



An  
Bord  
Pleanála

## Inspector's Report ABP-310927-21

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<b>Development</b>	Installation of inward opening pedestrian entrance gate and access to the rear boundary and lane.
<b>Location</b>	10 Daneswell Place, Glasnevin, Dublin 9
<b>Planning Authority</b>	Dublin City Council
<b>Planning Authority Reg. Ref.</b>	2714/21
<b>Applicants</b>	Liam & Jennifer O'Driscoll
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	Third Party vs. Grant
<b>Appellants</b>	Sonja & Fionn MacCumhail
<b>Observers</b>	Patricia McKenna
<b>Date of Site Inspection</b>	28 <sup>th</sup> January 2022
<b>Inspector</b>	Stephen Ward

## 1.0 Site Location and Description

1.1. The site is in a suburban part of Dublin c 2km north of the city centre. It has a stated area of 162m<sup>2</sup>. It consists of the curtilage of a terraced house on a recently built street called Daneswell Place, which is a cul-de-sac with a single access point from Botanic Road. The land on the opposite side of Daneswell Place from the site is enclosed by hoardings. The back of the site is bounded by part of a concrete block wall. There is a lane on the other side of that wall that runs behind the curtilages of houses on Iona Road. That lane has two openings onto Iona Road. There is a gate across the western one which was open at the time of inspection. There are sharp bends on the lane. There are numerous gates along it from the curtilages of the houses along Iona Road including pedestrian gates and vehicular gates from garages. One of the newer houses on Daneswell Place (No. 12, to the east) also has a newly installed pedestrian gate onto the laneway.

## 2.0 Proposed Development

2.1. It is proposed to provide a pedestrian gate from the back garden of the property onto the existing lane to the south. The gate would be 1.1m wide and 2.4m high.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 7 conditions, none of which significantly modified the proposed development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planner's Report

The proposal is a minor alternation to an existing boundary wall and permission has already been granted for a similar development to house No. 12. Taking into account the cumulative impact with No. 12, the planning authority does not have any objection to increased pedestrian activity on the laneway. The proposal will allow ease of access from the site to Iona Road for pedestrians. The submitted objections

have been taken into account. The lane is wide at c7m with good sightlines. No parking or pedestrian activity occurred there at the time on inspection. There is no reasonable planning concern that would warrant a refusal of permission for a minor development such as this one. Any potential future use as a vehicular entrance is not a matter for consideration in this application. The wall to be breached has no architectural or historic merit and does not warrant conservation in its entirety. The structural integrity of the wall is not a planning matter. Non-conformance with parking bye laws fall outside the remit of a planning application. A grant of permission was recommended.

### 3.2.2. Technical Reports

The Drainage Division stated that there were no objections subject to conditions.

No report was received from the Roads and Traffic Planning Division.

### 3.3. **Observations**

Several 3<sup>rd</sup> party submissions were made that objected to the proposed development on grounds similar to those made in the subsequent appeal and observation. Concerns are also raised that the development would involve additional vehicular traffic and parking on the laneway.

The TII raised the issue of the application of the Section 49 Supplementary Development Contribution Scheme for the LUAS Cross City project.

## 4.0 **Planning History**

4.1 There would not appear to be any planning history relating specifically to the appeal site alone. However, the site was included as part of a larger site with the following planning history:

**PL29N. 246124, Reg. Ref. 3666/15** – the board granted permission on 8<sup>th</sup> August 2016 for a development of 131 homes on a site that includes the current appeal site. The duration of this permission was extended under P.A. Reg Ref 3665/15X2.

Condition 7(c) of that permission stated –

*The boundary work shall not interfere with the structural integrity of the existing domestic boundaries and shall be certified by a competent structural engineering firm. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.*

*Reason: In the interest of the residential amenities of the area*

**P.A. Reg. Ref. 3444/14** – The council refused permission in November 2014 for 147 homes on a site including the current appeal site for reasons based on the proximity to the site boundaries resulting in insufficient amenity space and poor aspect; that the height of 5 and 6 stories would contravene the development plan; and that the design would be out of character with the area.

4.2 The following planning history relates to No. 12 Daneswell Place to the east:

**P.A. Reg. Ref. 0295/20** – The council made a declaration on 12<sup>th</sup> October 2020 under section 5 of the planning act that the provision of a pedestrian gate from the site onto the lane to the south would not constitute exempted development because it would be an access onto a public road that was more than 4m wide.

**ABP Ref. 309562-21 / P.A. Reg. Ref. 3847/20** – On 13<sup>th</sup> May 2021 the Board decided to grant permission for the installation of a new pedestrian gate and access to the rear boundary and lane at 12 Daneswell Place.

## 5.0 Policy Context

### 5.1. Development Plan

The Dublin City Development Plan 2016-2022 applies. The site is zoned Z1 – to protect, provide and improve residential amenities. Section 16.10.12 of the plan refers to alterations and extensions to houses. It says that the council will only grant permission when it is satisfied that they would not have an adverse impact on the scale and character of the house and would not have an unacceptable impact on the amenities of adjacent residences.

## 5.2. Natural Heritage Designations

None.

## 6.0 The Appeal

6.1. The DCC decision to grant permission has been appealed by Sonja & Fionn MacCumhaill of 5 Iona Road, Glasnevin. The grounds of the appeal from can be summarised as follows:

- The current proposal is different to that previously permitted at No. 12 in terms of width and position and requires separate consideration on its own merits.
- While no such access points should be allowed, the current proposal raises specific concerns relating to safety having regard to its location close to a sharp bend and opposite a vehicular garage, and the restricted width of the lane (4.2m).
- The DCC Planner's Report shows that the specifics of this proposal were not considered and DCC did not carry out an independent assessment.
- The proposal would compromise the safety and privacy of the laneway as a long-established amenity for the adjoining properties, which should be maintained in accordance with the Z1 zoning objective and section 16.10.12 of the Development Plan.
- The potential locking of the vehicular gate on the western laneway entrance further compromises the use and safety of the laneway.
- Development work at No. 12 Daneswell Place resulted in blockage of the lane
- All of the laneway remains in private ownership with some residents owning the freehold of part of the laneway. No consent for the application was sought and it should not have been approved without this.
- The site is part of an unfinished development (P.A. Reg Ref 3665/15 / ABP Ref 29N.246124, as extended by P.A. Ref 3665/15X2). This proposal should have been an application to amend that permission and not as an individual

entity, which sets an undesirable precedent with regard to proper planning and enforcement.

- The proposal compromises condition 7 of P.A. Ref 3665/15 as it could significantly compromise the structural integrity of the wall. No engineering assessment has been provided and a dangerous precedent would be created.
- The proposed access route is not required as Daneswell Place can access Iona Road via Botanic Road without any significant hazards.
- The installation of private one-way access for the benefit of only a few residents in Daneswell Place would not alleviate any perceived safety concerns about the wider footpath network.
- When a similar access was proposed under P.A. Ref 3444/14 it was strongly objected to by residents and was omitted from the subsequent applications.
- The current access to Daneswell Place is not in accordance with the permission given. When completed, it is assumed that the main access will be provided in accordance with the permission.
- The lane is used by both drivers and pedestrians on a daily basis and the impacts of the development on the movements of the existing residents have not been adequately considered.
- The proposal seeks an unprecedented link from Daneswell Place, which is not evident in other similar developments in the area.

## 6.2. Applicant Response

The applicant's response can be summarised as follows:

- The appeal includes additional observations to their original submission, and it is trusted that Section 127(3) of the Act will be maintained.
- The proposed access would improve safety and security for all residents with access to the laneway.
- The applicant is a daily bicycle commuter, and it would provide a safer route than Hart's Corner, a very hostile environment for a cyclist.

- Concerns regarding pedestrian safety are overstated and have been previously addressed by the Board under Ref 309562-21.
- The restricted width and right-angled bends on the laneway mean that all vehicular traffic proceeds very slowly.
- The laneway is already used by pedestrians for recreation and servicing. It is a calm and safe environment, which is at odds with the high-risk environment painted in the appeal.

### 6.3. **Planning Authority Response**

None received.

### 6.4. **Observations**

One observation has been received from Patricia McKenna of 11 Iona Road. It is based on various grounds including those which have already been raised in the appeal. The additional grounds can be summarised as follows:

- The proposal is inappropriate as it would change the historic purpose of the wall, which was to separate the rear of Iona from the Daneswell site and its predecessor, Smurfitt.
- The proposal would set an undesirable precedent for similar developments in other properties.
- The proposal prevents future gating of the laneway for security reasons.
- The application has described the proposal incorrectly.
- The Board's previous decision (for No. 12) did not properly consider the issues, including the fact that the application is not for a minor development and is a modification of the original parent permission.
- Any liability arising from the permission should rest with the planning authority.
- The design and excavation associated with the development threatens the structural integrity of the wall, which is already in a poor condition.

## 7.0 Assessment

### Introduction

- 7.1. This case relates to the installation of a pedestrian gate onto the laneway in an almost identical manner to that recently permitted by the Board in the case of No. 12 Daneswell Place (ABP Ref 309562-21). However, decisions on planning applications and appeals do not form binding precedents in a way that court judgments can. A grant or refusal does not require the board or the council to make a similar decision in any future case if they had reasons to come to a different conclusion. The case should therefore be considered *de novo* on its merits, taking into account the specific context of the appeal site and the cumulative impact with the previously permitted entrance at No. 12. Furthermore, notwithstanding the non-binding precedent of planning decisions, it must be acknowledged that the site is part of a row of recently built houses, several of which also have gardens that abut the lane. It would therefore be reasonable and prudent to be mindful of the likelihood of similar proposals being made in the future and to consider the possibility of further cumulative impacts.

### Validity

- 7.2. I consider that the proposal has been adequately described in public notices and that the participation in the planning process by 3<sup>rd</sup> parties has not been compromised. The planning authority deemed the application to be valid and I am satisfied that the application contains sufficient information to assess this appeal.
- 7.3. In terms of legal consent, the proposed works would take place entirely within/on the site boundary and the applicants have asserted that they have the necessary legal interest in the land to carry out the development as they have the freehold interest on the site including the relevant part of the boundary wall. The council has confirmed that the section of laneway adjoining the site has been taken in charge (i.e. 'a public laneway'), which is relevant inasmuch as the council is also the roads authority for the area. This assertion is consistent with the previous application for No. 12 and with my observations of the site/laneway at the time of inspection. Therefore, while the board cannot conclusively determine any dispute with regard to legal interest in land in the course of a planning appeal, there are insufficient grounds to conclude that the application and appeal should not be given further consideration due to any



lack of legal interest in the land by the applicants notwithstanding the queries raised in the appeal and observation.

- 7.4. I acknowledge that the appeal site formed part of the parent permission for Daneswell Place originally granted under ABP Ref PL29N. 246124 / P.A. Reg. Ref. 3666/15 and subsequently extended in duration under P.A. Reg. Ref 3665/15X2. However, I am satisfied that the current case constitutes a separate proposal which can be assessed on its individual merits without any requirement to modify the parent permission.
- 7.5. The applicant's response to the appeal appears to question the ability of the appellant to elaborate on the grounds of their original submission on the DCC application. However, the Board should note that s. 127(3) of the Act restricts elaboration on the grounds of an appeal or referral but does not restrict the appellant from elaborating on the grounds of their original submission to the planning authority.

#### The principle of the development

- 7.6. The applicants have given a clear and simple reason as to why the proposed gate would be of benefit to them. It would allow daily bicycle commuting on a safer route which avoids the hostile environment for cyclists at Hart's Corner. I consider that the facilitation of such sustainable travel patterns and pedestrian/cyclist permeability would be consistent with best design practice as outlined in local and national housing and transportation policy and would be in accordance with the proper planning and sustainable development of the area. Similar positive principles would apply to all the other houses at Daneswell Place and, accordingly, I would have no objection in principle to the potential future cumulative impact of similar developments.
- 7.7. The proposal involves a relatively minor alteration within the curtilage of the existing house. It involves a pedestrian gate only and does not propose any additional vehicular movements or parking. And given the availability of vehicular access and parking to the front of Daneswell Place, there is no reasonable indication that the proposed access would be used to facilitate vehicle access/parking. I acknowledge the location of the site within the Z1 zoning objective and the provisions of section 16.10.12 of the development plan. I consider that the principle of a pedestrian

access improvement is acceptable, subject to further assessment regarding impacts on the amenities of the area and surrounding properties.

#### Structural impacts

- 7.8. The wall that would be breached by the proposed development is a concrete block wall on a mass concrete base. The application indicates that the existing vertical structural movement joint adjoining the gate would be maintained for structural integrity. I note condition 7(c) of the grant of permission made by the board in PL29N. 246124, Reg. Ref. 3666/15 regarding the structural integrity of existing domestic boundaries. However, I would advise the board that there is no basis to conclude in this case that the wall at the back of the appeal site is unusually vulnerable to collapse, or that such collapse would have unusually deleterious consequences at this location. There is a residual level of risk that arises from any construction activity in any location, but the assertions in the appeal and observations (including those made to the planning authority) about the structural integrity of the wall would not justify refusing permission in this case. Consistent with the approach of the Board under ABP Ref 309562-21, I consider that a condition regarding structural integrity would be superfluous in effect and should not be imposed on any grant of permission.

#### Safety and convenience

- 7.9. I have had regard to the specific circumstances of this site. It is located at a point on the laneway where the width reduces to c. 4.2m and is in close proximity to two right-angle bends to the southwest. There are also multiple other vehicular/pedestrian entrances along the lane, including a garage entrance opposite the proposed access. However, I consider that the existing entrances, sharp bends and narrowing width of the lane give clear signals to drivers that they need to severely restrict their speeds and maintain awareness while travelling along the lane as it is a space shared with vulnerable road users. It is these constraints on vehicles that keep the lane safe. In this context the proposed pedestrian gate would not give rise to any hazard whatsoever. There is no reason to conclude that the residents that would use this gate would be any more or less likely to obstruct the lane than other persons who use the lane. The construction works associated with the development are minor and any impact on the lane is likely to be of a very limited magnitude and

duration that would be similar to any minor improvement or maintenance works. The assertions regarding traffic hazard or obstruction in the appeal and observations would not justify refusing permission for the proposed development.

#### Residential Amenity

- 7.10. The proposed development would not threaten the privacy, security or amenity of any of the other houses in the vicinity. The assertions to the contrary in the submitted appeal and observations are not accepted. The proposed development would be in keeping with the Z1 residential zoning that applies to the site.

#### Visual amenity

- 7.11. The wall is largely of modern concrete block construction and is not of any visual or architectural value. The proposed works are minor in scale and the insertion of the proposed gate would not detract from the visual amenity of character of the area. The proposed materials and finishes have not been specified but I am satisfied that these details can be agreed with the planning authority by condition.

## **8.0 Appropriate Assessment**

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

## **9.0 Environmental Impact Assessment – Screening**

Having regard to the nature and scale of the proposed development and its location in a serviced urban area, I have concluded that the proposed development would not be likely to have significant effects on the environment and that, on preliminary examination, an Environmental Impact Assessment Report (EIAR) or a

determination in relation to the requirement for an EIAR was not necessary in this case (See Preliminary Examination EIAR Screening Form).

## 10.0 Recommendation

I recommend that permission be granted subject to the conditions set out below.

## 11.0 Reasons and Considerations

The proposed development would be in keeping with the zoning objective Z1 'to protect, preserve and improve residential amenity' that applies to the area under the Dublin City Development Plan 2016-2022. It would contribute to the pedestrian permeability of the area and support travel by sustainable modes. The proposed development would be acceptable with regard to the safety and convenience of road users and would not injure the character of the area or the amenities of property in the vicinity. It would therefore be in keeping with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interests of clarity

2. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health and to ensure a proper standard of development.

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

**Reason:** In the interest of visual amenity

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Stephen Ward  
Senior Planning Inspector

28<sup>th</sup> January 2022