



An
Bord
Pleanála

Inspector's Report ABP-312647-22

Question

Whether the use of the lane for car parking on a sustained and prolonged basis is or is not development or is or is not exempted development

Location

Stable Lane, situated rear of Burnaby Park and Somerby Road and running between Portland Road and Whitshed Road, Greystones, Co. Wicklow.

Declaration

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

EX68/2021

Applicant for Declaration

Burnaby Residents Association

Planning Authority Decision

No declaration

Referral

Referred by

Burnaby Residents Association

Owner/ Occupier

Michael and Linda Shorten

Observer(s)

None

Date of Site Inspection

19th August 2022

Inspector

Ian Boyle

1.0 Site Location and Description

- 1.1. The site comprises a laneway called Stable Lane in Greystones, Co. Wicklow. The lane is narrow, approximately 5m in width, and connects Whitshed Road with Portland Road, which are to the north and south, respectively. It runs parallel and in between Somerby Road to the west and Burnaby Road to the east.
- 1.2. The rear gardens of residential properties face onto the laneway and in some cases small outbuildings and sheds are built on / near the shared boundary. There are also tall and mature hedgerows and a concrete block wall running along both sides of the laneway for its majority. At approximately the halfway point, on its eastern side, is a dwelling called The Mews, Beachview Court, Burnaby Road (A63 YH60). The gable end of the house is visible and there is a vehicular entrance providing access to an internal courtyard serving the house. The courtyard accommodates car parking.
- 1.3. The surrounding vicinity is characterised mainly by mature, established housing set on large plots. It generally consists of sizeable, detached houses in a residential area just south of Greystones town centre, within what is known as the 'Burnaby Estate' or 'the Burnaby'.
- 1.4. The area has an attractive sylvan quality and is of significant interest from a built and cultural heritage perspective. The Burnaby is an Architectural Conservation Area (ACA) and the site falls within this designation. Many of the houses in this area are also Protected Structures.

2.0 The Question

- 2.1. Whether or not the use of Stable Lane of car parking associated with the occupancy / ownership of The Mews (dwelling) on a 'sustained and prolonged' basis is or is not development or is or is not exempted development.
- 2.2. The Planning Authority requested further information in separate letters from the Referrer and owners/occupiers on the 3rd December 2021. The letters sought further details regarding the precise nature and extent of parking associated with the Mews house, the history of parking behaviour on the laneway, and the nature and extent of parking carried out by others (other than by the owners/occupiers).

- 2.3. The owners/occupiers provided further information on 10th December 2021 confirming they do not plan to park on the lane and that parking will be in the courtyard associated with the house or on nearby roads for which they have parking permits.
- 2.4. The Referrer (Burnaby Residents Association) provided further information on 13th December 2021, including details stating that parking on the laneway takes place overnight and for prolonged periods, references to historical planning files concerning parking at The Mews, affidavits stating there has been no overnight or prolonged car parking on the lane prior to 2018 (which is around the same time as a new owner and occupier moved into the Mews house), and a query as to why information has been sought by the Planning Authority from the owners/occupiers in relation to the matter.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority stated the question:

“Whether or not the use of Stable Lane for car parking associated with the occupancy / ownership of The Mews, Beachview Court, on a ‘sustained and prolonged’ basis is or is not development or is or is not exempted development.”

A letter was issued to the Referrer on 3rd March 2022 advising them that the Planning Authority considered there was a lack of definitive evidence and limited information available, which meant it was not possible for them to make a Declaration in relation to the matter.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The laneway in question is a private laneway and not a public road.
- On the day of the site visit, there were no cars parked on laneway. However, information sourced online shows cars on the laneway.

- Section 3(1) of the Planning and Development Act, 2000 (as amended) ('the Act') defines development as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'.
- The lane being used for parking of cars is a service lane and is not part of the curtilage of the Mews dwelling.
- The Referrer indicates that there is prolonged and overnight parking of up to 4 no. cars by the residents of The Mews. They argue that this use is different to the historical use of the lane, which was for services and deliveries / collection only and where parking was temporary and sporadic.
- To ascertain the precise nature of the parking taking place, further information is required from the Referrer and owners of the house.
- Upon receipt of further information, the Council's Senior Engineer circulated an internal email (dated 22nd December 2021) instructing staff to issue a letter to the Referrer that the Planning Authority would not in a position to issue a Declaration due to a lack of definitive evidence / information.

4.0 Planning History

Subject Site (Laneway)

None.

Surrounding Area

Reg. Ref. 141163: The Planning Authority **granted** permission on 7th August 2014 for a residential extension (31sqm) and associated works at The Mews, Burnaby Road, Greystones, Co. Wicklow.

Reg. Ref. 138897: The Planning Authority **refused** permission on 21st January 2014 for a residential extension (74sqm) and associated works at The Mews, Burnaby Road, Greystones, Co. Wicklow.

5.0 Policy Context

5.1. Greystones-Delgany & Kilcoole Local Area Plan 2013 – 2019

- The site is unzoned.
- The adjoining lands are zoned 'R10: Residential – 10/ha' where the zoning objective is *'to provide for the development of sustainable residential communities up to a maximum density of 10 units per hectare and to preserve and protect residential amenity'*.

5.2. Natural Heritage Designations

There are no natural heritage designations in the vicinity of the site.

5.3. Architectural Conservation Area

The appeal site is within 'the Burnaby', which is an Architectural Conservation Area (ACA). Many of the houses in this area are also Protected Structures.

6.0 The Referral

6.1. Referrer's Case

The Referrer is seeking a 'Section 5 Declaration' from the Board under Section 5(3)(b) of the Planning and Development Act, 2000 (as amended), which states that *'in the event that no declaration is issued by the Planning Authority, any person who made a request under subsection (1) may ... refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2)'*.

The following main issues are raised:

- Service Lanes in the Burnaby, including the subject laneway (Stable Lane) should be maintained to the extent that their semi-rural character is preserved. They form an important part of the character of the Burnaby Estate. This information is outlined in a submission previously prepared by a Grade 1

Conservation Architect, on behalf of the Burnaby Residents Association, in relation to the Greystones-Delgany & Kilcoole Local Area Plan 2013 – 2019 (LAP).

- The parking of vehicles for prolonged periods, including overnight, is a planning issue as it constitutes a de facto material change of use from a thoroughfare to a new use for residential car parking. This is not a use that is sanctioned by any planning permission, or as part of an established use.
- Planning permission for a dwelling extension at the Mews was originally refused in 2014 (Reg. Ref. 138897) because of the risk of overspill parking. Permission was only granted subsequently, under a separate application, when a commitment was given by the Applicant that no overspill would occur (Reg. Ref. 141163). The property was subsequently purchased by another party in 2016 and the practice of sustained and prolonged car parking in the laneway started soon afterwards in 2018.
- Stable Lane is now typically obstructed by two – four cars parked in the laneway outside the Mews house. This detracts from the character of the Burnaby ACA.
- Using the laneway for parking cars would require a specific planning application to secure a material change of use.
- Sworn affidavits are appended to the appeal submission which confirm no car parking took place on the laneway prior to 2018, which was when residents of the Mews house decided to use the lane to park their vehicles for prolonged periods.
- The Board is requested to issue a declaration that the use of the lane for car parking on a sustained and prolonged basis, associated with the occupancy / ownership of the adjacent house (or otherwise), constitutes a material change of use and constitutes development under the meaning of the Planning and Development Act, 2000 (as amended).

6.2. Planning Authority Response

- No declaration issued – due date on file 11th January 2022.

- The Planning Authority has no further observations/submissions to make on this appeal.

6.3. **Owner/occupier's response**

- There is no plan / intention to park in the lane apart from dropping off or collecting items.
- Parking will be either in the courtyard of the house or in the nearby roads and there are car parking permits for this from the Local Authority.
- The laneway is not suitable for parking as it interferes with the use of it by residents.
- [Note: There is a solicitor's letter on file dated 13th October 2021 confirming the current owner/occupiers were in the process of purchasing the Mews house in 2021/2022 and that they are aware that there is no right to park on the laneway abutting the property.]

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Section 3(1)

- "*Development*" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1) 'Exempted Development'

- The following shall be exempted developments for the purposes of this Act:
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

7.2. **Planning and Development Regulations, 2001**

Article 6 of the Planning and Development Regulations, 2001, as amended ('the Regulations') state the following:

- (1) *Subject to Article 9 the development of a Class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

Article 9(1) of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including (a) if the carrying out of such development that would –

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) *endanger public safety by reason of traffic hazard or obstruction of road users,*
- (viiB) *comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.*

Article 10 of the Regulations state the following:

- (1) *Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*
 - (a) *involve the carrying out of any works other than works which are exempted development,*

- (b) contravene a condition attached to a permission under the Act,*
- (c) be inconsistent with any use specified or included in such a permission, or*
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Development is defined under Section 3(1) of the Planning and Development Act, 2000 (as amended) as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*. Works defined under Section 2(1) of the Act *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*
- 8.1.2. Therefore, the relevant test in this case is whether not works or a material change in use has occurred in respect of parking on the laneway in question. The lane is approximately 185m in length and 5m in width. It is roughly the width of a single car, excluding the grass verges on either side, and there is no opportunity for vehicles to pass one another. The section of the lane being used is not part of the curtilage of the Mews dwelling.
- 8.1.3. The site is in a part of Greystones known as the 'Burnaby Estate' or 'the Burnaby', which is a low density area of historical and architectural interest, composed mainly of large, family style homes on generous sites. The surrounding vicinity is a designated architectural conservation area (ACA), as set out in the LAP.
- 8.1.4. There are several small domestic outbuildings and sheds in some of the rear gardens associated with the houses facing onto Somerby Road (west of the lane) and Burnaby Road (east) and the lane has historically been used as a services' access for these properties. Several properties in the surrounding vicinity are Protected Structures.

- 8.1.5. The Referrer states in their submission that no prolonged car parking on the lane happened around the start of 2018 after a new owner / occupier moved into the Mews house a couple of years previous (in 2016). The Referrer states car parking for extended durations and overnight is now commonplace and that this constitutes a de facto material change of use from 'a thoroughfare' to a new use for 'residential car parking'.
- 8.1.6. The appeal submission includes 2 no. affidavits, one from Ms. Muriel Taylor (Portland House) and another by Mr. Peter Murtagh. The affidavits set out that there was no established use of the lane for parking pre-1963, and that parking only started to occur in 2018, respectively.
- 8.1.7. The affidavit by Mr. Murtagh also includes a series of photographs of parked cars outside the Mews house to demonstrate the current obstruction that it causes and that this has been the typical scenario since 2018 to the present day. [I note during my physical inspection of the site that there were no cars parked on the laneway. However, this was at a time of day when typically, the residents and other people in the locality, would likely be away from their homes and at work, college, etc.]
- 8.1.8. As noted above, the test in respect of development is whether works or a material change of use has occurred due to the parking of cars on the laneway. I consider that the original purpose of the laneway would likely to have been to allow access for servicing, deliveries, collections, etc., of the houses that are situated on either side of it.
- 8.1.9. In my opinion, using the laneway, albeit a small part thereof, to accommodate parked cars would constitute a material change of use of the land given the resulting planning implications and external affects arising. Given the narrow width and original intended purpose of the lane (i.e., a service lane), it is clear to me that cars parked for extended periods of time would inhibit and impede other vehicles from passing through it and that the original purpose of the laneway to facilitate servicing and deliveries would be significantly impacted as a result.
- 8.1.10. In my view, the use of the laneway for parking cars would also create materially different planning considerations than to those arising in terms of the laneway functioning solely as a service lane. This would potentially include the generation and increased volume of traffic movements, noise impact, obstruction of other road

users – not just motorists, but also pedestrians and cyclists –, and other microclimatic and environmental effects.

- 8.1.11. Therefore, I consider that the uses are materially different and that a change of use has occurred, in my opinion. I conclude that the parking of cars on the laneway is development and as defined by Section 3(1) of the Planning and Development Act, 2000 (as amended).

8.2. Is or is not exempted development

- 8.2.1. The next test, after the considering the parking of cars on the subject laneway to be development, is whether the development is or is not exempted development.
- 8.2.2. Section 4(1) of the Act sets out various types of development which are exempt for the purposes of the Act. In my opinion, none of the sections would apply to the subject development.
- 8.2.3. Article 6(1) of the Regulations makes provision for classes of development set out under Schedule 2, Part 1, to be exempted development, subject to the provisions of Article 9. However, these exemptions relate to works, and not use, and therefore is not applicable in this instance.
- 8.2.4. Article 9 of the Regulations sets out several restrictions on development which would, otherwise, constitute exempted development. However, as the development is not a development included in the classes of development set out in Schedule 2, Part 1, I do not consider it necessary to address these restrictions in any detail. [However, notwithstanding this, I note that the practice of parking of cars within the lane for prolonged periods would result in an ‘obstruction of road users’ and that Article 9(ii) would apply, in my opinion, were the development considered to be exempted development under the provisions of Article 6(1).]
- 8.2.5. Article 10(1) of the Regulations provides that ‘development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided the development carried out would not’ fail any one of four considerations. However, I note that the change of use of the lands for car parking is not referenced under Part 4 to Schedule 2 and, therefore, would not apply in this instance.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether or not the use of Stable Lane, Greystones, Co. Wicklow for car parking associated with the occupancy / ownership of The Mews, Beachview Court, on a sustained and prolonged basis is or is not development or is or is not exempted development:

AND WHEREAS Burnaby Residents Association requested a declaration on this question from Wicklow County Council and the Council issued a letter dated 4th January 2022, advising that there was a lack of definitive evidence and information available to enable them to make a Declaration in relation to the matter:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 3rd day of February 2022:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1), Article 9(1) and Article 10(1) of the Planning and Development Regulations, 2001, as amended,

- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site, and
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the use comprises development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,
- (b) the use does not come within the scope of Section 4 of the Planning and Development Act, 2000, as amended, and
- (c) the use does not come within the scope of Article 6(1) or Article 10(1) of the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(b) of the 2000 Act, hereby decides that the parking of cars on Stable Lane, Greystones, Co. Wicklow on a sustained and prolonged basis is development and is not exempted development.

Ian Boyle
Planning Inspector

14th October 2022