



An
Bord
Pleanála

Inspector's Report ABP310187-21

Referral Question	Whether a cycle lane is or is to development or is or is not exempted development.
Location	Griffith Avenue, Dublin 9.
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	0093/21.
Referrers	Griffith Avenue Group.
Planning Authority Determination	The development is exempt from planning permission.
Date of Site Inspection	21 st September 2021
Inspector	Paul Caprani.

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1.0 Introduction

A question has arisen pursuant to Section 5 of the Planning and Development Act as to whether or not the provision of a cycle lane along Griffith Avenue, Dublin 9 is or is not development and if it is development, whether such development is exempted development. The third-party referrer argues that the cycle lane is not exempted development on the basis that it endangers public safety by reason of a traffic hazard and obstruction to road users.

2.0 Site Location and Description

2.1. Griffith Avenue is a wide distributor road in the north suburbs of Dublin City running in an east/west direction linking the suburban area of Glasnevin via Tolka Estate Road in the west to the Malahide Road in the east. It is approximately 4 kilometres in length and acts as both a collector and distributor road for the surrounding suburbs of Glasnevin, Drumcondra, Whitehall and Marino. The Avenue was laid out in the 1930s and was progressively extended westwards. The western portion of the Avenue comprises of new dwellings facing onto relatively wide footpaths. The western section of the carriageway is wide enough to accommodate two-way traffic and on-street parking. The section between the Ballygall Road and the Ballymun Road accommodates three and four traffic lanes and a segregated footpath and cycleway. Between the Ballymun and Malahide Road the Avenue incorporates extensively wide footpaths and grass verges (c.9 to 10 metres in width) with each footpath accommodating two rows of mature trees with the pedestrian footpath located in between the roads and trees. It also accommodates one of two lanes of westbound traffic and one lane of eastbound traffic. The area of concern raised in the referral relates to the stretch of roadway/cycleway between Grace Park Road and Calderwood Road along the northside of Griffith Avenue (between Nos. 127 and 149A Griffith Avenue). In recent months segregated cycle lanes have been developed along this stretch of the carriageway. The segregated cycleway is demarcated by road markings and bollards. On street parking is provided outside the cycleway, adjacent to the carriageway and 0.7m wide hatched buffer zone separates

the parking area from the carriageway. Double yellow lines prohibit parking at areas adjacent to junctions. The cycleway is 1.5 metres in width. There are a number of schools and other institutions located along the northern side of Griffith Avenue.

3.0 Question

A referral was submitted by the Griffith Avenue Group as to whether or not a cycle lane is or is not development or is or is not exempted development. The question was referred to Dublin City Council on 15th March, 2021. The referral argued that the provision of a cycleway would endanger public safety by reason of a traffic hazard. Concerns were specifically expressed in respect of the section of cycleway between Calderwood Road and Gracepark Road.

3.1. Dublin City Council's Determination

- 3.1.1. Dublin City Council in its determination had particular regard to Sections 2, 3, 4 and Section 179 of the Planning and Development Act. References are also made to the Traffic Department's comments where it is argued that the proposed cycleway does not represent a traffic hazard and is fully in accordance with the provisions contained in the Traffic Signs Manual, DMURS and the National Cycle Manual. The parking area adjacent to the cycle lane is clearly demarcated and delineated. Dublin City Council's determination was issued on 9th April, 2021.

4.0 The Referral

- 4.1.1. Griffith Avenue Group referred the question to An Bord Pleanála. It notes that Griffith Avenue is a main busy distributor road for the speed limit of 50 km/h. The proposal as laid out between No. 147 and 129 Griffith Avenue is described in the referral submission. It is argued that the proposed development should be classed as de-exempted on the basis of Article 9(1)(iii) as it is argued that the proposal would "endanger public safety by reason of a traffic hazard and obstruction to road users". The specific concerns set out in the Referral are described below:

- The parking bay is located so far out into the carriageway that people getting in and out of cars will present a hazard to passing traffic. This is particularly in

the case of elderly residents with slower mobility and younger families that require to strap toddlers into seats etc.

- Cyclists on the cycleway could also be injured by the opening of car doors impinging on the cycleway.
- A Road Safety Audit report in respect of a cycle lane on St. Mobhi Road to Walnut Drive recommended that the parking area be 2.1 metres in width. The parking bays proposed are only 1.8 metres in width.
- Concerns are expressed that the placing of cycle paths on the road could also give rise to road safety concerns, particularly for younger children using cycle paths.
- The relocation of cars further out onto the roadway will exacerbate obstructed sightlines for vehicles exiting No. 149A Griffith Avenue and for cars exiting Calderwood Avenue.
- Dublin City Council have failed to take into account that the side of the roadway next to the footpath experiences significant flooding on regular occasions due to leaves blocking the drains along the roadside. The cycle path will require a high level of maintenance to control the threat of flooding.

4.2. Responses

4.2.1. Dublin City Council have not submitted a response to the Referral.

5.0 Legislation

5.1. Section 2 definitions

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 “development” In this Act “development” means, except where the context otherwise requires, the carrying out of any works on, in over or under land or the making of any material change in the use of any structures or other land.

Section 4-(1)(e) *development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road.*

Section 179-(1)(a) *the Minister may prescribe a development or class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such a development or class of development there should, in relation to any such development or development belonging to such a class of development, be in compliance with the provisions of this sections and regulations under this section.*

(2) *The Minister shall make Regulations providing for any or all of the following matters:*

- (a) *The publication by a local authority of any special notice with respect of the proposed development.*
- (b) *Requiring the local authorities to:*
 - (i) *notify prescribed authorities of such development or classes of proposed development as may be prescribed, or*
 - (ii) *consult with them in respect thereof, and*
 - (iii) *give to them such documents particulars and plans or other information in respect thereof as may be prescribed.*
- (c) *The making available for inspection by members of the public of any specified documents, particulars or plans or other information with respect of the proposed development.*
- (d) *The making of submissions or observations to the local authority in respect of the proposed development.*

5.2. Subsection 6 states that this section shall not apply to proposed development which

- (bb) *consists of works, other than works involving road widening, to enhance public bus services or improve facilities for cyclists provided under Section 95 (as amended by Section 37 of the Roads Traffic Act 1994) of the Road Traffic Act 1961 under Section 38 of the Roads Act 1994.*

6.0 Assessment

6.1. Development

- 6.1.1. It is my considered opinion having regard to the information provided and having inspected the site that the provision of a cycleway along Griffith Avenue constitutes works as it involves construction in the form the provision of bollards/wands which demarcate the cycleway from the parking area and demarcate the beginning and end of the parking area from the vehicular carriageway. Furthermore, the proposal constitutes alterations to the existing roadway in the form of demarcating areas for a cycle path and for on-street parking. On this basis it can therefore be reasonably concluded that the proposal constitutes 'works' under the definition set out in Section 2 of the Act, and therefore constitutes development as per Section 3 of the Act.

6.2. Exempted Development

- 6.2.1. It is my considered opinion that the proposal is exempted development under the provisions of Section 4(1)(e) of the Planning and Development Act 2000. This section of the Act clearly and unambiguously states that development consisting of the carrying out by the Corporation or a County or other Borough or the Council or an Urban District Council of any works required for a new road or the maintenance or improvement of a road. In my view the provision of a cycle path and the incorporation of designated and segregated on-street parking areas within the carriageway would fall within the category of maintaining or improving an existing road. The provision of a cycleway seeks to improve the roadway layout in incorporating a designated and segregated alignment to cater for the provision of cyclists along the road. The provision of such infrastructure in my view is particularly appropriate along Griffith Avenue having regard to the presence of a number of schools along the alignment. It is important therefore to provide appropriate safe and sustainable cycling infrastructure to enable students to access the schools in question in a safe and practical manner. Having regard to the provisions of the National Cycle Manual which sets out detailed design guidance for cycleways and the guidance contained in the Design Manual for Urban Streets (which is primarily predicated on the design parameters set out in the National Cycle Manual) it is considered that the design of the cycleway and segregated on-street parking is fully in accordance with the provisions contained therein. The proposal therefore does not

in my view constitute a traffic hazard nor does it endanger public safety by reason of a traffic hazard or obstruction to road users under the provisions of Article 9(1) of the Planning and Development Regulations 2001 (as amended).

- 6.2.2. The provisions of Section 179 of the Planning and Development Act 2000 is also relevant in this instance. This relates to development carried out by or on behalf of a local authority. Subsections 1 to 4 of this Act sets out the requirements which the Planning Authority are mandated to undertake when carrying out development in its own area. Subsection 6 sets out circumstances where such requirements do not apply and this includes subsection 179(bb) "*works other than works involving road widening to enhance public bus services or improve facilities for cyclists provided under Section 95 (as amended by Section 37 of the Road Act 1994) of the Road Planning Act 1961 or under Section 38 of the Road Traffic Act 1994*". It is clear from the above subsection that the provision of a cycleway does not fall under the statutory requirements for Planning Authorities to advertise or accept submissions under the statutory provisions of Section 179.
- 6.2.3. It would appear therefore based on the above arguments that the works relating to the provision of a cycleway constitutes development that is exempted development.
- 6.2.4. The Board will note that the referrer predicates the arguments set out in the Referral on the basis under the restrictions on exemptions under Article 9(1)(iii) of the Planning and Development Regulations 2001, as amended. However, the restrictions on exemptions under Article 9 only relate to exempted development classes set out under Article 6 of the same Regulations. These exemptions relate to classes specified in Column 1 of Schedule 2 of the 2001 Regulations (as amended). They do not relate to the exempted development provisions under Section 4 of the Act. There appears to be no classes of exemptions under Schedule 2 of the Planning and Development Regulations 2001 (as amended) which would relate to the works undertaken by the Planning Authority along this section of Griffith Avenue. Therefore, any restrictions on development under Article 9, and in this case Article 9(1)(ii) of the Planning and Development Regulations 2001 (as amended) would not apply to the exempted development provisions set out under Section 4 of the Planning and Development Act 2000. Therefore, the works in question which are exempted development under the provisions of Section 4(1)(e) of the Act and any restrictions on exemptions under the provisions of Article 9(1)(iii) in this instance would not apply

on the basis that restrictions under Article 9 only relate to restrictions in respect of exempted development under Schedule 2 of the 2001 Regulations (as amended).

7.0 **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 **Decision**

I would therefore recommend that the Board issue a direction as follows:

WHEREAS a question has arisen as to whether or not the construction of a cycleway along a section of Griffith Avenue between Gracepark Road and Calderwood Road is development and if it is development and whether or not such development is exempted development.

AND WHEREAS the question was referred to Dublin City Council by the Griffith Avenue Group on 15th March, 2021 and Dublin City Council issued a declaration on the 9th April, 2021 determining that the works to be undertaken is development which is exempted development.

AND WHEREAS An Bord Pleanála in considering this referral had particular regard to

- (a) Sections, 2, 4 and 4(1)(e) and Section 179 of the Planning and Development Act 2000, and in particular Section 179(6)(bb) of the said Act.
- (b) The fact that the restrictions referred to in the Referral by Griffith Avenue Group related specifically to restrictions under Schedule 2 of the Planning and Development Regulations 2001 and not the exempted development provisions under Section 4 of the Act.

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by Section 5(4) of the Act hereby decides that the provision of a cycleway along this section of Griffith Avenue constitutes development which is exempted development.

Paul Caprani,
Senior Planning Inspector.

29th September, 2021.