



An
Bord
Pleanála

Inspector's Report ABP-312117-21

Development	Retention of boundary walls and retention of pedestrian gate.
Location	Carrick Court Housing Estate, Portmarnock, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0522
Applicant(s)	Carrick Court Close Property Management Co.
Type of Application	Retention.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Carrick Court Close Property Management Co.
Observer(s)	Don Powell and others.
Date of Site Inspection	24 th of February 2022
Inspector	Karen Hamilton

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1.0 Site Location and Description

- 1.1. The subject site is located on lands adjoining the Carrick Court Close Housing Estate, connecting into Suncroft Avenue, Portmarnock, Co. Dublin. The site includes a pedestrian gate, attached to the end of the boundary wall between Carrick Court and Suncroft Avenue.
- 1.2. Carrick Court Close is a small housing estate, consisting of 5 no. dwellings and linked into a larger residential estate Carrick Court. The 5 no. dwellings were built separately, and the design and layout of the dwellings differ from the older estate. Vehicular and pedestrian access into Carrick Close is via the overall Carrick Court residential estate. Pedestrian access is also achievable from Suncroft Avenue, which links onto the Strand Road. Suncroft Avenue is characterised by one off detached dwelling set within their own private grounds.
- 1.3. The steel gate, which separates Carrick Court Close and Suncroft Avenue, is c. 1.8m high and 1.2m wide. The gate was locked during site inspection.

2.0 Proposed Development

- 2.1. The proposed development comprises of the retention of boundary walls (2m high with granite capping and a brick pier finish) and retention of pedestrian gate between Carrick Court Close Housing Estate and Suncroft Avenue (steel gate, painted black with a width of c. 1.2m and a height of c. 1.8m).

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for the proposed development subject to two reasons listed below:

1. The provision of this locked gate contravenes materially a condition attached to an existing permission for development under An Bord Pleanála Ref No. PL06F.248412 which requires a pedestrian access. Additionally, the provision of a locked gate preventing connectivity and ease of movement from Carrick Court to Coast Road results in a negative impact on surrounding residential

amenity and the development as such is contrary to the proper planning and sustainable development of the area.

2. The Fingal Development Plan 2017-2023 has objectives which relate to connectivity and permeability which promote walking and cycling within the County. The provision of this pedestrian walkway provides a direct convenient and safe route from Carrick Court Estate to Coast Road via Suncroft Avenue to access educational facilities and a public transport interchange. The development contravenes materially Objectives MT13, MT17 and MT22 of the Fingal Development Plan 2017-2023.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission and may be summarised as follows:

- Condition No. 4 of planning permission PL06F.248412 (Reg Ref F16A/0520) required a pedestrian access from the proposed development to Suncroft Avenue.
- The provision of a locked gate fails to improve permeability.
- The locked gate is in direct contravention of condition no. 4.
- The locked gate prevents ease of movement from Carrick Court to Coast Road and results in a negative impact on the residential amenity of the area.
- The proposed development would be contrary to the policies and objectives of the development plan in relation to connectivity and permeability.
- The proposed development prevents pedestrian and cycle access from Carrick Court to the Coast Road, where it is an objective to provide a pedestrian and cycle route (map based objective).
- The proposed development prevents pedestrian and cycle connectivity to Saint Manock's National School (along the Coast Road) and is contrary to Objective MT17.

3.2.2. Other Technical Reports

None received

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

One third party submission was received on behalf of a group of residents living in Carrick Court. An observation to the grounds of appeal has also been received from the same group. The issues raised in the 3rd party submission are similar to the observation and have been summarised below.

4.0 Planning History

RL06F.307592 (FS5/027/20)

Section 5 Referral. Question: Is or is not exempt development: A pedestrian access from the proposed development to Suncroft Avenue, Portmarnock, which is in compliance with Condition No. 4 of the grant of permission ABP PL06F.248412 (Reg Ref No. F16A/0520).

An Bord Pleanála concluded that:

- (a) the erection of the gate constitutes works which is development,
- (b) there are no provisions in the Planning and Development Act, 2000, as amended which would exempt such development,
- (c) there are no provisions in the Planning and Development Regulations, 2001, as amended, which would exempt such development, and
- (d) even if there were such provisions in the Regulations, the development would be de-exempted by Article 9(1)(a)(i), as it would contravene Condition No. 4 attached to planning permission ABP PL06F.248412 (P.A. Ref. No. F16A/0520) which requires, inter alia, that the developer shall provide a pedestrian only access from the proposed development to Suncroft Avenue generally in accordance with drawings submitted to the Planning Authority on

10th day of February 2017, and those drawings indicate a new 1500mm wide access which is not gated.

PL06F.248412 (Reg Ref F16A/0520)

Permission granted for 5 no. detached dwellings a new vehicular access and pedestrian access from Carrick Court, and associated works.

Condition no 4: The developer shall provide a pedestrian only access from the proposed development to Suncroft Avenue generally in accordance with the drawings submitted to the planning authority on the day 10th of February 2017. Prior to commencement of development, detailed plans and particulars providing for access shall be submitted to, and agreed in writing with the planning authority, and pedestrian access shall be provided prior to the making available of the houses for occupation.

Reason: To improve permeability in the area in the interest of residential amenity.

5.0 Policy Context

5.1. National Policy

- 5.1.1. Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities (2009) and accompanying Urban Design Manual: A best practice guide

5.2. Fingal Development Plan 2017-2023

The site is zoned as residential, RS, where it is an objective “*To provide for residential development and protect and improve residential amenity*”

Pedestrian Connectivity

Objective MT13: Promote walking and cycling as efficient, healthy, and environmentally friendly modes of transport by securing the development of a network of direct, comfortable, convenient and safe cycle routes and footpaths, particularly in urban areas.

Objective MT17: Improve pedestrian and cycle connectivity to schools and third level colleges and identify and minimise barriers to children walking and cycling to primary and secondary schools.

Objective MT22: Improve pedestrian and cycle connectivity to stations and other public transport interchanges.

Gated Communities

Objective DMS32: Prohibit proposals that would create a gated community for any new residential developments.

5.3. Natural Heritage Designations

The proposed development is c. 50m north of the Baldoyle Bay p NHA (site code: 000199) and the Baldoyle Bay SAC (site code: 000199) and c. 365m north of the Baldoyle Bay SPA (site code 004016).

5.4. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental 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

The grounds of appeal are submitted from the applicant in relation to the refusal of permission by the PA. The issues raised are summarised below:

6.1.1. Background

- The clients are responsible for the site, security and maintenance of the communal areas.
- There is no public right of way through the property.

- The appeal is in response to enforcement proceedings taken by the local authority in relation to non-compliance with Condition No. 4.
- A pedestrian access was provided, as per permission, although as this is a private estate the gate is locked to prevent trespassers.
- As per the previous Section 5 declaration, the applicant assumed the proposed development was exempt development.
- The requirement for permeability is understood although there is concern that the third parties going through the site would cause a safety issue.
- Condition no. 4 does not refer to Section 47 or the creation of a right of way.
- An ungated access would bring unnecessary traffic and create an unwanted problem for the residents of Carrick Court Close, Suncroft Avenue and Carrick Court Avenue.
- There is little to be gained from, in terms of distance, from using the access.
- The alternative access route is more appropriate, well lit and has better surveillance.

6.1.2. First reason for refusal

- The estate has not been taken in charge and the clients maintain all the spaces.
- The public liability is borne by the clients.
- The existence of Condition No. 4 can not be used as a reason for refusing the proposed development.
- A Section 47 agreement is necessary to allow public access onto the applicant's lands.

6.1.3. Second reason for refusal

- The proposed development can rely on the provisions of Section 37 of the Planning and Development Act, 2000 (as amended) whereas the Board may grant permission where a planning authority has decided to refuse permission where a proposed materially contravenes a plan.

- The Board can rely on the provisions of Section 37 (2) (b) (ii) and (iv) of the Act to grant permission.
- Objective MT13, MT17 and MT22 are of general interest and not specific to the site.
- If the PA wish to create a public right of way, they must undertake proper consideration and advertisement.
- MT23 mentions the PA intention to carry out feasibility studies for different pedestrian/cycle routes although none of these have been undertaken.
- A study (Safety Assessment of Suncroft Avenue, Portmarnock, Co. Dublin, prepared by PMCE 2019) has been attached and concludes that Suncroft Avenue is not suitable over its full length to cater for an increased volume of pedestrians, an upgraded junction, a footpath should be provided and a safe crossing onto Strand Road.

6.1.4. Conclusion

- The proposed development is acceptable.
- The opening up of the gate would only allow only an additional 40m of walk.
- The increase of pedestrian traffic would have a negative impact on the residential amenity and security of the residents.

6.1.5. Additional Information

- Letter of support from the residents of 1-5 Carrick Court Close. This submission reiterates the information in the grounds of appeal and makes reference to Section 3.3.3 of DMURS (pedestrian links)
- Copy of Safety Assessment “Suncroft Avenue, Portmarnock, Co. Dublin” undertaken by PMCE (2018).

6.2. Applicant Response

The appellant is the applicant.

6.3. Planning Authority Response

A response from the PA was received on the 16th of December 2021. The submission reiterates the reason for refusal and may be summarised as follows:

- Under PL06F.248412 (Reg Ref F16A/0520) the Board included Condition No 4 which states that the developer is to provide a pedestrian only access from the proposed development to Suncroft Avenue.
- The provision of a locked gate fails to improve permeability in the area and is in direct contravention of this condition.
- The locked gate would prevent ease of movement from Carrick Court to Coast Road and would result in a negative impact on the residential amenity of the area
- The proposed development is contrary to condition No. 4.
- In the event the appeal is successful, the Board is requested to include a Section 48 development contribution condition.

6.4. Observations

One observation was received from the residents of the wider Carrick Court area (signed by 4 no. residents of Carrick Court). The issues raised are summarised below:

- It is asserted by the appellant that all the lands are in private ownership of the clients who are responsible for the maintenance and upkeep of all common areas including the footpaths, open space and lighting.
- The above assertion is at variance to Condition No. 16 of the original grant of permission.
- There was no attempt in the planning process to change this condition.
- The owner of Carrick Court Close Property Management Company bought their houses from Ballystone Properties with full planning permission including Condition No 4 and Condition No 16.

- Condition No. 4 requires the developer to provide for a pedestrian only access from the proposed development to Suncroft Avenue.
- The new owners would have been aware of this condition when they purchased their dwellings.
- A letter (attached with the observation) indicates that the developer was aware of Condition No. 4 and intended to comply with same.
- Following completion of the development in 2019 it was clear that the pedestrian gate was to be locked.
- Condition No. 4 was brought to the attention of the development who ignored it.
- The proposal introduced a gated community beside a mature established neighbourhood.

6.5. Further Responses

None received.

7.0 Assessment

7.1. I consider the main issues of the appeal can be dealt with under the following headings:

- Planning History
- Permeability and Connectivity
- Material Contravention
- Appropriate Assessment.

Planning History

7.2. The subject site consists of 5 no detached dwellings within a court setting, Carrick Court Close. The site forms part of an extension of a larger mature residential estate Carrick Court and was developed separately as part of a separate more recent permission PL06F.248412 (Reg Ref F16A/0520). In addition to the residential area to the south of the site, the site adjoins another residential area to the north Suncroft

Avenue. Suncroft Avenue is c. 130m in length, radiates south from mixed use area, provides access to c. 10 no dwellings and the access road connects to the north of the proposed development.

- 7.3. Condition No. 4 of PL06F.248412 (Reg Ref F16A/0520) required the developer to provide a pedestrian only access from the proposed development to Suncroft Avenue generally in accordance with the drawings submitted to the planning authority on the day 10th of February 2017. Prior to commencement of development, detailed plans and particulars providing for access shall be submitted to, and agreed in writing with the planning authority, and pedestrian access shall be provided prior to the making available of the houses for occupation.
- 7.4. The required pedestrian access between Carrick Court Close and Suncroft Avenue has, in general, been provided although the access gate remains locked. The proposed development (retention of the locked gate) has been submitted subsequent to a Section 5 Declaration RL06F.307592 (FS5/027/20). In the Section 5 Referral the Board determined that the pedestrian access from the proposed development to Suncroft Avenue, Portmarnock, was development was not exempt development and would contravene Condition No. 4 attached to planning permission ABP PL06F.248412 (P.A. Ref. No. F16A/0520). The current proposal has been submitted to regulate the use of the gate and the grounds of appeal makes reference to current enforcement proceedings by the Local Authority.
- 7.5. The grounds of appeal have been submitted by the owners of those properties in Carrick Court Close in relation to a refusal of permission for the retention of the gate. The proposed development was refused for 2 no reasons. The first reason for refusal relates to a contravention of Condition No. 4 of the grant of permission ABP PL06F.248412 (P.A. Ref. No. F16A/0520) which required a pedestrian access. The reason for refusal also notes that the proposal prevents connectivity and ease of movement between Carrick Court to Coast Road which would have a negative impact on the surrounding residential amenity.
- 7.6. The grounds of appeal do not consider that non-compliance of Condition No. 4 can be a reason for refusal of permission. In addition, they note that the applicant has provided the pedestrian gate although it is now locked. The rationale for keeping the gate locked relates, in the most part, to the ownership of Carrick Close (which is in

private control and management by the residents) and the need to ensure the area is secure and free from anti-social behaviour. The grounds of appeal area concerned that the movement of pedestrians through this gate would require the establishment of a right of way and/ or Section 47 agreement. Neither of these legal avenues has been established by the Local Authority.

- 7.7. I note Condition no. 4 was attached by the Board under planning permission PL06F.248412. The Inspector's Report notes the location of the site, adjoining Suncroft Avenue, the request of the Transport Planning Office for a pedestrian access and the characteristics of the surrounding area. Having regard to national policy to ensure connectivity and permeability, it was considered a condition requiring pedestrian access was reasonable.
- 7.8. While I note the inclusion of a condition does not necessarily always warrant a refusal of permission, I consider the rationale for the inclusion of a condition such as condition No. 4 is in keeping with the proper planning and sustainable development of the area. I have further elaborated on this point below.
- 7.9. The grounds of appeal have raised concerns in relation to the absence of any legal right of way and/or Section 47 agreement. They believe that this is necessary to allow the movement of pedestrians across Carrick Court Close (a privately owned residential estate). The Board will note that the permission does not include any restrictions of the use of the residential units (Section 47 agreement). In relation to the establishment of any right of way, I note this is a matter for the Local Authority under the Roads Act. I do not consider either of these procedures are necessary or relevant to the assessment of the proposed development.

Permeability and Connectivity

- 7.10. The first and second reason for refusal of the proposed development makes reference to connectivity and permeability and the promotion of walking and cycling. The PA considers the pedestrian walkway provides a direct convenient and safe route from Carrick Court Estate to Coast Road via Suncroft Avenue to access educational facilities and a public transport interchange. In addition, the development contravenes materially Objectives MT13, MT17 and MT22 of the Fingal Development Plan 2017-2023.

- 7.11. The grounds of appeal have submitted documentation illustrating an alternative route to the Coast Road, a report stating that Suncroft Avenue is not appropriate for pedestrian activity and also raise concerns in relation to anti-social behaviour arising from the movement of pedestrians and cyclists through this route.
- 7.12. I note national guidance Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (DOEHLG 2009) promotes permeability and connectivity in all urban developments and considered that priority should be given for pedestrians and cyclists with interventions such as the creations of new streets. This is further highlighted in the accompany Best Practice Manual where any proposed housing should clearly demonstrate how well the developments can be connected and how easily people can use and access the development. To assist the convenient access for everyone this national guidance states that “gated estates” should be discouraged.
- 7.13. These principles of good urban design and promotion of connectivity are also elaborated in the Fingal County Development Plan 2017-2023. Objectives MT13, MT17 and MT22 require the safe and convenient movement of pedestrians and cyclists whereas Objective DMS32 prohibits residential proposals that would create a gated community. I consider the inclusion of an open pedestrian access at the location between Carrick Court Close and Suncroft Avenue provides a more direct route to the mixed-use area along the Coast Road. I consider the closing of this gate which prevents the movement of pedestrians, would not be in keeping with the criteria for appropriate development of residential estates and therefore not in keeping with the proper planning and sustainable development of the site or the surrounding area.
- 7.14. In relation to the addition information submitted with the grounds of appeal, the Board will note a report has been submitted on the appropriate use of Suncroft Avenue as a pedestrian access. I note the date of issue of this report (January 2018) was subsequent to the grant of permission for the site (2017) and I am unclear as to the end user of this report. This aside, the Board will note the Inspector’s Report on PL06F.248412 (P.A. Ref. No. F16A/0520) which assessed the appropriateness of the connection through Suncroft Avenue. I also carried out a site inspection of the area and walked along Suncroft Avenue. This shared carriageway provides access for c. 10 no dwellings. Having regard to the design of the Suncroft Avenue and the

limited vehicular access, I do not consider there will be any conflict between pedestrians and vehicles and I consider this connection between Carrick Court Close and Suncroft Avenue will provide a safe and convenient access to the mixed use facilities and the wider area of Portmarnock.

- 7.15. The Board will note the grounds of appeal also raised concern that the proposed development will lead to antisocial behaviour in the vicinity. I note the current Carrick Court and pedestrian access is well overlooked which provides active surveillance. The second criteria of the Urban Design Manual notes that poorly designed and underused connections become unsafe. I consider the pedestrian connections are well designed and appropriately overlooked.
- 7.16. Overall, I consider the use of this pedestrian access complies with national and local planning policy for good urban design. It is my opinion that the proposed development, and the locking of the gate, would prevent convenient access and restrict the movement and flow of pedestrians and cyclist through the site and the wider vicinity. To this end, I consider any attempt to restrict access (locked gate) is inappropriate, against the proper planning and sustainable development of the area and the proposed development should be refused.

Material Contravention

- 7.17. The second reason for refusal states that the development contravenes materially Objectives MT13, MT17 and MT22 of the Fingal Development Plan 2017-2023. As stated above these objectives require the delivery of safe and convenient pedestrian and cyclist movements. My assessment above concludes that the retention of a fully pedestrian access can ensure greater permeability with a more direct and convenient access between two residential areas and into the wider area.
- 7.18. The grounds of appeal consider the proposal should be granted by the Board having regard to Section 37 (2) (b) (ii) and (iv) of the Planning and Development Act, 2000, as amended. Section 37(2)(b) of the act provides that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with specific criteria, where it considers one of the criteria of section 37 (2) (b) of the Act of 2000 were to apply.

- 7.19. Section 37 (2) (b) (i) states that permission for the proposed development should be granted having regard to *“conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or”* whereas Section 37 (2) (b) (iv) states that *“permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan”*.
- 7.20. In the first instance (conflicting objectives in the development plan), the grounds of appeal note the objectives MT13, MT17 and MT22 are generic and not specific to the subject site or clearly stated as to how they are concerned with the proposed development. As stated above in my assessment permeability, these objectives promote the permeability and connectivity for all residential developments and stem from the national guidance for good urban design. Those national guidelines, Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (DOEHLG 2009), fall within the scope of the provisions of Section 2 of the Planning and Development Acts, where the PA are required to implement. In this regard I consider the Objectives MT13, MT17 and MT22 clearly reflect the national guidance and whilst not site specific they are applicable to all new developments. I do not consider the proposed development should be granted having regard to any conflicting objectives, or those objectives which have not been clearly stated.
- 7.21. In the second instance (pattern of development in the area or permissions granted since the making of the development plan), the grounds of appeal note that a feasibility study has been undertaken for other proposed pedestrian/cycle route (an example of Abbeville to Kettle’s Lane, Balgriffin to Teagasc Kinsaley etc. It is noted that no feasibility study has been undertaken for this route. The Board will not the scale of the connection between Carrick Court and Suncroft Avenue. I consider this connection would provide the limited movement of residents in the vicinity to access the main road more conveniently. I do not consider the absence of a feasibility study would warrant a grant of permission under Section 37 (2) (b) (iv). I do not consider there is any pattern of development in the area or permissions granted since the making of the development plan which would warrant a grant of permission under Section 37 (2) (b) (iv).

7.22. Therefore, having regard to my assessment above I consider a grant of permission under Section 37 (2) (b) (ii) and (iv) of the Planning and Development Act 2000 (as amended), is not justified in this instance.

Appropriate Assessment

7.23. The referral site is not within or adjoining any European sites. It is a development that is already in situ and forms part of the serviced lands of suburban Portmarnock. Having regard to the modest nature and extent of the development; the serviced location of the site in a mature suburban setting; and the lateral separation distance between the site and nearest European site, I consider that no Appropriate Assessment issues arise, and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend that planning permission should be **refused** for the reasons and considerations set out below.

9.0 Reasons and Considerations

The "Sustainable Residential Development in Urban Areas -Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in May, 2009, and the accompanying Urban Design Manual recommends a sequential and co-ordinated approach to residential development, whereby zoned lands should be developed so as to facilitate walking and cycling and new developments should be successfully connected to existing neighbourhoods. Objectives MT13, MT17, MT22 and DMS32 of the Fingal County Development Plan 2017-2023 support the second criteria of the Urban Design Manual "Connections". The proposed development restricts the use of a pedestrian walkway between the Carrick Court Estate and Suncroft Avenue, as required in Condition No. 4 of PL06F.248412 and prevents a direct convenient and safe route from a large residential area to mixed use facilities. Therefore, it is considered that the proposed development would militate against an attractive pedestrian environment and would be contrary to the national guidelines, Objectives MT13, MT17, MT22 and DMS32 of

the Fingal County Development Plan 2017-2023 and to the proper planning and sustainable development of the area.

Karen Hamilton
Senior Planning Inspector

28th of February 2022