



An
Bord
Pleanála

Inspector's Report ABP 312023-21.

Development	Demolish rear garage, construct single storey extension at rear, alterations to rear and side windows and doors, new boundary wall on laneway, alteration to front garden wall to create a vehicular access.
Location	12 Tivoli Avenue, Harold's Cross, Dublin 6 .
Planning Authority	Dublin City Council.
Planning Authority Reg. Ref.	1910/21.
Applicant	Greg Patel.
Type of Application	Permission.
Planning Authority Decision	Split decision.
Type of Appeal	Third Party
Appellant	Mary Whelan
Observer	None.
Date of Site Inspection	28 January 2022.
Inspector	Mairead Kenny.

1.0 Site Location and Description

- 1.1. The site is located in the south suburban area of Harold's Cross in a residential street. Traffic circulation along the street provides for a one way through route to access the site from Harold's Cross Road. Tivoli Avenue is lined with terraced houses to the north of the road and there are some residential properties also to the south.
- 1.2. The subject site is one of a pair of semi-detached houses at the western side of Tivoli Avenue. The layout is somewhat unusual insofar as the laneway to the side of the site is open to the gable wall of the adjacent house. There is no separation between the gable walls of the houses. At the adjacent house (no. 11) which is in the ownership of the appellant a rear extension has been constructed. The appellant retains a right of way over the laneway. The applicant owns the laneway.
- 1.3. Within the laneway there is a manhole. There is also a section of foul sewer infrastructure which is overground for a short length as it departs the gable wall of the appellant's house. Its orientation would suggest that that this discharges in the direction of the manhole. The application drawings do not provide details of this infrastructure.
- 1.4. The site is adjacent a small former turning head which is now a designated parking space which is part of the regulated on-street parking system. This parking space is to the front of the garden area. There is access to the garage on site through the existing vehicular entrance – this does not involve crossing over the public parking space.
- 1.5. Photographs which were taken by me at the time of my inspection are attached.

2.0 Proposed Development

- 2.1. Permission is sought for:
 - Demolition of a rear garage.
 - Construction of a single storey rear extension.
 - Alterations to fenestration to rear and side.

- New boundary wall centred on the laneway – this would divide the laneway in two and would reserve part of the laneway to each the individual houses.
- Alteration to the front garden wall and creation of a vehicular access at 12 Tivoli Avenue.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to issue a split decision.

Permission was granted subject to standard conditions for:

- demolition of garage and construction of single storey extension, alterations to rear and side windows/doors, new boundary wall centred on laneway.

Permission was refused for alteration to front garden wall and creation of vehicular access to the following reason:

- contravenes development plan policy as it would reduce the supply of on street parking available to residents along Tivoli Avenue, would directly contravene policy T14 and set an undesirable precedent.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The comments in the planner's report include:

- The proposed extension is considered acceptable.
- There is no objection to the wall to be centred between the two houses in planning terms. Private legal matters fall under section 34(13).
- The proposed vehicular entrance to the front should be refused. The majority of dwellings rely on on-street parking. The subject dwellinghouse is adequately served by in curtilage parking on the laneway.

3.2.2. Other Technical Reports

Drainage Division report indicates no objections subject to conditions.

Roads – Loss of a pay-and-display/permit parking space it is unacceptable - the provision of a vehicular access as proposed would contravene development plan policy. The majority of dwellings rely on on-street parking. The existing vehicular entrance should be retained to facilitate in curtilage parking. A minimum car parking depth of 5 m should be retained.

3.3. **Prescribed Bodies**

Not relevant.

3.4. **Third Party Observations**

The submission of the observer makes points which are reiterated in the appeal.

4.0 **Planning History**

There is stated to be no relevant planning history.

5.0 **Policy Context**

5.1. **Development Plan**

Under the provisions of the **Dublin City Development Plan** policy the site is in an area zoned Z1 'to protect and improve residential amenities'. The policy relating to extensions to residential development is set out in section 16.10.12. Appendix 17 sets out more detailed provisions in relation to the approach to design and consideration of the impact on the amenities of the area.

There are no conservation objectives related to the site or the immediate surroundings.

Policy MT14 is to minimise loss of on-street car parking, while recognising that some loss of spaces is required for, or in relation to, sustainable transport provision, access to new developments, or public realm improvements.

6.0 The Appeal

6.1. Grounds of Appeal

The main points of the appeal are:

- The appeal is against the permission granted for a new boundary wall centred on the driveway between the houses.
- There is a right of way over the driveway since the house was constructed and this is subject also of a court order.
- I have not agreed to a wall.
- The location of the wall is not centred on the site.
- There are pipes and a manhole which need to be taken into account.
- A 6 foot high wall with the curve deviation as shown would pose difficulties in accessing my house for deliveries of goods.
- In the absence of agreement over the line of any wall the driveway should remain open.

6.2. Applicant Response

The applicant responds as follows:

- A grant of permission cannot overrule a right of way.
- We are the owners of the laneway and are satisfied that the proposed wall will continue to afford Ms Whelan uninterrupted right for 'pedestrian access and services only' to the rear of her property.
- This is a matter of private law to be resolved outside of the planning process.
- To the extent that planning permission is granted this does not limit Ms Whelan's rights at private law.

6.3. Planning Authority Response

The planning authority has not offered a substantive response.

6.4. Observations

None.

7.0 Assessment

I consider that the substantive issues in this case relate to the arrangements for parking and to the implications of development of the proposed laneway wall. I briefly refer below to each element of the proposed development.

7.1. Alteration to the front garden wall and creation of a vehicular access at 12 Tivoli Avenue.

- 7.1.1. The proposed development includes modifications to the front boundary wall to provide for creation of a vehicular access. I have set out the development plan policy in relation to the provision of parking in the front gardens of houses. The street is relatively high density being dominated by terraced housing. While a number of the houses have private front garden parking the majority of houses would be reliant on shared parking on the street. The street is marked out in parking bays and one such bay is positioned across the front of the site. The proposed front vehicular entrance would mean that this space could not be utilised, and the site layout drawing shows this space with the caption – ‘parking space proposed to be removed’. It is stated that an application will be made to DCC for this space to be removed. The Roads Section however has stated its opposition to this element of the proposed development.
- 7.1.2. The use by the applicant of the front garden for parking would result in an existing shared parking space in the public realm being made redundant. I consider that the proposed vehicular entrance and parking arrangements are contrary to the development plan policy and not in accordance with the proper planning and sustainable development of the area. This element of the proposal should be omitted from any decision to grant of permission.

7.2. New boundary wall centred on the laneway

- 7.2.1. The construction of the new boundary wall centred on the laneway conflicts with a right of way to 11 Tivoli Ave. The decision of the planning authority based on the planner's report states that this is private legal matter. I consider that the proposed wall would also raise material planning issues relating to parking and sewerage infrastructure.
- 7.2.2. The recommendation of the Roads Department includes that the existing on-site parking be retained. The Planner's report notes that the existing house is served by on-site parking at the existing laneway entered by way of the existing vehicular entrance. The planning authority decision does not reflect the general support for retaining the existing parking, which is evident in the report of the planning and roads officials. In my opinion it is appropriate that the wall in the centre of the laneway be omitted to facilitate ongoing use of the existing vehicular entrance and driveway / laneway for parking.
- 7.2.3. The appellant references a manhole and objects to the location of the proposed wall in that respect. On site I noted a manhole which appears to serve one of the foul sewers at the appellant's house. It is in the interest of the proper planning and sustainable development of the area that drainage details relating to the two properties be resolved. I note that the Drainage Division of DCC did not express any reservations relating to this proposal. Nevertheless, I conclude that pending resolution of drainage details and right to maintenance access as may be required, the Board should not grant of permission for the proposed new boundary wall.
- 7.2.4. I therefore conclude that the proposed development of a wall in the centre of a laneway should be omitted from the proposed development as it would reduce the on-site parking and interfere with access to drainage infrastructure.

7.3. Construction of a single storey rear extension.

- 7.3.1. The proposed single storey extension will be parallel to the extension which is in place at no. 11.
- 7.3.2. I agree with the rationale for the decision to grant permission based on the reasoning presented in the planner's report.

7.4. Demolition of the garage.

7.4.1. Demolition of the rear garage is acceptable.

7.5. Alterations to fenestration to rear and side.

7.5.1. The revised windows and doors will not adversely impact on the amenities of the dwellinghouses at either side of the site.

8.0 Appropriate Assessment

8.1. Having regard to the nature of the proposed development, which comprises modifications to a suburban dwellinghouse on serviced lands I am satisfied that 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.

9.0 Recommendation

9.1. I recommend that the Board issue a split decision as below.

9.2. I recommend that permission be granted for the demolition of the garage, construction of a single storey extension and alterations to rear and side windows/doors for the reasons and considerations in Schedule One below and subject to the conditions in Schedule Two below and that permission be refused for alteration to front garden wall and creation of a vehicular access and for construction of a new boundary wall centred on laneway for the reasons and considerations in Schedule Three.

10.0 Schedule One

It is considered that subject to compliance with the conditions set out in Schedule Two below, the proposed single storey extension and alterations to rear and side windows/doors would not seriously injure the residential amenities of adjoining properties or the visual amenities of the area, would not be prejudicial to public

health or public safety or adversely affect the environment and would be in accordance with the proper planning and sustainable development of the area.

Schedule Two

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 interest of clarity.

2. 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.

3. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise transferred or conveyed, save as part of the dwelling.

Reason: To restrict the use of the extension in the interest of residential amenity.

4. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

5. Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Schedule Three

1. It is an objective of Dublin City Council under Policy MT14 of the Dublin City Development Plan 2016-2022 to seek to retain on-street parking as a resource for the city as far as practicable. It is considered that the site is located in an area where there is heavy reliance on on-street parking and that the proposed development of a new vehicular entrance and front garden parking bay would result in the loss of existing controlled on street parking reducing the supply available to residents on the street and in the wider area. The proposed development would therefore contravene Policy MT14 and be contrary to the proper planning and sustainable development of the area.

2. It is considered that the construction of a new boundary wall centred on laneway would eliminate an existing on-site parking bay and may interfere with access to drainage infrastructure. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Mairead Kenny
Senior Planning Inspector

30 January 2022