural Conservation Areas*:

It is Council policy to:

- i. Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).
- ii. Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area.
- iii. Seek a high quality, sensitive design for any new development(s) that are complimentary and/or sympathetic to their context and scale, whilst simultaneously encouraging contemporary design.
- iv. Ensure street furniture is kept to a minimum, is of good design and any redundant street furniture removed.
- v. Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving and street furniture.

(The proposed development site is located within the '*Monkstown Architectural Conservation Area*').

*Chapter 8: Principles of Development:*

Section 8.2.4.9: *Vehicular Entrances and Hardstanding Areas*

Section 8.2.11: *Archaeological and Architectural Heritage:*



Section 8.2.11.2: *Architectural Heritage - Protected Structures*

Section 8.2.11.3: *Architectural Conservation Areas*

### 5.3. **Natural Heritage Designations**

5.3.1. The following natural heritage designations are in the general vicinity of the proposed development site:

- The South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), approximately 75m northeast of the site.
- The South Dublin Bay Special Area of Conservation (Site Code: 000210), approximately 75m northeast of the site.
- The South Dublin Bay Proposed Natural Heritage Area (Site Code: 000210), approximately 80m northeast of the site.

### 5.4. **EIA Screening**

5.4.1. Having regard to the minor nature and scale of the development proposed, the site location outside of any protected site, the nature of the receiving environment in an existing built-up area, the intervening pattern of development, the limited ecological value of the lands in question, the availability of public services, and the separation distance from 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**

6.1.1. *Katrina Foley (owner of No. 39 Seapoint Avenue):*

- By way of background, the appellant's property (which has been divided into 3 No. apartments), enjoys unhindered access via the common forecourt that serves Nos. 37, 39, 41, 43 & 45 Seapoint Avenue and it is essential, in the protection of her legal property rights, that unfettered access be retained.

Vehicular access to the forecourt is via two points which generally operate in an informal manner with cars entering / exiting via either opening. Although the forecourt is not demarcated, parking generally occurs in 3 No. rows of four spaces yielding a total of 12 No. useable spaces (with 8 No. spaces effectively accessed from the eastern entrance and the remaining 4 No. spaces accessed from the western access point).

In 1995 the appellant applied for planning permission under PA Ref. No. D95A/0028 for the extension and internal alteration of No. 39 Seapoint Avenue (in use as 3 No. apartments) during which the current applicants (i.e. John and Anne O'Donnell) lodged an objection for reasons relating, inter alia, to additional parking demands within the forecourt (wherein they indicated that they were the owners of the area fronting Nos. 37-45 Seapoint Avenue over which each of the houses enjoyed a right of passage). Although refused by the Planning Authority, permission was granted on appeal under ABP Ref. No. PL06D.095972 with the decision highlighting that the forecourt area provided for communal parking and that there was adequate parking available to accommodate the 3 No. apartment units.

- Although the report of the Transportation Planning Dept. has recommended that the proposed automatic electronic vehicular entrance gates be omitted from the development, it makes no recommendation as to an alternative arrangement which is of concern to the appellant. The apparent rationale for the proposed development is the installation of automatic gates in order to control parking for security and other reasons, however, it is evident that if the principle of the automatic gates is unacceptable then the application should be refused in its entirety.
- Although the report of Architectural Conservation Officer raised no specific objection to the development, the broader considerations of the original layout (including the two access points) were not taken into account and as such the report fails to fully address the conservation impact of the proposed works.
- The initial report prepared by the case planner did not fully consider or review the contents of the appellant's original objection to the proposed development.

- While the applicants have asserted that they retain freehold interest / ownership of the forecourt, neighbouring properties have legal rights over that area in the form of rights of way and parking. The Conservation Report submitted with the application suggests that residents parking is by way of agreement with the site owner, however, the appellant rejects this statement in that she has a legal entitlement over the forecourt for access and parking purposes. To permit the erection of remotely operated gates under the control of the applicant would be to fundamentally infringe upon these property rights.

An applicant must have sufficient legal interest to carry out a development (*Frescati Estates Ltd. v. Walker [1975] IR77*) and if they do not retain full ownership of the site in question then a planning application must be accompanied by the written consent of the landowner in accordance with Article 22(1)(g) of the Planning and Development Regulations, 2001, as amended. Given that the applicants do not have full ownership of the proposed development site, it is submitted that the subject application requires the consent of all the owners of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue (please refer to the accompanying correspondence prepared by Patrick Durcan & Co. Solicitors which sets out the appellant's legal interest in the lands in question).

- In response to the request for further information, the applicants have claimed that they are the 'owners' of the appellant's property, however, they are merely the ground rent landlord and the appellant, as the leasehold owner of No. 39 Seapoint Avenue, is allowed to purchase the ground rent under the Ground Rent Purchase scheme. Therefore, the further information response is incorrect and misleading in maintaining that the applicants are the owners of the appellant's property.
- The key issue is that the applicants should have sufficient legal interest to carry out the development and in this regard it is submitted that the definition of 'owner' for the purposes of Article 22(1)(g) of the Regulations should extend to all those with a legal interest in the lands, whose consent is required to undertake the development.

- The proposed development seeks to control access to the forecourt and will potentially remove parking provision for the occupants of neighbouring properties. The applicants have not engaged with the appellant in relation to these concerns and are attempting to limit / control all parking within the forecourt.
- The erection of automated gates will impede the right of access to the front door of the appellant's property. Access is not only required for parking purposes, but also for deliveries and emergency (fire) services.
- Condition No. 3 of the notification of the decision to grant permission as imposed by the Planning Authority states that the '*proposed new vehicular entrance gates shall not be automatic electronic gates*' which is somewhat at odds with the recommendation of the Roads Dept. that the gates should be '*omitted*'. It is unclear whether the gates can be retained and allowed to be physically opened by an individual, however, in the absence of any mechanical opening mechanism, any such arrangement could result in cars backing up onto the public roadway / footpath. Furthermore, the wording of the condition is considered to be uncertain as it could be argued that the gates could continue to be operated remotely. In the event of a grant of permission, it should be specified that no gates of any sort are to be erected.
- The Conservation Impact Report provided with the application refers to much of the car parking as being 'unauthorised', however, the use of the forecourt for parking is long-established and no enforcement action has been taken against any unauthorised use.
- The Conservation Report states that the intention of the proposed development is to domesticate the terrace and to enclose the garden area, however, there is no illustrated increase in garden area and it appears as though the gravel parking area will remain.
- The application has not been accompanied by a traffic report and / or layout to illustrate how the parking and manoeuvring of vehicles will be accommodated in the absence of the western entrance. Furthermore, no consideration has been given to the need to facilitate access to the forecourt by fire tenders.

- The intention of the development is to reduce and control parking within the forecourt that presently serves No. 37 – 45 Seapoint Avenue (which accommodates a demand for 12 No. parking spaces). It will also reduce the effective capacity of the forecourt area.
- No drawings have been submitted to illustrate how the new parking arrangement will work in practice. At present, there are effectively three rows of four parking spaces which are facilitated by a central manoeuvring area serving the two rows accessed from the eastern entrance / exit with the remaining row accessed from the western entrance / exit. With the removal of the western entrance, it will only be possible to park around the perimeter of the forecourt and it is estimated that this will result in the loss of 4 No. parking spaces. The loss of this parking is critical and will undermine the previous decision to grant permission for 3 No. apartments within the appellant's property. It will also give rise to on-street parking while any parking directly to the front of the appellant's property will result in a loss of amenity.
- The Planning Authority has failed to consider the loss of parking and the resulting on-street car parking.
- The proposed development will give rise to a traffic hazard. Section 8.2.4.9 of the Development Plan states that shared entrances serving two dwellings should be 4.5m in width to allow for the passage of vehicles. The proposed omission of one entrance and the reduction of the western entrance to 3.6m in the width will give rise to conflicting traffic movements with vehicles entering and exiting at the same location and having to stop (possibly suddenly) on the single narrow carriageway arising from the introduction a one-way (westbound) system along Seapoint Avenue.
- The application has not been accompanied by a sweep-path analysis which would involve an assessment of vehicles entering and exiting the property at the same time and the impact on road users. This would require a Stage 1 Road Safety Audit.
- The automatic gates are proposed to be set back only 4.2m from the near edge of the carriageway and c. 1.5m behind the footpath. In this regard, the

Board's attention is drawn to Section 8.2.4.9 of the Development Plan which states the following:

*'Automatic electronic gates into residential developments are not favoured, and should be omitted. Electronic or automatic gates are not acceptable in terms of road safety unless the entrance is set back 6.0m from the back of the footway to avoid the roadway or footway being obstructed by a vehicle while the gate is opening'.*

- While the existing dwarf boundary wall is unsympathetic to the protected structures and there is no objection to its upgrading, there are no proposals to undertake any such upgrading works.
- It is apparent from the Conservation Impact Report that the proposed development is at odds with the original layout of the forecourt area (as shown in Figure 2: 'Historic Layout' of the grounds of appeal) which included a vehicular entrance / exit at the eastern and western ends of the road frontage thereby allowing for Nos. 37 & 39 to front onto the drive which connects to Seapoint Avenue. The shared front garden area is characteristic of this part of Seapoint Avenue and the existing access arrangement retains the original design concept that involved the provision of two wide entrances. The proposed development would fundamentally alter this original layout to the detriment of the setting of the protected structures and the character of the Architectural Conservation Area.
- The proposed development should be refused permission on the basis that a single vehicular access would lead to a traffic hazard and would have a negative impact on the setting of the protected structures.

**6.1.2. Michael Anglim (owner of No. 37 Seapoint Avenue):**

- While the applicants have sought to claim title to the forecourt fronting Nos. 37 - 41 & 45 Seapoint Avenue with a view to establishing sufficient legal interest in order to make the application, the existing forecourt is a shared space over which a number of properties have established rights of access and parking.
- It is clear from the imposition of Condition No. 2 in the notification of the decision to grant permission that the Planning Authority has accepted that the

appellant, in common with his neighbours, has long-standing rights of access for the passage of vehicles to / from Seapoint Avenue to the forecourt without let or hindrance, and for the right to park cars thereon. The appellant has exercised these rights since his acquisition of No. 37 Seapoint Avenue over 30 No. years ago and the Board is requested to retain the aforementioned condition in the event of a grant of permission.

- The proposed development will result in the partial curtailment of the appellant's existing rights to full and free vehicular access to / from both of the vehicular accesses serving the forecourt. The replacement of the western entrance with a pedestrian gate would pose a particular nuisance to the appellant while the loss of the dual entry / exit points to the shared forecourt would represent a serious inconvenience to the appellant and his neighbours.
- One of the appellant's tenants is a long-established medical practice and any change in the present access arrangements, particularly if it were to involve the use of electronically controlled gateways, would cause considerable nuisance to its operation and patients.
- While the appellant is aware of the Board's stance that civil or legal issues are outside its statutory remit, in the event of a grant of permission, the appellant will instigate legal proceedings to preserve his long-established rights.
- Having regard to the built heritage interest and character of Seapoint Avenue, including the designation of protected structures and its location within the Monkstown Architectural Conservation Area, and noting the historical access arrangement which has served those properties, it is queried as to why it is considered necessary to change the historic layout which can equally be held not to have a negative impact on the character of the protected structures or the wider ACA. In the interest of historical accuracy, the original layout should be preserved, and the application refused permission.
- The existing front boundary wall and railing are within the curtilage of a series of protected structures while all of the front boundaries to the properties on both sides of Seapoint Avenue (including the forecourt of Trafalgar Terrace) consist of masonry walls. It is considered that the insertion of railings at this location would be an anomaly, and while there is an existing railing atop the

roadside boundary wall, it is presently obscured by dense planting the removal of which would open up and enhance the setting of the protected structures. Notwithstanding, the appellant has no objection to the replacement of the boundary wall with a railing, although the existing openings must be retained *in situ* with no gates of any sort.

- Since the lodgement of the planning application, a one-way (westbound) traffic system has been introduced along Seapoint Avenue (with the formerly eastbound lane having been converted into a cycle-path). Due to the narrowing of the roadway and the inability of motor vehicles to swing out or pass due to the cordoning off of the cycleway, any delays caused by the operation of electronic or manually controlled gates will lead to traffic backing up with consequential hazards and delays. The existing open gateways allow for uninhibited traffic movements to / from the site and provide for better traffic flow and less hazardous conditions.
- Section 8.2.4.9 of the Development Plan requires vehicular entrances / exits to be designed to avoid traffic hazard for pedestrians and other road users. The Plan also states that '*Automatic electronic gates into residential developments are not favoured and should be omitted*'. Electronic or automatic gates are not acceptable in terms of road safety unless the entrance is set back 6.0m from the footpath so as to avoid the roadway or footpath being obstructed by a vehicle while the gate is opening. The automated gate proposed does not comply with this requirement and would give rise to a serious traffic hazard.
- While the prohibition on the use of automatic electric gates required by Condition No. 3 as imposed by the Planning Authority is welcomed, it does not go far enough. In the event of a grant of permission, the condition should be expanded to exclude the installation of any gates whatsoever. With the revised one-way system along Seapoint Avenue it would be extremely dangerous to allow any sort of gated access to the existing forecourt. To permit a situation where the existing open access is replaced by a manually operated gateway, which would necessitate the driver of a car to leave their vehicle while parked on or across the road / footpath in order to open / close the gate, would be a retrograde step and a potential traffic hazard.



- Contrary to the applicants' submission, there is very little, if any, unauthorised / illegal parking within the forecourt and the only tangible result of the proposed development will be the curtailment of the established legal rights currently enjoyed by the appellant and neighbouring properties.
- The proposed development is contrary to the relevant land use zoning objective which aims '*to protect and / or improve residential amenity*'.

## 6.2. Applicant Response

- It is in the interest of the applicants and the occupants of neighbouring properties that the proposed arrangement functions safely and that access by delivery vehicles and fire tenders etc. is not impeded.
- A single vehicular opening provides users of the forecourt and roadway with clarity and reduces the potential for conflict / confusion.
- The introduction of the Coastal Mobility Route (CMR) has reduced traffic volumes along Seapoint Avenue and – in line with the Design Manual for Urban Roads and Streets – the narrowing of the carriageway has reduced traffic speeds. In addition, cars entering / exiting the subject site no longer need to cross in front of oncoming traffic.
- Given that the majority of the existing houses are located on the western side of the forecourt closest to the DART station, pedestrian traffic is predominantly confined to this side, hence the location of the pedestrian gate. The safety of children is of particular concern to the applicants and further concerns arise as regards the entrance to the basement medical clinic at No. 37 given its positioning alongside the existing western entrance (although there is a separate entrance to the clinic to the rear of that property).
- Since the introduction of the one-way traffic system along Seapoint Avenue as part of the Coastal Mobility Route, vehicles enter the forecourt by way of the eastern entrance knowing that access via the western entrance will likely require having to reverse back onto the roadway should cars already be parked on site. The consequent requirement for persons to walk slightly

further to their front doors cannot reasonably be held to present a particular nuisance or loss of amenity.

- The reference by the appellants to Section 8.2.4.5 of the Development Plan as regards parking standards is not of relevance as the application relates to an established / historic setting and not a new development. Nevertheless, it should be noted that Section 8.2.4.5 of the Plan states that:

*‘Reduced car parking standards for any development (residential and non-residential) may be acceptable dependent on the location of the proposed development and specifically its proximity to Town Centres and District Centres and high density commercial / business areas and the proximity of the proposed development to public transport’.*

The proposed development concerns a small site well served by public transport and proximate to local shops and services. The new CMR also provides for a safe walking & cycling route between Booterstown and Sandycove.

- It is reiterated that the core intention of the proposed works is to *‘domesticate the terrace, enclose the garden area, prevent unauthorised parking and create a boundary which is more in keeping with the ACA designation’.*
- The forecourt includes a landscaped area to the front of Nos. 43 & 45 Seapoint Avenue which can be expected to be enjoyed in more enclosed and less trafficked surrounds consequent on the development thereby protecting and improving the residential amenity of all concerned as per the land use zoning.
- The layout and maintenance of the forecourt have been undertaken by the owners of Nos. 43 & 45 Seapoint Avenue without contribution from Nos. 37-41.
- The historical forecourt arrangement facilitated the set-down of carriages as opposed to car parking and predominantly comprised a planted area. The existing vehicular openings are significantly wider than those historically in place and the original gates and boundary were removed and reconstructed as part of a previous road widening scheme.

- The proposed development will address the ‘gaping’ effect of the very wide vehicular openings and will improve the setting of the protected structures.
- The existing rights of all owners / occupiers will be protected and unhindered access will remain.
- There are rights of way to ‘pass and repass’ through the forecourt and these include the right to access property in order to undertake repairs etc. (such as by visiting tradesmen). The applicants have facilitated parking for such purposes, however, given that Nos. 37 & 39 are investment properties, the appellants cannot know the substantial difficulties caused by unauthorised parking within the forecourt.
- Resident parking is by agreement based on availability within the physical space at any given time and the particular needs of the owner / occupier. Verbal and written permissions are given in a spirit of reasonable accommodation and a long-term agreement for additional rights is in place with the owners of No. 45 (as was the case for previous owners of that property). In short, the applicants have control over the forecourt as this is necessary to balance the needs of all residents.
- The basement of No. 37 is used as an addiction clinic and the applicants and other residents are grateful that it is made clear to clients that there is no parking available on site. No medical service can be expected to provide off-street parking, particularly on someone else’s property.
- The applicants are amenable to Condition Nos. 2 & 3 as imposed by the Planning Authority. It is proposed on foot of these conditions to install manual gates in keeping with the ACA although these will generally remain open for convenience purposes (as is common practice with gates to residential settings elsewhere).

### 6.3. Planning Authority Response

- States that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

#### 6.4. **Observations**

None.

#### 6.5. **Further Responses**

##### 6.5.1. *Response of Mr. Michael Anglim to the Third Party Appeal of Ms. Katrina Foley:*

- Supports the appeal against the grant of permission.
- Clarifies that the appellant's (Mr. Anglim's) property at No. 37 Seapoint Avenue accommodates a doctor's surgery and 2 No. three-bedroom dwellings which generate a combined demand for 6 No. car parking spaces as per the requirements of the Development Plan. Therefore, the total parking requirement for those properties served by the forecourt equates to 15 No. spaces as per Development Plan standards. There are currently 12 No. parking spaces within the forecourt and it is estimated that the proposed works will result in the loss of 4 No. of these spaces.
- The loss of parking consequent on the proposed development will seriously detract from the residential amenity of those properties which avail of the forecourt area.

##### 6.5.2. *Response of Ms. Katrina Foley to the Third Party Appeal of Mr. Michael Anglim:*

None.

#### 7.0 **Assessment**

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- Procedural issues
- Impact on residential amenity
- Traffic implications
- Impact on built heritage considerations
- Appropriate assessment

These are assessed as follows:

## **7.2. Procedural Issues:**

- 7.2.1. Concerns have been raised that the applicant may not have sufficient legal interest in the existing forecourt area to either lodge the subject application or to undertake the development for which permission has been sought. In this respect, it would appear that the applicants retain the freehold title to both the application site and neighbouring properties within Seapoint Avenue while various third parties (including the appellants) hold long-term leasehold titles to their respective properties in addition to certain rights of passage over the forecourt (it is unclear whether any of the leasehold titles held by third parties include the forecourt area as distinct from simply retaining a 'right of passage' over same and I note the submission by the applicant that they are responsible (with another party) for the management and maintenance of the forecourt parking etc.).
- 7.2.2. It is not the function of the Board to adjudicate on matters of property ownership with a view to establishing an applicant's legal interest in same. For the purposes of the lodgement of a planning application, it is only necessary for an applicant to assert sufficient legal estate or interest to enable them to carry out the proposed development or so much of the proposed development as relates to the property in question. Therefore, given that the applicants have identified themselves as the owners of the application site, would appear to hold the freehold title to same, and seem to be responsible for the management and / or maintenance of the forecourt area, it is my opinion, in the absence of any evidence to the contrary, that it is reasonable to accept the veracity of the submitted details and that the applicants have sufficient interest both to lodge the subject application and to undertake the proposed development.

## **7.3. Impact on Residential Amenity:**

- 7.3.1. While I would acknowledge the concerns of third parties as regards any potential interference with established and / or other property rights in relation to the use of the forecourt for parking purposes and the access arrangements thereto, I would reiterate that it is not the function of the Board to adjudicate on property disputes and in this regard I am inclined to suggest that any alleged interference with private property rights attributable to the proposed development is essentially a civil matter

for resolution between the parties concerned. Accordingly, I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that *'A person shall not be entitled solely by reason of a permission under this section to carry out any development'* and, therefore, any grant of permission for the subject proposal would not in itself confer any right over private property considerations.

#### **7.4. Traffic Implications:**

- 7.4.1. The primary concerns raised in the grounds of appeal with respect to the potential traffic impact of the proposed development are twofold, namely, the loss of car parking and circulation space from within the shared forecourt and, secondly, the proposal to install automated electronically controlled gates at the shared vehicular & pedestrian access.
- 7.4.2. At present, the existing forecourt is used as off-street parking by the residents of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue and would also seem to accommodate authorised visitors to the site, including a General Practitioner operating from the basement doctor's surgery / clinic within No. 37. Notably, none of the parking is physically demarcated and it would appear that no specific parking areas are allocated to individual properties with the arrangement being somewhat informal with residents / visitors availing of whatever space is available on arrival at the site. When taken in combination with the existing unrestricted access available to the forecourt area from the public road, this would appear to have given rise to some level of difficulty as regards instances of unauthorised parking by the general public and broader security considerations.
- 7.4.3. Within the grounds of appeal, it has been submitted that there are a total of 12 No. car parking spaces present on site in the form of three rows of four spaces facilitated by a central manoeuvring area with two of the rows accessed from the eastern entrance / exit and the remaining row accessed from the western entrance / exit. Accordingly, concerns have been expressed that the loss of the western vehicular access will result in a reduction of overall parking provision on site due to the necessity to provide for additional circulation space in order to accommodate access / egress via the single road opening proposed (it has been indicated in the response to the request for further information that permission was previously granted in 1979

for a singular vehicular entrance arrangement to the site under PA Ref. No. PL57/5/44780 although these works were not carried out).

- 7.4.4. Having reviewed the available information, I would generally concur with the appellants that the proposed development will likely result in some loss of practical and readily accessible off-street parking within the forecourt which I estimate to be in the region of 3 - 4 No. spaces (although it is possible that a greater number of spaces may be lost as aerial photography would suggest that the forecourt could perhaps presently accommodate the parking of 15 No. cars). However, I am cognisant that the existing parking arrangement is undefined with no formal allocation or demarcation of the parking bays whilst its day-to-day operation / management is seemingly reliant on informal agreements and good neighbourly relations. Accordingly, it is difficult to precisely determine the impact of the proposed works on existing parking provision.
- 7.4.5. Within the third-party appeal of Ms. Foley, it has been calculated that the current usage / occupation of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue necessitates the provision of 12 No. parking spaces in accordance with the requirements of the Development Plan, however, in response to that appeal the second third-party appellant (Mr. Michael Anglim), as the owner of No. 37 Seapoint Avenue, has sought to clarify the use of his property and has submitted that a total of 15 No. car parking spaces are required to satisfy overall demand.
- 7.4.6. Regrettably, I am not in a position to confirm the exact number of residential units within Nos. 37, 39, 41, 43 & 45 Seapoint Avenue, although it would appear to comprise 3 No. dwelling houses (Nos. 41, 43 & 45) and 5 No. apartments (within Nos. 37 & 39) (for the purposes of clarity, I have assessed the units within No. 37 as apartments as opposed to dwelling houses given the make-up of that property). Accordingly, a crude estimation of the parking requirements of the residential component of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue in line with Table 8.2.3: '*Residential Land Use - Car Parking Standards*' of the current Development Plan can be made as follows:
- 3 No. (3+bedroom) dwelling houses @ 2 No. spaces per unit = 6 No. spaces
  - 3 No. (1-bedroom) apartments @ 1 No. space per 1-bed unit = 3 No. spaces
  - 2 No. (3-bedroom) apartments @ 2 No. spaces per 2-bed unit = 3 No. spaces

- 7.4.7. When taken in combination with the demand for one further parking space on site to facilitate the GP operating from the basement surgery (as has been indicated by the applicants in response to the grounds of appeal and noting that parking for clients / patients is not facilitated on site), the overall 'standard' parking requirement for the properties concerned would amount to 13 No. spaces, although I would again emphasise that this is a somewhat speculative estimation.
- 7.4.8. While the foregoing calculation would seem to broadly tally with the level of parking presently available on site, I am inclined to suggest that any demand / requirement for on-site parking should take account of the specifics of the site location / context. In this regard, I would draw the Board's attention to Section 8.2.4.5: '*Car Parking Standards*' of the Development Plan which states that reduced car parking standards for any development (residential and non-residential) may be considered acceptable dependant on a number of factors, including the location of the development relative to town centres / district centres and the proximity / availability of public transport.
- 7.4.9. Given the site location within an approximate 500m walking distance of Monkstown Neighbourhood Centre and c. 1km from Blackrock District Centre (with its additional services & amenities), the availability of public transport in the vicinity (including Seapoint Train Station c. 300m distant and the Dublin Bus services along Monkstown Road within an approximate 500m walking distance), the recent introduction of a one-way road system along Seapoint Avenue in tandem with the provision of a two-way cycleway as part of the Coastal Mobility Route, and noting the broader relaxation in parking requirements facilitated by the national guidance (including the 'Sustainable Urban Housing: Design Standards for New Apartments, Guidelines for Planning Authorities, 2020'), I would be amenable to a relaxation in the 'standard' parking provision at the application site to the effect that the 8 – 9 No. parking spaces consequent on the proposed development works would allow for each of the existing residential units within Nos. 37, 39, 41, 43 & 45 Seapoint Avenue to avail of 1 No. parking space.
- 7.4.10. The Board may also wish to consider if a further relaxation would be warranted by reference to the limited circumstances referenced in the Development Plan when 'car-free housing' on suitable small-scale sites may be appropriate having regard to the high levels of public transport accessibility, and the proximity of local shops,



community facilities, and district / neighbourhood centres, although I would suggest that the relaxation previously outlined is reasonable in the circumstances.

- 7.4.11. Accordingly, it is my opinion that the loss of car parking and the need to provide for adequate circulation space to accommodate access / egress via the single road opening proposed as part of the development is acceptable in this instance.
- 7.4.12. With respect to the proposal to install automated electronically controlled gates at the new shared vehicular & pedestrian access, while I would acknowledge the applicants' assertion that these are required in order to prevent unauthorised parking by the general public, Section 8.2.4.9: '*Vehicular Entrances and Hardstanding Areas (i) General Specification*' of the Development Plan specifically states that automatic electronic gates serving residential developments are not favoured and should be omitted on the basis that they are contrary to road safety unless the entrance is set back 6.0m from the near edge of the footway so as to avoid the roadway or footway being obstructed by a vehicle while the gate is opening.
- 7.4.13. Given that the design of the revised entrance arrangement does not satisfy the aforementioned provision as regards the 'exception' allowed for the installation of automated gates, and noting the likelihood of traffic queuing back along the one-way system along Seapoint Avenue while waiting for any gates to open (particularly as traffic will be unable to pass waiting vehicles due to the limited carriageway width and the physical barrier between the roadway and the cycle-track), I would concur with the decision of the Planning Authority to omit the proposed automated gates. I would further advise the Board that the applicants have indicated that they are amenable to the omission of the automated gates (with an alternative proposal being the installation of manual gates that will generally remain open for convenience purposes). Any remaining concerns as regards unauthorised parking by the general public could perhaps be resolved by other mechanisms such as the introduction of a residents-only parking permit system, suitable signage, or greater policing / enforcement (e.g. clamping).

## 7.5. **Impact on Built Heritage Considerations:**

- 7.5.1. From a built heritage perspective, it is of relevance at the outset to note that the proposed development site includes No. 43 Seapoint Avenue which has been designated as a protected structure (RPS Ref. 365) by reason of its inclusion in the

Record of Protected Structures set out in Appendix 4 of the County Development Plan. Moreover, the site forms part of a larger 'L'-shaped grouping of buildings, including several other protected structures, identified as Seapoint Terrace on Ordnance Survey mapping, which serves as a 'set-piece' to terminate the westernmost end of an attractive terrace of two / three-storey-over-basement period properties (also designated as protected structures) known as Trafalgar Terrace that overlooks Seapoint Avenue and Dublin Bay beyond. In addition, the site is located within the wider confines of the Monkstown Architectural Conservation Area and, more specifically, '*Character Area 4: Seapoint Avenue*' of the ACA.

- 7.5.2. For the purposes of clarity, the Conservation Impact Report submitted in support of the application has indicated that the shared forecourt / car parking area to the front of the application site (serving Nos. 37, 39, 41, 43 & 45 Seapoint Avenue i.e. 'Seapoint Terrace'), including the boundary wall alongside the public road, is shown on the deeds of No. 43 Seapoint Avenue and thus forms an inherent part of that property. Furthermore, notwithstanding the issue of ownership, it has been suggested that the boundary wall (and, by extension, the forecourt area) forms part of the shared curtilage of a number of protected structures i.e. Nos. 39, 41, 43 & 45 Seapoint Avenue.
- 7.5.3. The proposed development involves the alteration of the existing roadside boundary and access arrangement between the shared forecourt and the public road. These works will primarily entail the removal of the westernmost vehicular access to / from the site and its replacement with a pedestrian-only gateway (to include the installation of un-automated pedestrian gates) and the revision of the easternmost access to provide for a new bell-mounted entrance arrangement with recessed gate piers and automated gates to accommodate pedestrian and vehicular access. In this regard, it is of particular relevance to note that the existing boundary treatment would not appear to be original to the property with the submitted Conservation Impact Report indicating that the original boundary was altered (including the removal of earlier gates, walls and railings) having been compulsorily acquired in 1976 to facilitate road widening works undertaken in 1979.
- 7.5.4. While I would acknowledge the concerns of third parties as regards the need to protect the intrinsic historical character of protected structures along Seapoint Avenue and the wider built heritage value of the Monkstown Architectural

Conservation Area, having reviewed the available information, and following a site inspection, in my opinion, it is clear that the layout and use of the forecourt area forward of Nos. 37, 39, 41, 43 & 45 Seapoint Avenue has evolved over time (with the advent of the private car etc.) and that its present use as car parking is no longer reflective of its original purpose while the roadside boundary and access arrangements also appear to have been significantly altered in response to contemporary developments i.e. the widening of the public road. In this regard, I would consider the scale, nature and impact of the proposed development to be comparatively minor and, therefore, I would concur with the report of the Local Authority's Architectural Conservation Officer that the works will not detract from the character or built heritage interest of the protected structures while the revised access arrangements will not adversely affect the integrity of the streetscape or the wider Monkstown ACA.

#### **7.6. Appropriate Assessment:**

- 7.6.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

### **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations, and subject to the conditions, set out below:

### **9.0 Reasons and Considerations**

- 9.1. Having regard to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022 and to the nature, form and design of the proposed development, it is considered that, subject to compliance with the conditions set out

below, the proposed development would not seriously injure the residential amenities of property in the vicinity, would be acceptable in terms of pedestrian and traffic safety, would not be detrimental to the integrity, character and setting of the protected structure or other protected structures in the vicinity, and would not adversely impact on the character of the Monkstown Architectural Conservation Area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 4<sup>th</sup> day of February, 2021, 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. The automated gates proposed at the eastern site access onto Seapoint Avenue shall be omitted from the development.

**Reason:** In the interests of pedestrian and traffic safety.

---

Robert Speer  
Planning Inspector

23<sup>rd</sup> June, 2021