



**Development**

Retention of (i) ground floor lean-to roof over front entrance of semi-detached house, (ii) gym & store structure, (iii) pedestrian side gate, (iv) part of eastern boundary wall.

Permission for (i) new side extension, (ii) removal of 1<sup>st</sup> floor chimney, (iii) attic conversion with dormer window & roof lights, (iv) replacement of southern boundary wall, and (v) rising part of eastern boundary wall.

**Location**

49 Gracefield Road, Artane, Dublin 5

**Planning Authority**

Dublin City Council

**Planning Authority Reg. Ref.**

3052/21

**Applicant(s)**

Aidan & Richard Davis

**Type of Application**

Retention Permission and Permission

**Planning Authority Decision**

Grant Retention Permission and Permission

**Type of Appeal**

First Party v. Conditions

<b>Appellant(s)</b>	Aidan & Richard Davis
<b>Observer(s)</b>	Glen Keogh
<b>Date of Site Inspection</b>	13 <sup>th</sup> April 2022
<b>Inspector</b>	Louise Treacy

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 368 m<sup>2</sup> and is located at No. 49 Gracefield Road, Artane, Dublin 5. The existing property is a 2-storey, end-of-terrace dwelling with a single-storey extension to the rear. A detached, single-storey gym/store structure abuts the rear site boundary.
- 1.2. The access road to the Gracefield Court residential estate adjoins the eastern site boundary and terminates in a cul-de-sac to the rear/south of the site. This estate comprises 10 no. 2-storey dwellings arranged in 2 no. terraces. A gated laneway extends between the rear boundary of the subject site and Nos. 1-5 Gracefield Court beyond.
- 1.3. Our Lady of Mercy Catholic Church is located to the east of the subject site beyond the Gracefield Court access road. A 3-storey apartment scheme (Brookwood Abbey) is located to the rear of the church and to the south-east of the subject site.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the retention of:
  - (i) ground floor lean-to roof over front entrance of the existing semi-detached house,
  - (ii) gym and store structure located to the rear of the site with associated windows, external doors and mono-pitch roof,
  - (iii) pedestrian side gate providing access to Gracefield Court, and
  - (iv) part of the c. 2.4 m high eastern boundary wall.
- 2.2. Planning permission is sought for:
  - (i) a new side extension and removal of the chimney to the 1<sup>st</sup> floor of the existing house,
  - (ii) conversion of the attic with a rear dormer window and two roof lights to the side and front of the house respectively,
  - (iii) replacement of the southern boundary wall with a new 2.3 m high wall with one pedestrian gate to access the back lane, and

(iv) rising of part of the eastern boundary wall to match the rest of the wall subject to retention.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. Notification of the Decision to Grant Permission and Grant Retention Permission subject to 13 no. conditions issued on 23<sup>rd</sup> August 2021.
- 3.1.2. Condition no. 4 states that the proposed gym / storeroom shall not be put to commercial use, with its use being incidental to the enjoyment of the principal dwelling and shall not be separated from the principal dwelling by lease or sale.
- 3.1.3. Condition no. 5 states that the proposed gym / storeroom shall not be used for human habitation or any other use other than incidental to the enjoyment of the dwelling house, unless authorised by a prior grant of planning permission.
- 3.1.4. Condition no. 6 states that the attic space shall not be used for human habitation unless it complies with current Building Regulations.
- 3.1.5. Condition no. 7 requires the following:
  - (a) the omission of the 1 no. rooflight on the front facing roof plane,
  - (b) the eastern and southern boundary walls shall be no more than 2 m in height,
  - (c) the replacement of the side gate on the eastern elevation with a boundary wall matching the original boundary wall and being no more than 2 m in height,
  - (d) all elevations, fascia/soffits, rainwater goods, window frames, glazing bars serving the rear dormer shall be finished in a dark colour so as to blend in with the existing roof,
  - (e) the rear dormer shall have a vertical emphasis (shall be no larger or wider than the largest window at 1<sup>st</sup> floor level below the rear elevation of the dwelling).
- 3.1.6. Condition no. 8 states that the rear dormer shall not accommodate solar panels whether or not they would be exempted development.
- 3.1.7. All other conditions are generally standard in nature.

## 3.2. **Planning Authority Reports**

### 3.2.1. **Planning Reports**

3.2.2. Basis of Planning Authority's decision.

3.2.3. In assessing the amendments which are required to the development under condition nos. 7 (b) and (c), Dublin City Council's Planning Officer considered that the creation of an additional pedestrian entrance in the eastern boundary wall, together with the increased height of the eastern and southern boundary walls, would constitute the excessive development of the property, which would not respect the character of the existing building, its context and wider streetscape.

### 3.2.4. **Other Technical Reports**

3.2.5. **Engineering Department – Drainage Division:** No objection to the proposed development subject to conditions.

## 3.3. **Prescribed Bodies**

3.3.1. **Irish Water:** None received.

## 3.4. **Third Party Observations**

3.4.1. Two third-party observations were made on the application by: (1) Glen Keogh, 6 Gracefield Court, Artane, Dublin 5 on behalf of owners and occupiers of Gracefield Court, and (2) Ann Byrne, 2 Gracefield Court, Artane, Dublin 5.

3.4.2. The issues which are raised can be summarised as follows: (1) inappropriate site notice location, (2) non-compliance with previous planning permission, (3) unauthorised pedestrian access onto Gracefield Court, (4) gym/study should not be used as a habitable structure, (5) obstruction of footpath, (6) unauthorised discharge of surface water onto public footpath, (7) rooflights to the front should be discouraged, (8) overlooking from rear dormer and 1<sup>st</sup> floor windows, (9) excessive wall height onto rear laneway, (10) no right of access from the subject site onto Gracefield Court.

## 4.0 Planning History

- 4.1. **Planning Authority Reg. Ref. WEB1211/16:** Planning permission granted on 16<sup>th</sup> August 2016 for a single-storey pitched roof detached structure to the rear and single-storey pitched roof extension to the front of the existing dwelling, the part conversion of the existing garage and all ancillary site works and the retention of the pitched roof over the existing garage.

## 5.0 Policy and Context

### 5.1. Dublin City Development Plan 2016-2022

### 5.2. Land Use Zoning

- 5.2.1. The site is subject to land use zoning “Z1” (Sustainable Residential Neighbourhoods) which has the objective “to protect, provide and improve residential amenities”.

### 5.3. Alterations and Extensions

- 5.3.1. The policy regarding extensions and alterations to dwellings is set out in Sections 16.2.2.3 and 16.10.12 and Appendix 17 of the development plan. In general, applications for planning permission to extend dwellings will only be granted where the planning authority is satisfied the proposal will: (1) not have an adverse impact on the scale and character of the dwelling, and (2) not adversely affect amenities enjoyed by the occupants of adjacent buildings in terms of privacy and access to daylight and sunlight.
- 5.3.2. Further guidance in relation to dormer extensions is set out in Section 17.11 of Appendix 17. When extending the roof, the following principles should be applied:
- The design of the dormer should reflect the character of the area, the surrounding buildings and the age and appearance of the existing building.
  - Dormer windows should be visually subordinate to the roof slope, enabling a large proportion of the original roof to remain visible.
  - Any new window should relate to the shape, size, position and design of the existing doors and windows on the lower floors.
  - Roof materials should match or complement the main building.

- Dormer windows should be set back from the eaves level to minimise their visual impact and reduce the potential for overlooking of adjoining properties.

#### **5.4. Boundary Walls and Railings**

- 5.4.1. Dublin City Council will seek to ensure that development will not result in the loss or insensitive alteration of characteristic boundary walls or railings. Where appropriate, boundary features will be reinstated. New boundary walls or railings should: (1) Replicate an existing or traditional pattern which is characteristic of the immediate locality; (2) Use a design and materials appropriate to the existing or proposed building and street-scene.

#### **5.5. Natural Heritage Designations**

- 5.5.1. None.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. A first-party appeal has been lodged by the applicants in relation to condition no. 7 (b) and (c) only, which can be summarised as follows:

- The eastern boundary wall is currently 2.4 m in height and was originally built with the house. It was of no architectural merit and was not particularly 'in-keeping' with the surrounding area.
- The site is not located in an Architectural Conservation Area and there are no Protected Structures in the vicinity.
- Layers of bricks were added to the wall over the years, making it unstable. Due to structural instability, the wall was mostly rebuilt two years ago.
- When rebuilding the wall, a more sympathetic and high-quality design and materials were used to ensure it was appropriate to the existing street scene. Other houses in the area have side walls of similar height.
- For safety, security and privacy reasons, the new wall was rebuilt to 2.4 m in height. The 0.4 m difference in wall height does not have a detrimental impact

on the character of the area. The orientation of the wall means that it does not result in any overshadowing or overbearing impacts on neighbouring properties. As such, it is requested that condition no. 7 (b) be omitted.

- Condition no. 7 (c) requires the omission of the existing side metal gate. There was an old steel-framed timber gate already in place at this location, which was replaced for security reasons. This gate facilitates bin and bicycle access, and it is unclear how this gate is considered excessive in a residential area.
- High-quality materials have been used for the side gate, which does not have a negative impact, visually or otherwise, with no policy reason supporting its removal. As such, it is requested that condition no. 7 (c) be omitted.
- The gym space at the rear of the site is a private space built for family use and storage.

6.1.2. The appeal submission includes photographs of similar side boundary walls within 1 km of the application site (appendix 2 refers).

## 6.2. Planning Authority Response

6.2.1. None received.

## 6.3. Observations

6.3.1. An observation has been made on the appeal by Glen Keogh, No. 6 Gracefield Court, Artane, Dublin 5. The issues which are raised can be summarised as follows:

- Section 139 (1) of the Planning and Development Act, 2000 consists of three associative and inseparable conditions. Submitting an appeal based on only one of these conditions is to invite conduct contrary to the Planning Act.
- The failure to adopt a 'de novo' approach in this matter, would inequitably benefit the appellants, inequitably disbenefit any other party, undermine objections previously submitted and undermine the Planning Authority's position and decision.



- The safety concerns raised by the appellants are noted and the submission that the boundary wall was built at the same time as the house is accepted.
- The pre-existing boundary wall was increased in height to 1.95 m in 1996, with the wall being entirely in keeping with the surrounding area and respecting its immediately neighbouring walls along the west side entrance to Gracefield Court cul-de-sac in height, design and surface finish.
- The appellants increased the wall height to 2.4 m in 2019. The insertion of the pedestrian access gate caused it to become unstable. The wall as constructed in 1996 should be reinstated.
- The new boundary wall has lost the characteristics of the pre-existing wall and is insensitive and contrary to Section 16.2.2.4 (Boundary Walls and Railings) of the Dublin City Development Plan 2016-2022.
- The precedent developments which are identified by the appellants are wholly redundant to this appeal case.
- The appellants have provided no evidence to support the requirement to construct a 2.4 m boundary wall for safety, security and privacy reasons.
- No evidence has been provided of anti-social behaviour at this location or overlooking from the nearby apartment block.
- This area is a long-established, mature neighbourhood with no experience of anti-social behaviour.
- The increased wall height is clearly out of character with the immediate neighbouring wall(s) on Gracefield Court cul-de-sac.
- Condition nos. 7 (b) and (c) should be retained.
- The appellants unlawfully inserted a new pedestrian entrance and door into the boundary wall on/before June 2018 as evidenced in Google imagery between 2009 – 2019. The appellants have no right of access onto the Gracefield Court cul-de-sac.
- The side access gate creates a physical obstruction to the residents of Gracefield Court, with bins now being placed on the pedestrian laneway, attracting vermin and diminishing the value of the 10 houses in the cul-de-sac.

- Gracefield Court cul-de-sac is taken in charge by the Local Authority and the appellants are not entitled to provide an access onto same from their property.
- The boundary wall should be returned to its pre-existing height and finish and the pedestrian access gate should be removed.

6.3.2. A list of signatories to the observation is appended to the submission.

## 7.0 **Assessment**

7.1. This is a first-party appeal against condition nos. 7 (b) and (c) of Dublin City Council's Notification of the Decision to Grant Permission and Grant Retention Permission. Condition no. 7 (b) requires the eastern and southern boundary walls to be no higher than 2 m, with the height of the retained eastern boundary wall to be reduced accordingly. Condition no. 7 (c) requires the pedestrian access gate in the eastern boundary wall to be omitted and replaced with a wall of no more than 2 m in height to match the existing. Both amendments are required to be undertaken within 6 months of the permission.

7.2. The observer to the appeal submits that Section 139 (1) of the Planning and Development Act, 2000 (as amended) consists of three associative and inseparable conditions (a, b and c), and that the submission of an appeal based on only one of these conditions, is to invite conduct contrary to the Planning Act. In considering the foregoing, I note that the appellants have stated that their appeal has been submitted under Section 139 (1)(b) of the Act. While I acknowledge that the appellants have not referenced the entirety of this Section relating to appeals against conditions, I am satisfied that the nature of the appeal has been clearly explained and that the observer's submission on this point is not material to the assessment of this case.

7.3. The observer also submits that the failure by the Board to undertake a 'de novo' assessment in this case, would inequitably benefit the appellants, inequitably disbenefit any other party, undermine the objections previously submitted and undermine the Planning Authority's position and decision. I do not agree with this position, and in reaching this conclusion, I note that the observer would have been entitled to submit a third-party appeal in relation to the Planning Authority's decision, having made a valid submission during the application process. Thus, following my examination of the planning file and grounds of appeal, I consider it appropriate that

the appeal should be confined to condition nos. 7 (b) and (c) only. I am satisfied that the determination by the Board of this application as if it had been made to it in the first instance would not be warranted and that the Board should determine the matters raised in the appeal only in accordance with Section 139 of the Planning and Development Act 2000, as amended.

- 7.4. In assessing the amendments which are required under condition nos. 7 (b) and (c), Dublin City Council's Planning Officer considered that the creation of an additional pedestrian entrance in the eastern boundary wall, together with the increased height of the eastern and southern boundary walls, would constitute the excessive development of the property and would not respect the character of the existing building, its context and wider streetscape. The appellants submit that the eastern boundary wall has been rebuilt to a height of 2.4 m for safety, security and privacy reasons and that the metal gate facilitates bin and bicycle access. It is considered unclear how this gate is excessive in a residential area. The observer submits that the increased wall height is out of character with the area, in particular the boundary wall at Gracefield Court, and that the pedestrian access gate has created a physical obstruction for the residents of this estate.
- 7.4.1. In considering the issues at hand, I acknowledge that the height of the eastern boundary wall exceeds that adjoining at Gracefield Court. While a uniform boundary height along this side of the access road may have been more preferable from an aesthetic point of view, in my opinion, it would be unreasonable to require the wall height to be reduced. In reaching this conclusion, I note that the boundary treatment to Our Lady of Mercy Catholic Church on the opposite side of the access road is characterised by iron railings over a low rendered wall, interspersed with red-brick pillars. As such, a variety of boundary treatments already exists, when both sides of the access road to Gracefield Court are considered.
- 7.4.2. In addition, as identified by the appellants, the subject site is not located within an Architectural Conservation Area and is not a Protected Structure, and while the eastern site boundary adjoins a local access road, this route is not heavily trafficked and is not readily visible in public views from Gracefield Road. Having regard to the foregoing, I consider that the height of the eastern boundary wall for which retention permission is sought is acceptable. I also note that planning permission has been sought to increase the height of the remaining section of this wall, which will

regularise the boundary height along the eastern site boundary. I also have no objection to the height of the replacement boundary wall (2.3 m) to the rear (south) of the site, given that it is not readily visible outside the site and fronts onto the gated laneway which extends between the rear of the dwellings on Gracefield Road and Gracefield Court. As such, I consider that condition no. 7 (b) should be omitted.

7.4.3. Condition no. 7 (c) requires the side gate in the eastern boundary wall to be omitted and replaced with a boundary wall to match the existing. While the appellants submit that this gate is used for bin and bicycle access, I note that it has a somewhat unusual configuration, opening directly into the gym/store structure at the rear of the site. The observer submits that the appellants do not have the right to provide an access onto Gracefield Court and that the access road is taken-in-charge.

7.4.4. In considering the foregoing, I note that a letter of consent to provide an access from within the subject site onto property which is outside of the appellants' control has not been provided with the application or appeal. As such, I consider that planning permission cannot be granted to retain the access gate in the eastern site boundary. Thus, I consider that condition no. 7 (c) should be removed, and an amended condition attached in its place.

## 7.5. **Appropriate Assessment**

7.5.1. Having regard to the nature and scale of the proposed and retained development, and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed and retained 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 **Recommendation**

8.1. I recommend that the Planning Authority be directed to omit condition no. 7 (b).

8.2. I recommend that the Planning Authority be directed to remove condition no. 7 (c) and attached an amended condition as follows:

“The pedestrian access gate in the eastern site boundary shall be omitted and made good to match the retained boundary wall within 6 months of the date of this Order”.

**Reason:** In the interests of proper planning and sustainable development and the visual amenity of the area”.

## 9.0 Reasons and Considerations

- **Condition no. 7 (b)**

9.1. Having regard to the residential land use zoning of the site, the existing pattern of boundary treatments at this location, and the nature, location and scale of the retained and proposed development, it is considered that the modifications and requirements of the Planning Authority, in its imposition of condition no. 7 (b), are not warranted, and that the retained and proposed development, with the omission of this condition, would have no significant negative impact on the character of the dwelling, the streetscape or any neighbouring property. Thus, the proposed and retained development would be in accordance with the proper planning and sustainable development of the area.

- **Condition no. 7 (c)**

9.2. Having regard to the location of the pedestrian access gate in the eastern site boundary and adjoining land outside of the applicants’ control, it is considered that sufficient legal interest has not been demonstrated to implement the development for which retention permission is sought. As such, the granting of retention planning permission in this instance would be contrary to the proper planning and sustainable development of the area.

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Louise Treacy  
Planning Inspector

14<sup>th</sup> April 2021