



An
Bord
Pleanála

Inspector's Report ABP312173-21

Development	Create a new vehicular access with timber gate and new boundary wall at Santos Cottage.
Location	Oaklands Close, Church Lane, Greystones, County Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	21/1177
Applicant(s)	Michelle Connolly
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal
Appellant(s)	Michelle Connolly
Observer(s)	Oaklands Court Residents Association Deborah & Ronan Nicholson
Date of Site Inspection	18 th March 2022.
Inspector	Hugh Mannion.

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1.0 Site Location and Description

- 1.1. The application site has a stated area of 0.043ha and comprises an existing house 'Santos Cottage' at Blacklion, Greystones, County Wicklow. The applicant's site backs onto a residential cul de sac – Oaklands Close – and a new vehicular access from 'Santos Cottage' to Oaklands Close is proposed.

2.0 Proposed Development

- 2.1. The proposed development comprises the creation of a new vehicular access with a timber gate and boundary wall from for a house at 'Santos Cottage' onto Oaklands Close, Church Lane, Greystones, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission.

The access is over lands that form part of the public amenity space at Oaklands Court. The applicant has not demonstrated sufficient legal interest to carry out the proposed development and the proposed development would contrary to traffic safety and to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended refusal as set out in the manager's order.

3.2.2. Other Technical Reports

No other reports.

4.0 Planning History

- 4.1. Reference number 21/855 permission refused for a similar development for the lack of sufficient legal interest and traffic hazard.
- 4.2. Reference numbered 20/979 permission refused for a similar development for the lack of sufficient legal interest and traffic hazard.

5.0 Policy and Context

- 5.1. The Development Management Guidelines for Planning Authorities (DOEHLG 2007) deals with the matter of tile to land when processing planning applications at paragraph 5.13.

5.2. Development Plan

- 5.3. The Wicklow County Development Plan is the relevant county development plan for the area.
- 5.4. The Greystones – Delgany and Kilcoole Local Area Plan 2013-2019 is the relevant Local Area Plan.

Objective SOC9: Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces. In particular, residential development shall not be permitted on designated public open space within these areas.

5.5. Natural Heritage Designations

Not relevant.

5.6. EIA Screening

- 5.7. Having regard to nature and scale of the proposed development and the absence of emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- the planning authority refused permission for lack of legal interest and traffic hazard as in previous applications.
- the lands have been taken in charge by the planning authority. Therefore, the applicant has a right to make an application and the planning authority may grant a permission.
- the owner of the lands is Town Park Estates limited. They have given consent to make this application therefore it is a valid application.
- the residents' association attempted unsuccessfully to register a deed over the land.
- the land does not function as meaningful open space and therefore the proposed access over the land is not contrary to objective SOC 9 in the Local Area Plan.
- there are numerous examples where planning permission has been granted for access over open space.

6.2. Planning Authority Response

- None.

6.3. Observations

6.4. Observations were received from Oaklands Court Residents Association and Deborah & Ronan Nicholson. The observations can be summarised as:

- There is a history of refusal for this development.
- The original grant of planning permission for Oaklands estate required that the open space areas within the development be dedicated for the use of the residents. Such an agreement was submitted to the planning authority by the landowner Town Park Estates Limited.

- The land where the access is proposed has been planted and is in use as a public open space.
- The applicant has insufficient legal interest to carry out the proposed development. The planning authority did not take in charge the land over which access is proposed. The correspondence from Town Park Estates Limited does not refer to the use of the public open space.
- The applicant has sufficient space within her ownership/site to turn a motor car and need not reverse onto R761. The access through Oaklands would be unsuitable for ambulance access.
- The hammer head in Oaklands Court accommodates parking for numbers 9, 10 and 11 Oakland Court, interfering with this parking arrangement would seriously injure the amenity of these houses.

6.5. Further Responses

- None.

7.0 Assessment

7.1. Background.

7.2. As pointed out by the parties and observed in this appeal there is a history of unsuccessful applications in relation to this proposed development. The applicant makes the case, *inter alia*, that the existing access from Rathdown Road/R671 to the applicant's house (Santos Cottage) is unsatisfactory for being too long and narrow and requires either reversing down the access towards Santos Cottage or reversing out of the lane onto the regional route, neither of which is satisfactory. Oaklands Court is a housing development to the east/behind Santos Cottage and the application would create a new vehicular access from Santos over a landscaped strip at the western end of Oaklands Court.

7.3. Legal Interest

7.4. Section 34(13) of the Act provides that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. The Development Management Guidelines for Planning Authorities clarify that the

planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. The Guidelines make the point that where doubt arises as to the legal interest of the applicant that additional information may be sought by the planning authority to clarify the matter.

- 7.5. It may have been preferable that the planning authority sought additional information from the applicant on this point but having regard to the history of applications the issue has been raised.
- 7.6. In the present case the applicant included a letter from the landowner (Town Park Estates Limited) who was the original builder of Oaklands Court which states that that company grants permission to the applicant to make an application. Oaklands Court was taken in charge by the planning authority and this creates an additional layer in relation to ownership. The observers make the case that the permission for the Oaklands development included a requirement that the open space in the development be dedicated to the use of future residents of the development.
- 7.7. I conclude from all the submissions on file that there are various parties with an interest in the landscaped strip: the original landowner, the planning authority who took it in charge and the residents by virtue of the planning conditions in relation to the future use of public open space within the development. The landowner may be able to confer a right on the applicant to make a valid application but cannot confer a right to carry out the development free of these other layers of interest in the land. I conclude, therefore, that the applicant has insufficient legal interest in the land to carry out the development and I recommend refusal along the lines set out by the planning authority.
- 7.8. **Public Open Space.**
- 7.9. The point is made in the application that the utility of the strip of land as public open space is not significant. The Greystones LAP is the relevant plan for the area, and it includes an objective (SOC9) that public open space within residential housing estates shall be preserved and enhanced and that no development shall be permitted that would compromise the integrity of these spaces.
- 7.10. The relevant open space is narrow, but it is grassed and there are adjoining trees and it provides an attractive end point for the Oaklands Court. I consider that the

strip is of amenity value within Oaklands Court and the LAP policy in relation to protecting public open space is relevant, and the creation of a vehicular access over it would contravene the LAP and injure the amenity of nearby residential property.

7.11. Traffic Safety

7.12. Oaklands Close is a residential *cul de sac* where each house has at least one off-street car space. Given the configuration of the road which does not facilitate high speed I consider it unlikely that an additional access would endanger public safety.

7.13. Appropriate Assessment

7.14. Having regard to minor nature and lack of emissions from the proposed development 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.

8.0 Recommendation

8.1. I recommend refusal.

9.0 Reasons and Considerations

The Board is not satisfied on the basis of the submissions made in relation to the application and appeal that the applicant has sufficient legal interest to carry out the proposed development and is therefore precluded from granting planning permission.

Hugh Mannion
Senior Planning Inspector

20th March 2022.