



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311777-21

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<b>Development</b>	Construction of vehicular access
<b>Location</b>	Ashleigh, 2 Vergemount, Clonskeagh, Dublin 6, D06 R6K8
<b>Planning Authority</b>	Dublin City Council South
<b>Planning Authority Reg. Ref.</b>	3307/21
<b>Applicant(s)</b>	Denis Finn
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Denis Finn
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> February 2022.
<b>Inspector</b>	Mary Crowley

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## 1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 992.2 sqm comprises the rear of No 2 Vergemount and is located on the northern side of Vergemount Park; a cul de sac located off the Clonskeagh Road. Ashleigh, (No. 2 Vergemount), comprises a two storey period property that is located on the northern side of the junction of Vergemount Park and Clonskeagh Road (R825), in the Dublin city suburb of Rathmines where it adjoins No. 1 Vergemount Park. The surrounding area has a mature residential character. This road is characterised by what would originally been ten matching pairs of 2-storey Art Deco in period and architectural style semi-detached dwellings dating to c1930s.
- 1.2. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

## 2.0 Proposed Development

- 2.1. Permission is sought for a new vehicular access from Vergemount Park at Ashleigh.
- 2.2. The application was accompanied by the following:
  - Report from **Malone O'Regan, Consulting Engineers** stating that the proposed entrance complies with all applicable standards and guidelines in relation to the siting of vehicle entrances including DMURS and the DCC document titled "Parking Cars in Front Gardens".
  - Cover letter prepared by **Crean Salley Architects** stating this is the second planning application for a new vehicular access to this property. The first application was refused. The new entrance is required as the existing vehicular entrance will be lost due to the proposed new house on this site (Reg Ref 3927/20) for the owners daughter. Due to the positioning of the kerb side trees it is impossible to provide vehicular access to the property and meet DCCs Parks Departments criteria for the protection of trees. The proposal involves the removal of one tree. In line with Section 3.3.3 it is proposed to pay a financial contribution in lieu of the removal of the tree. This approach was approved under Reg Ref 3927/20.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Dublin City Council issued a notification of decision to refuse permission for the following reason:

*The vehicular entrance would require the removal of one mature Birch tree and potentially conflict with the tree root zone of another mature Birch tree on Vergemount Park. Section 3.3.3 of the Dublin City Tree Strategy 2016-2020 states that entrances should be designed to avoid conflict with street trees. The development would therefore be contrary to Section 16.3.3 of the Dublin City Development Plan (which states that the Dublin City Tree Strategy is a material consideration in the determination of planning applications) and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy). The development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The **Case Planner** recommended that permission be refused for a single reason relating to the removal of one mature Birch tree that would be contrary to Section 16.3.3 and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy) of the Dublin City Development Plan 2016- 2022. This recommendation is in line with the report and recommendation of the DCC Roads Streets & Traffic Department Road Planning Division. The notification of decision to refuse permission issued by Dublin City Council reflects this recommendation.

#### 3.2.2. Other Technical Reports

- **Drainage Report** - No objection to this development, subject to the developer complying with the Greater Dublin Regional Code of Practice for Drainage Works Version 6.0 (available from [www.dublincity.ie](http://www.dublincity.ie) Forms and Downloads).
- **Roads Streets & Traffic Department Road Planning Division** – Recommended that permission be refused for the following reason:

*The vehicular entrance would require the removal of one mature Birch tree and potentially conflict with the tree root zone of another mature Birch tree on Vergemount Park. Section 3.3.3 of the Dublin City Tree Strategy 2016-2020 states that entrances should be designed to avoid conflict with street trees. The development would therefore be contrary to Section 16.3.3 of the Dublin City Development Plan (which states that the Dublin City Tree Strategy is a material consideration in the determination of planning applications) and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy). The development would, therefore, be contrary to the proper planning and sustainable development of the area.*

### 3.3. Prescribed Bodies

3.3.1. None

### 3.4. Third Party Observations

3.4.1. None

## 4.0 Planning History

4.1. There was a previous appeal on this site that can be summarised as follows:

- **ABP 310539 (Reg Ref 3927/20)** - Planning permission granted by DCC for the construction of a new two storey, 3 bedroom dwelling house with vehicular access from Vergemount Park and all associated works. Following a third party appeal the Board refused permission as the development would by reason of its bulk, height and proximity to adjoining properties seriously injure the residential amenities of such adjoining property, in particular particularly No. 1 Vergemount Park, by reason of loss of daylight and sunlight, and by reason of being visually overbearing.

4.2. The following planning history was provided with the appeal file:

- **Reg Ref 3926/20** - This application sought permission for Permission for a new vehicular access from Vergemount Park at Ashleigh, 2 Vergemount, Clonskeagh.

Following receipt of further information, permission was refused for the following reason:

*The proposed development would require the removal of two mature birch trees on Vergemount Park in front of the subject site. It is considered that the loss of trees to the street is not justified, having regard to the principle set out at Section 3.3.3 of the Dublin City Tree Strategy 2016-2020 which states that entrances should be designed to avoid conflict with street trees. The proposed development would be contrary to the relevant provisions of the Dublin City Development Plan 2016-2022, including Section 16.3.3 (which states that the Dublin City Tree Strategy is a material consideration in the determination of planning applications) and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy). The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative Development Plan is the **Dublin City Development Plan, 2016 to 2022**, under which the site is zoned **Zone Z2: Residential Neighbourhoods (Conservation Areas)** where the objective is to *protect and/or improve the amenities of residential conservation areas*.
- 5.1.2. Section 14.8.2 of the Development Plan in relation to 'Residential Neighbourhoods (Conservation Areas – Zone Z2 )' states: "*the overall quality of the area in design and layout terms is such that it requires special care in dealing with development proposals which affect structures in such areas, both protected and non-protected. The general objective for such areas is to protect them from unsuitable new developments or works that would have a negative impact on the amenity or architectural quality of the area.*"
- 5.1.3. Section 5.1 of Appendix 5 of the Dublin City Development Plan 2016-2022. Roads Standards for Various Classes of Development "Where driveways are provided, they shall be at least 2.5m or at most 3.6m in width and shall not have outward opening gates. The design standards set out in the Planning Authority's leaflet 'Parking Cars in Front gardens' shall also apply".

5.1.4. Relevant section of the Development Plan are set out below:

- **Policy GI28** - To support the implementation of the Dublin City Tree Strategy, which provides the vision for the long-term planting, protection and maintenance of trees, hedgerows and woodlands within Dublin City.
- **Section 16.3.3 Trees Existing trees and their protection**

*The successful retention of suitable trees is a benchmark of sustainable development. Trees of good quality and condition are an asset to a site and significantly increase its attractiveness and value. They add a sense of character, maturity and provide valuable screening, shelter and privacy and will often have a useful life expectancy beyond the life of new buildings. Dublin City Council will consider the protection of existing trees when granting planning permission for developments and will seek to ensure maximum retention, preservation and management of important trees, groups of trees, and hedges.*

*The Dublin City Tree Strategy 2016 provides the vision and direction for longterm planning, planting, protection and maintenance of trees, hedgerows and woodlands within Dublin city, and is a material consideration in the determination of planning applications and other development.*

*A tree survey must be submitted where there are trees within a proposed planning application site, or on land adjacent to an application site that could influence or be affected by the development. Information will be required on which trees are to be retained and on the means of protecting these trees during construction works. Where development is proposed it is essential that existing trees are considered from the very earliest stages of design and prior to an application for planning permission being submitted. Root systems, stems and canopies, with allowance for future movement and growth, need to be taken into account in all projects.*

*The following criteria shall be taken into account by Dublin City Council in assessing planning applications on sites where there are significant individual trees or groups/ lines of trees, in order to inform decisions either to protect and integrate trees into the scheme, or to permit their removal:*

- *Habitat/ecological value of the trees and their condition*
- *Uniqueness/rarity of species*
- *Contribution to any historical setting*

- *Significance of the trees in framing or defining views*
- *Visual and amenity contribution to streetscape.*

*The design of vehicular entrances that impact on adjacent trees will need to be considered to avoid conflicts with street trees. Where a conflict is unavoidable and where a tree, located on-street, requires removal to facilitate a new or widened vehicular entrance and cannot be conveniently relocated within the public domain, then a financial contribution will be required in lieu.*

*Existing trees which make a positive contribution to the character of a conservation area and which provide a setting for the city's architectural heritage will be considered for preservation.*

*Financial securities for trees: where trees and hedgerows are to be retained, the Council will require a developer to lodge a financial security to cover any damage caused to them either accidentally or otherwise as a result of non-compliance with agreed/specified on-site tree-protection measures. Types of securities include a cash deposit, an insurance bond or such other liquid asset as may be agreed between a developer and the planning authority (see also Chapter 13). The security will be returned on completion of the development once it is established that the trees/hedgerows are in a satisfactory condition and have not been unnecessarily damaged by development works. Where damage occurs, the sum deducted from the tree security (or bond/other financial security) will be calculated in accordance with a recognised tree valuation system (e.g. Helliwell, CAVAT).*

### **Tree survey and tree protection information**

*For applications where trees might be affected, the application should be accompanied by the information below, prepared by a suitably qualified arboriculturist in accordance with British Standard 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' (this information may be helpful in pre-application consultations):*

- *Tree survey*
- *Tree retention/removal plan*
- *Tree protection plan*
- *Details of retained trees and Root Protection Areas (RPA) shown on the proposed layout*



- *Arboricultural impact assessment*
- *Arboricultural method statement*

*Depending on the site, some or all of the following may also be required:*

- *Details of existing and proposed finish levels*
- *Details for all proposed services within the RPA*
- *Schedule of works to retained trees*
- *Arboricultural site monitoring schedule*
- *A strategic hard and soft landscape design including species and location of new tree planting*
- *Tree and Landscape Management Plan*
- *Adequate fencing prior to commencement of construction works is essential to prevent damage to the root zone of retained trees.*
- *All tree works associated with development must be carried out in accordance with British Standard BS 3998:2010 Tree Work Recommendations.*

## **5.2. Natural Heritage Designations**

5.2.1. The site is not located within a designated Natura 2000 site.

## **5.3. EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

6.1.1. The first party appeal against the decision to refuse permission has been prepared and submitted by Armstrong Fenton Associates and may be summarised as follows:

- The An Bord Pleanála decision to refuse permission for a dwelling to the rear of Ashleigh under ABP-310539-21 (Reg Ref 3927/20) are noted. The current application is an application in its own right and it is requested that same is assessed individually, on its own merits, de novo.
- The size of the property can accommodate the proposed car parking space. The applicant is elderly and requires proximate access to park and enter the property.
- While the proposed development would result in the loss of a street tree, there is an assumption that the proposed development will also affect a second tree. This has not been confirmed or qualified by the Council. The current proposal sought to address the decision to refuse permission under Reg Ref 3926/20 by reducing the width of the entrance.
- Reference is made to Drawing No PL2-011-A which not only illustrates that the splay is outside of the crown and roots to the second tree, but if the splay was conditioned to be omitted, the proposed entrance would be further away from the second tree thus ensuring its protection.
- All of the trees along Vergemount Park are not identical in terms of height, girth etc and are not evenly distributed along the street. It is not considered that the removal of a single tree will alter the character of the street or impact on same. The applicant is than willing to pay a financial contribution in lieu for the removal of the tree which could be used to plant another tree elsewhere on Vergemount Park, or as agreed with DCC.
- The applicant is willing to accept an appropriate condition to ensure that the proposed entrance will not affect a second tree on Vergemount Park.
- Proposed development requires a pragmatic assessment and that the permission being sought can be granted with an appropriate condition attached.

## 6.2. Planning Authority Response

6.2.1. None

## 6.3. Observations

6.3.1. None

## 6.4. Further Responses

6.4.1. None

## 7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings.

- Principle
- Traffic Safety
- Loss of Tree(s)
- Appropriate Assessment
- Other Issues

### 7.2. Principle

7.2.1. The applicant wishes to create a new vehicular entrance to serve their home which is located at the junction of Clonskeagh Road with Vergemount Park. The appeal site is wholly contained within an area zoned is Zoned Z2 Residential Neighbourhoods (Conservation Areas) where alterations to an existing dwelling for residential purposes is considered an acceptable development in principle. Accordingly the principle of the creation of a new vehicular entrance at this location is acceptable in principle. Furthermore, I consider that the design, scale and choice of materials to be suitable for this location and that to permit same would not have a negative impact on the amenity or architectural quality of the area.”

### 7.3. Traffic Safety

7.4. The proposed new entrance is 3m in width which accords with the DCC Development Plan 2016 – 2022 requirements. Furthermore, I am satisfied that the entrance complies with all applicable standards and guidelines in relation to the siting of vehicle entrances including DMURS and the DCC document titled “Parking Cars in Front

Gardens”. However, I am concerned with the requirement for a second vehicular entrance serving this site and the justification for same.

7.5. No.2 Vergemount Park is located on a cul-de-sac just off Clonskeagh Rd. There are two existing pedestrian entrances and one vehicular entrance serving the overall subject site and located to the rear of the property. This is the only vehicle access serving the existing property. The proposed entrance is situated 25 m from the junction of Clonskeagh Rd and Vergemount Park. As documented this proposed new entrance was originally required as the existing vehicular entrance was to be lost to the development of a new house to the rear of the site as permitted by DCC (Reg Ref 3927/20 refers). Following a third-party appeal An Bord Pleanála refused permission in September 2021 for same as the development would seriously injure the residential amenities of adjoining property (ABP 310539 refers). With the issuing of this refusal there is no further obvious or justifiable necessity for a second entrance at this site. I am concerned that to permit a second entrance would lead to additional vehicular movements that would conflict with traffic or pedestrian movements in the immediate area by reason of a proliferation of entrances serving this site. Refusal is recommended.

#### 7.6. **Loss of Tree(s)**

7.6.1. DCC having considered the scheme refused permission as the vehicular entrance would require the removal of one mature Birch tree and potentially conflict with the tree root zone of another mature Birch tree on Vergemount Park and would be contrary to Section 16.3.3 (which states that the Dublin City Tree Strategy is a material consideration in the determination of planning applications) and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy).

7.6.2. While I am satisfied that the entrance complies with all applicable standards and guidelines it remains that the works proposed will result in the loss of a tree and possibly impact negatively on a second tree. Due to the positioning of the kerb side trees I agree with the applicant that it is impossible to provide vehicular access to the property and meet DCCs Parks Departments criteria for the protection of trees. The proposal involves the removal of one tree. It is applicants’ proposal to pay a financial contribution in lieu of the removal of the tree.

- 7.7. I refer to Section 16.3.3 of the Development Plan where it states that “*the design of vehicular entrances that impact on adjacent trees will need to be considered to avoid conflicts with street trees.*” Furthermore, it states that “*root systems, stems and canopies, with allowance for future movement and growth, need to be taken into account in all projects.*” Of note, “*where a conflict is unavoidable and where a tree, located on-street, requires removal to facilitate a new or widened vehicular entrance and cannot be conveniently relocated within the public domain, then a financial contribution will be required in lieu.*”
- 7.8. The Case Planner states that in order to protect a mature tree, the Parks, Landscape and Biodiversity Services recommends a 3.5 m buffer between the tree trunk and the entrance dishing in order to protect a mature street tree. I am concerned that a 3.5 m buffer cannot be achieved in this instance.
- 7.8.1. The DCC Planning and Transportation Department notes that the new splayed entrance is 3m in width, incorporating a recessed gate and associated footpath dishing. It is further stated that the proposed width of 3 m is considered acceptable, however a splayed entrance is generally not supported on urban roads where speed limits does not warrant it. In this regard, Vergemount Park is a quiet cul-de-sac. The submitted drawings detail kerb and footpath dishing based on the proposed 5 m wide splayed entrance rather than the 3 m vehicular entrance. Of note, the vehicular entrance dictates the extent of the dishing, not the proposed splay.
- 7.8.2. It is considered that the proposed vehicular entrance, with consequent loss of an existing mature birch street tree and likely loss of another, is contrary to the provisions of the City Development Plan. Refusal is recommended.

## 7.9. **Appropriate Assessment**

- 7.9.1. The site does not form part of or is it located near to any Natura 2000 site. It lies within an established suburban area that is fully serviced. Accordingly, no Appropriate Assessment issues arise. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

## 7.10. Other Issues

7.10.1. **Development Contribution** - I refer to the Dublin City Council Development Contribution Scheme 2020-2023. Section 11 outlines circumstances where no contribution or a reduced contribution apply. It is stated that residential ancillary car parking will not be required to pay development contributions under the Scheme.

## 8.0 Recommendation

8.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **REFUSED** for the following reasons and considerations.

## 9.0 Reasons and Considerations

1. The proposed vehicular entrance would require the removal of one mature Birch tree and potentially conflict with the tree root zone of another mature Birch tree on Vergemount Park. Section 3.3.3 of the Dublin City Tree Strategy 2016-2020 states that entrances should be designed to avoid conflict with street trees. The development would therefore be contrary to Section 16.3.3 of the Dublin City Development Plan (which states that the Dublin City Tree Strategy is a material consideration in the determination of planning applications) and Policy GI28 (which supports the implementation of the Dublin City Tree Strategy). The development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the location and layout of the site and the proposal, it is considered that the proposed development, in respect of the additional vehicular entrance, by itself or by the precedent which the grant of permission for it would set for other similar developments, would adversely affect the use of the existing road by traffic, and would endanger public safety by reason of traffic hazard of obstruction of road users or otherwise. The development would, therefore, be contrary to the proper planning and sustainable development of the area.

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**Mary Crowley**

**Senior Planning Inspector**

**22<sup>nd</sup> February 2022**