



An
Bord
Pleanála

Inspector's Report

ABP-309950-21

Development	Construction of fence and gates.
Location	Clonacool, Busheloaf, Naas Road, Clondalkin, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD21B/0008
Applicant(s)	John J Hanlon
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	John J Hanlon
Observer(s)	None
Date of Site Inspection	12 th June, 2021
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site comprises an irregular shaped site located to the rear of a residential property that fronts onto a slip or service road that runs to the side of the mainline N7, approximately 600 metres to the west of the Red Cow interchange on the M50.
- 1.2. The slip or service road from which access to the site is available can be accessed from the junction with the Fonthill Road to the west of the site and access to the road is also available direct from the N7 a short distance to the west of the site. To the east of the site the slip / service road loops around to the north west and connects with Monastery Road. Access onto the M50 is available from a roundabout close to this end of Monastery Road.
- 1.3. The slip or service road serves a number of commercial sites including 'Joel's' Restaurant, a number of vacant commercial properties and a short cul-de-sac of cottages (St. Brigid's' Cottages) the entrance to which is approximately 80 metres to the west of the appeal site.
- 1.4. The site is located to the rear of 2 no. two-storey dwellings which access onto the slip or service road. The house closest to the site entrance 'Clonacool', which is in the ownership of the first party, was occupied at the time of inspection of the site and it would appear that the other house ('Holmans') is also currently occupied.
- 1.5. The site slopes upwards to the north away from the road and is currently laid out as a storage area with 40 no. 20 foot shipping containers laid out around the perimeter of the site. The first party states that these container structures are used as a storage yard for domestic, household, and commercial goods. Signage on the site makes reference to Red Cow Self Storage and the facility is operated by Eurobin Limited.
- 1.6. Access to this area is available via a recessed sliding gate on the western side of the houses fronting the site and the junction between this access and the service or slip road comprises a recessed entrance with gate piers aligned with the inside edge of the footpath. Visibility to the right hand side (south west) is restricted when exiting the site by the location of this gate pier. The initial part of the access road into the site from this entrance is tarmacked and the surface within the body of the site comprises compacted hardcore.

2.0 Proposed Development

- 2.1. The development the subject of the current appeal comprises the erection of a new 2.5 metre high mesh fence around the perimeter of the site. This fence would extend around all boundaries of the site including to the rear of the existing houses bounding the site to the south east. The design of fence comprises a wire mesh type fence comprising panels of 4 metres in width. The type of fencing proposed is very similar to that erected on the adjoining site to the west.
- 2.2. As part of the development, it is also proposed to erect a new sliding gate at the site entrance. This gate would replace the existing steel sliding gate and is proposed to be 2.1 metres in height and therefore c.600 mm higher than the existing gate in this location. It is also proposed to erect a fence to the same design as the gate to create a barrier between the rear elevation of the house adjoining the access and the shed to the north.
- 2.3. The justification given by the first party for the proposed development is security of the site given the nature of the use and the fact that a significant number of surrounding sites and properties are currently vacant.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested the submission of further information on the following issues:

- The applicant requested to submit details of the proposed uses / intensification of the site within the red line boundary and information regarding the vehicle type and intensity and any potential increase in traffic / trips generated from the site onto the N7 slip road.

The following is a summary of the main issues raised in the response to the request for further information received from the first party:

- That, contrary to the statement in the report of the Planning Officer in Ref. ABP-305392-19, the applicants house and the adjoining house ('Holmans') are not vacant. Both houses have been continuously occupied for c.50 years.
- That the reports on file continuously refer to 'slip road'. Reference to the development plan and public consultations in the area in 2016 (NRB-SK-001) and that at all times the road was referred to as a service road. When Arup consultants were engaged to upgrade this road, the applicant was advised that it was to be a bus corridor and from Joel's restaurant to St Brigid's Cottages there were to be raised bollards installed to create a bus corridor. From the Cottages to Monastery Road the road was to be a service road.
- That all the neighbouring businesses are now closed and since the section of road was designed the level of traffic has reduced by more than 95 percent.
- Business that previously used the road, but which are now gone include McCormack McNaughton Caterpillar dealership, Naas Road car sales, Komatsu Dealership, and car repairs.
- That the inspector in ref. ABP-305392-19 refers to the inadequate radius and the entrance to the site and the inadequate visibility / sightlines. It should be noted that this access was designed by Arup for the council and to suggest it is inadequate is a poor reason for refusal.
- Accepted that the design with a direct exit from the N7 onto the service road was poorly designed. The council should consider the introduction of some ramps.
- That there is no intention to intensify the use within the red line boundary / on the site. It is intended that the use would continue as a storage yard for domestic, household, and commercial goods. It may be that it would be used for storage of a boat or caravan built not heavy machinery or trucks / trailers.
- History of the use of the site over the last 40 years submitted.
- Details of the type and intensity of vehicles provided. That it is not intended that the intensity of use of the site would increase and the type of traffic will primarily consist of domestic type cars and the maximum intensity of 6-8 trips per day.

- That the entrance to the site is not from a national road. In the 40 year use of the site there have not been any recorded incidents.
- That the adjacent sites from Joel's restaurant are empty and the area is under review for redevelopment for residential and commercial uses. It is anticipated that the required enhancement in security of the site would be short term pending the redevelopment of the wider area, including the appeal site.
- The statement that the site is unsightly is rejected and it is considered that the site is the best kept along this section of the road.

3.2. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for 3 no. reasons that can be summarised as follows:

1. That having regard to the provisions of the development plan, the extensive planning history of the site it is considered that the intensification of traffic that would arise from the development would endanger public safety by reason of a traffic hazard and would be contrary to policy regarding the control of development on national roads as set out in DoECLG guidance Spatial Planning and Roads Guidance for Planning Authorities.
2. That the site is currently being used for unauthorised storage and the proposed development would result in the making of a material change in use of the land for which permission has not been granted. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. That the proposed development would set an undesirable precedent for other similar developments which would in themselves and cumulatively be contrary to public safety and to the proper planning and sustainable development of the area.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The report of the planning officer notes the planning history of the site including the previous refusals of permission by the Board. Report states that the form of fencing proposed is more visually acceptable than that which was refused immediately to the west under Ref. SD19A/0202. In the event that permission was to be granted it is recommended that the fence to the west would be conditioned to be removed and replaced with the form of fencing proposed in the subject application. Report notes the concerns of the Roads Department regarding the proposed uses on the site and the traffic implications. Concluded that the proposed development would not have any likely significant effects on any European site and the requirement for EIA is excluded after a preliminary examination. Initial report recommends further information as per the recommendations of the Roads Department and second report subsequent to the submission of further information recommends refusal of permission for reasons consistent with the Notification of Decision which issued.

3.3.2. Other Technical Reports

Roads Department – there are two Roads Department reports on file dated 1st February. One states that there is no objection to the proposed development and notes that a road opening licence will be required for the development. A second Roads Department Report dated 1st February recommends that further information be requested regarding the proposed uses / intensification of uses within the red line boundary and that the applicant is requested to submit clarification regarding the vehicle type and intensity of potential traffic at the site. It is this second report that is noted in the report of the Planning Officer. A report subsequent to the submission of further information recommends refusal of permission on the basis that the development to be retained would lead to an increased traffic hazard due to traffic intensification and turning movements at the site access.

3.4. Prescribed Bodies

None on file.

3.5. Third Party Observations

None received.

4.0 Planning History

Appeal Site:

South Dublin County Council Enf. Ref. 7798 – Current enforcement action in respect of unauthorised development on the appeal site. Planning Officer reports indicate that this case is ongoing.

South Dublin County Council Ref. SD19A/0202; An Bord Pleanála Ref.ABP-305392-19 –permission for retention of change of use of premises to self-storage facility; 40 shipping containers used as storage units; 10 metre length of 2.6 metre high palisade fencing in west boundary; sign on Unit 40; sign at roadside entrance and 2.2 metre high security gate and fence at entrance refused by the Planning Authority and decision upheld on appeal. The reasons for refusal cited by the Board related to (1) the increase in traffic turning movements onto and off a busy slip road linking with the national primary road (N7) and the lack of adequate visibility at the site entrance which would endanger public safety by reason of a traffic hazard, (2) that the development for which retention is sought would constitute haphazard development that is excessively visually prominent from the N7 and contrary to Objective ET3, Objective 5 of the development plan relating to architectural standards and design of industrial areas.

Other Sites

South Dublin County Council Reg. Ref. 15A/0314 – Planning permission was refused by the planning authority at a site at 'The Yard' Red Cow, Naas Road, Clondalkin, Dublin 22 for a development consisting of the storage of 68 no. 20 foot storage containers and 9 no. 40 foot storage containers, 1 no. 10 foot office unit and a toilet, vehicle storage and landscaping. The proposed units were intended for self-service storage. The planning application was for a period of 5 years.

5.0 Policy Context

5.1. Development Plan

The site of the proposed development is zoned 'EE' in the *South Dublin County Development Plan, 2016-2022*. The stated objective of this zoning is '*To provide for enterprise and employment related uses*'.

Policy TM5, Objective 1 seeks:

'To effectively manage the flow of through traffic along the strategic road network and maximise the efficient use of existing road resources'

Policy TM5 Objective 3 seeks

'To minimise the impact of new development on the county's road and street infrastructure'.

5.2. Spatial Planning and National Roads Guidelines for Planning Authorities (DoECLG 2012)

Section 2.5 sets out details of '*Required Development Plan Policy on Access to National Roads*'. In relation to '*Lands Adjoining National Roads within 50 kph Speed Limits*' this section states:

Access to national roads will be considered by planning authorities in accordance with normal road safety, traffic management and urban design criteria for built up areas.

Section 2.7 relates to national roads and junctions. Section 2.7 states that interchanges and junctions are especially important elements of infrastructure and that Development Plans and Local Area Plans must take account of and manage such infrastructure.

5.3. Natural Heritage Designations

The site is not located within or in close proximity to any European sites. The following are the closest European sites to the appeal site:

- Glenasmole Valley Special Area of Conservation (SAC) (Site Code 001209) is c. 8km south-west of the site.
- Wicklow Mountain SAC (Site Code 002122) is c.8km south of the site.
- Wicklow Mountain SPA (Site Code 004040) is c.8.5 4km south of the site.
- South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) is c. 13 km. to the east of the site.

5.4. EIA Screening

The form of development proposed is such that it does not come within a class of development as set out at Part 1 or Part 2 of the Fifth Schedule of the *Planning and Development Regulations, 2001*.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party appeal received:

- That the application is made by the individual (John J Hanlon) and not by any company.
- That Eurobin Limited rent the site from appellant.
- Submitted that there is no proposal to change the use of the yard from that for which it has been used for the previous 50 years – i.e. as a storage yard.
- That the application relates to a perimeter fence and a gate and would not have any implications for traffic.

- That the surrounding lands are vacant and there have been instances of vandalism in the vicinity of the site.
- That the sites to the sides and rear have been permitted to erect fencing of the same type that is proposed on the appeal site.
- That the proposed gate is to a height that it would appear to be exempted development and is proposed to be in the same location as the gate that was originally erected by the council.
- That the planners report is incorrect to state that the houses adjoining are unoccupied.
- That the proposal does not constitute development in the context of the development plan. The development will not result in any change of use or intensification of traffic movement.
- Regarding the impact on regional roads and the comments of the planner, this ignores the fact that the entrance was designed and built by the council.
- That the council is relying on a previous application for the use of the site by Eurobin Ltd and the assertion of the council of unauthorised use. This case is still before the courts and the decision of the council is preventing the applicant from securing their property irrespective of who the occupant / tenant is.
- Regarding reason for refusal No.3 and precedent, the council has permitted similar perimeter fencing on surrounding sites.
- Contended that the approach of the council is a means of pressurising the applicant to vacate the premises and thereby remove the only remaining access points onto the slip road.

6.2. Planning Authority Response

The response received from the Planning Authority states that it confirms its decision and that the issues raised in the appeal have been covered in the Planners Report.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Principle of Development, Visual Impact and Planning Status of the Existing Use,
- Access and Traffic Safety,
- Other Issues,
- Appropriate Assessment.

7.2. Principle of Development, Visual Impact and Planning Status of the Existing Use

7.2.1. The site of the proposed development is zoned 'EE' in the *South Dublin County Development Plan, 2016-2022*. The stated objective of this zoning is '*To provide for enterprise and employment related uses*'. The form of development proposed, comprising fencing for the security of a commercial or industrial site, is in my opinion consistent in principle with this land use zoning. I also note and generally accept the case presented by the first party with regard to the need to improve the security at the site given the vacant nature of surrounding sites. The first party submissions on file has also highlighted first party that the general environs of the site are proposed for comprehensive redevelopment in the near future and that the appeal site is likely to be sold as part of this redevelopment. It would therefore appear likely that any fencing erected on the site would be for a temporary period pending the redevelopment of the wider lands in this location.

7.2.2. The fact that the adjoining site to the west which is also zoned Objective EE has been permitted to erect fencing of a very similar design and scale to that proposed on the appeal site is noted, and I consider that the scale and design of the proposed fencing are acceptable in this location and in keeping with the character and structures contained on other sites in the general vicinity. This view is consistent with the report of the Planning Officer which states that the proposed fence is considered to be generally acceptable and preferable in visual terms to the palisade

fence which was refused permission on the site immediately to the west under Ref. SD19A/020. In my opinion, the existing storage facility on the site is not very visually prominent in the wider area or from the M50 and the scale of the fencing proposed at 2.5 metres in height would not be any higher than the existing containers that are on the site which are c.2.6 metres high. Even in the event that the containers are removed from the site the design and scale of the fencing and the surrounding predominantly industrial / commercial context of the site and location adjoining a national road is in my opinion such that the form of development proposed would not represent an excessively visually prominent or incongruous form of development.

- 7.2.3. With regard to the status of the existing use of the site the Planning Authority are clearly of the opinion that the existing use of the site is unauthorised. This is referenced in the report of the Planning Officer and supported by the fact that the site is currently the subject of enforcement proceedings initiated by the Council.
- 7.2.4. The basis of the reason for refusal No. 1 as included by the Planning Authority in the Notification of Decision to Refuse Permission is that the proposed development would result in an intensification of use of the site that would have a endanger public safety by reason of the creation of a traffic hazard. Specific consideration of the safety of the existing site access is set out at section 7.3 of this report below, however given that the development the subject of this appeal is for the erection of a fence around the perimeter of the site and a new gate I do not see how the proposed development can be considered to lead to an intensification in the use of the site and any consequent implications for traffic safety. While not explicitly stated, what I take as the basis for Reason for Refusal No.1 is that the planning authority consider that the existing use of the site is an unauthorised use and that the proposed development would facilitate the continuation of this unauthorised use, although in practice the fence and gate is not clearly necessary for or directly connected with the existing use. On the basis that the use is considered to be unauthorised the Planning Authority have determined that the current use has resulted in an intensification of traffic movements to and from the site such as would give rise to the creation of a traffic hazard.
- 7.2.5. Similarly, the basis for reason for refusal No.2 included in the notification of decision is that the existing use of the site is unauthorised and that the proposed development

would consist of the making of a material change in the use of the site for which permission has not been granted.

7.2.6. In my opinion the issue before the Board has to be restricted to the consideration of the planning implications of the fence and gate which are the subject of the current application. It is not in my opinion open to the Board to take the same route as the Planning Authority and consider the case on the basis that the existing use of the site is unauthorised. The Planning Authority are charged with enforcement of the planning code as a function and in this case have initiated enforcement proceedings against the first party with regard to the use of the site which. As set out above, the opinion of the Planning Authority on the planning status of the existing use of the site has directly influenced its decision on the subject application. In advance of a conclusion of enforcement proceedings related to the existing use, and notwithstanding the significant information on file regarding the historical use of the site provided by the first party, it is not in my opinion open to the Board to determine that the existing development on the site is not authorised and to base its decision on such a determination. I therefore consider that the sole issue before the Board is to determine the merits of the development as proposed, namely the fencing and replacement gate.

7.2.7. As set out in the paragraphs above, I consider that the first party has set out a clear rationale as to the need for the proposed development and that the development would not be significantly out of character with its surroundings or such as to have a significant impact on the visual or other amenities of the area. For these reasons it is my opinion that the proposed development is acceptable, and that permission should be granted for the development as proposed. The section below sets out my views on the traffic safety implications of the existing access to the site and will be of relevance to the Boards assessment in the event that it does not agree with the above conclusion regarding the parameters within which the Board can made a decision in this case.

7.3. Access and Traffic Safety

- 7.3.1. Reason for refusal No.1 cited in the decision of the planning authority relates to the intensification of development on the site and that this intensification would give rise to the creation of a traffic hazard or obstruction of road users. In my opinion there are a number of issues relevant to the traffic safety implications of the existing access to the site. Firstly, the issue of the status of the road onto which the existing access to the site connects has been the subject of comment from the first party during the assessment of the application by the Planning Authority. Specifically, the first party contend that the road onto which the site accesses is a service road and not a slip road off the N7 and that the nature of traffic has to be seen in this context. During the course of the consideration of the application by the Planning Authority the first party submitted a number of drawings, including layouts prepared by Arup Consulting Engineers who were advising the council on the road layout at the time of the works to the M7 / Red Cow interchange, and it is noted that at least one of these identifies the road as a '*service road*'.
- 7.3.2. The comments of the first party on this issue and the drawings submitted are noted, however, on the ground, the road onto which the site accesses can be seen to have elements of both a service road and a slip road. Specifically, the existing layout is such that access to the road is available from the junction with the Fonthill Road to the west of the site and to the east of the site this loops around to the north west and connects with Monastery Road. The road therefore clearly serves a function as a service or access road for the appeal site and the now largely vacant sites located between the two junctions. The section of road fronting the site is however also directly accessible from the N7 via an access point approximately 75 metres to the west of the site entrance. The section of road fronting the site therefore has two lanes with a merge located approximately 50 metres to the north east of the site.
- 7.3.3. At the time of inspection of the site it was observed that traffic speeds on the road fronting the site were high, particularly in the case of traffic that had just exited from the N7. My inspection of the site also indicated that the available sight line to the right hand side (south west) when exiting the site is significantly restricted by the presence of the gate pier located at the inner edge of the footpath and also by the boundary of the site immediately to the south west. The layout of the road fronting the site, the tight radius of the turn into the site and the traffic speeds observed are in

my opinion such that, notwithstanding the recessed site entrance traffic slowing down to access the site would be in conflict with the normal traffic on the road. These restrictions on available sight lines and issues arising from the traffic speeds and site access are in my opinion such that it leads to the creation of a potential traffic hazard in this location.

7.3.4. The first party appellant makes reference to the fact that the road layout in the vicinity of the site was designed and built by the council and that it appears unreasonable that permission would be refused on the basis of traffic safety in such circumstances. This is noted, and there is some degree of validity to the point raised, however it remains that the nature of the road fronting the site, the volume and speed of traffic and the geometry of the site access combine to create a hazardous access to the site. I also note the first party submissions on file which acknowledge that the existing access is not ideal from a safety perspective and suggestions that the council should consider the installation of speed control measures on the section of road fronting the site. In my opinion these comments serve to highlight the traffic safety issues arising. Similarly, I note the comments of the first party with regard to the reduction in traffic volumes using the access road on account the closure of businesses and premises that had access onto the service road. The closure of these premises may have led to some reduction in traffic flows however as noted previously traffic volumes on the section of road fronting the site remain significant comprising traffic from the Fonthill Road junction to the south west and from the access off the N7 and the traffic safety issues referenced above remain relevant.

7.3.5. In conclusion, I consider that the layout of the existing access to the appeal site, the nature of the road onto which it accesses and the volume and speed of traffic on this road are such that the continued operation of the existing use on the site constitutes a traffic hazard. As set out previously however I do not consider that the issue before the Board is one of the assessment of the merits of the existing use of the site and associated traffic safety impacts. Rather, the development under consideration relates solely to the proposed fencing and gate the development of which would not have any direct or indirect impacts in terms of traffic safety. For this reason I do not consider it appropriate that permission would be refused on the basis of traffic safety or the creation of a traffic hazard.

7.4. Other Issues

7.4.1. As per Paragraph 9 of the South Dublin County Council development Contribution Scheme, industrial / commercial developments are levied on the basis of floor area of development in square metres. The nature of the proposed development is not therefore such that it would require a development contribution to be levied.

7.5. Appropriate Assessment - Screening

7.5.1. The site is not located within or in close proximity to any European sites. The following are the closest European sites to the appeal site:

- Glenasmole Valley Special Area of Conservation (SAC) (Site Code 001209) is c. 8km south-west of the site.
- Wicklow Mountain SAC (Site Code 002122) is c.8km south of the site.
- Wicklow Mountain SPA (Site Code 004040) is c.8.5 4km south of the site.
- South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) is c. 13 km. to the east of the site.

7.5.2. The location of the appeal site is such that there would be no direct impacts on any European sites and the nature of the proposed development on the site (fencing and gate) is such that it would lead to any emissions or discharges that could have any potential impacts on a European site. There are also no potential pathways identifiable between the appeal site and the above listed European sites.

7.5.3. With regard to the existing use of the site as a commercial self storage facility that would be facilitated by the granting of permission for the proposed development, the nature of the use is such that it does not give rise to any emissions or discharges that could have any potential impacts on a European site. There are also no potential pathways identifiable between the appeal site and the above listed European sites.

7.5.4. Having regard to the above, the proposed development would not have an adverse effect on the integrity of any European sites in the light of the conservation objectives of the relevant sites.

8.0 Recommendation

- 8.1. Having regard to the above it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions:

9.0 Reasons and Considerations

Having regard to the employment and enterprise zoning objective of the site and surrounding lands and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area or of property in the vicinity and would not have a negative impact on the character of the 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 10th day of March, 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 permitted fence shall be green, grey, or black in colour.

Reason: In the interests of visual amenity.

Stephen Kay
Planning Inspector

20th October 2021