



An
Bord
Pleanála

Inspector's Report

ABP-313725-22

Development	Installation of electric gates at the entrance of a private avenue to residential houses
Location	Violet Hill, Herbert Road, Bray, Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	22272
Applicant(s)	Tudor Violet Hill Management Company
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Maria Gallen and others
Observer(s)	None
Date of Site Inspection	25 th April 2023
Inspector	Ian Boyle

1.0 Site Location and Description

- 1.1. The appeal site comprises an existing public entrance and driveway leading off Herbert Road to existing houses in Bray, Co. Wicklow. The driveway is for access to Violet Hill, which is a small residential enclave sited within the grounds of a large former country house – it itself called Violet Hill.
- 1.2. The house was subdivided into individual apartments in the 1970s and there are various outbuildings, such as former stables, which have since been converted to residential use. The overall estate has a mix of mature trees and dense shrubbery. The houses are setback from the public road and well screened by vegetation.
- 1.3. Violet Hill (the original house) is a Protected Structure. It is described in the National Inventory of Architectural Heritage as having been constructed in brick and stone block and has regional importance (NIAH Ref. 16400702).
- 1.4. The driveway leading off from Herbert Road is in private ownership.

2.0 Proposed Development

- 2.1. The proposed development is for the installation of electric gates at the entrance to Violet Hill (residential estate) from Herbert Road.
- 2.2. The gates are proposed to be fitted and operated via multiple access controls, including keypad, FOB and telephones. It would have an emergency override.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority granted permission on 10th May 2022, subject to one standard condition.

3.2. Planning Authority Reports

3.2.1. Planning Report

- The subject site / avenue is in private ownership.
- The avenue is not likely to be taken in charge by the Council in the future.
- The Development Plan states under Appendix 1 (Development and Design Standards) that gated developments will not be permitted except in exceptional circumstances.
- The installation of electric gates would not be out of character with the existing house (which is a protected structure) or that of its grounds and curtilage.
- The Area Engineer has indicated no objection to the proposal.
- The proposed design is acceptable.

3.2.2. Other Technical Reports

Area Engineer: No objection. There is a large setback within the splayed area at the front entrance. This would allow space for cars to wait while gates open and to avoid the need to wait on the public road.

3.3. Third Party Observations

The Planning Authority received a single third party observation by residents of Violet Hill. The concerns are similar to those raised in the grounds of appeal to the Board. See Section 6.1 below.

4.0 Planning History

Reg. Ref. 08/630102: The Planning Authority granted permission in September 2008 to upgrade and improve the existing public road entrance.

5.0 Policy Context

5.1. Bray Municipal District Local Area Plan 2018-2024

Zoning

- 5.1.1. The site is zoned 'Existing Residential' under the Bray Municipal District Local Area Plan 2018-2024 ('LAP').
- 5.1.2. The LAP states that the purpose of this zoning objective is to protect, provide and improve residential amenities of existing residential areas.
- 5.1.3. The description for the zoning is provide for house improvements, alterations and extensions and appropriate infill residential development in accordance with principles of good design and protection of existing residential amenity. In existing residential areas, the areas of open space permitted, designated or dedicated solely to the use of the residents will normally be zoned 'RE' as they form an intrinsic part of the overall residential development; however new housing or other non-community related uses will not normally be permitted.
- 5.1.4. The LAP states that land uses generally appropriate for residential zoned areas include houses and apartments.

5.2. Wicklow County Development Plan 2022 – 2028

Appendix 1: Development and Design Standards

- 5.2.1. Section 3.1.14 of Appendix 1 (Development and Design Standards) of the Development Plan is in relation to 'entrances to developments'.
- 5.2.2. It states *inter alia* that gated developments will not be permitted, except in exceptional circumstances.

5.3. National Policy

- *Development Management Guidelines for Planning Authorities, 2007*
- *Quality Housing for Sustainable Communities – Best Practice Guidelines, 2007*

5.4. **Natural Heritage Designations**

No natural designations apply to the subject site.

The closest European site is the Ballyman Glen SAC (Site Code: 000713) which is approximately 1.5km to the north. The site is also a pNHA.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Third Party Appeal was received from the residents at The Gallery and The Coach House (Violet Hill).

The main grounds of appeal can be summarised as follows:

- There should be no electric security gates installed at the entrance to Violet Hill. Such mechanisms can be complex to operate and they would be a barrier of entry to homes in Violet Hill.
- The proposed gates are only 5ft in height and therefore a potential intruder could easily climb over them.
- The gates would be operated by a keypad operated lock and connected to the system by an intercom.
- Legal advice has been received that anything more than unlocked or decorative gates would be held by a court of law to be an interference for residents to enter their own homes. It would, therefore, be unlawful without first receiving permission in writing.
- One appellant is elderly and has required an ambulance on multiple occasions in the recent past. A further appellant has a family member with a disability and may need emergency services at very short notice. Installing security gates would pose a risk to life as they could malfunction or fail.
- Solicitors are preparing to issue legal proceedings against the Applicant should the Board grant permission for the proposed development.

7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Accessibility
- Legal Matter
- Appropriate Assessment

7.1. Accessibility

- 7.1.1. The proposed development is for the installation of security gates at the entrance of Violet Hill, which is a small residential cul de sac situated within the grounds of a large former country house. The house has been subdivided over the past years into individual apartments. Various other outbuildings on the property have also been converted to residential use.
- 7.1.2. Violet Hill is accessed via Herbert Road from north of the appeal site where there is an existing entrance and pillars. The entrance was open and unimpeded on the day of my site inspection. The new security gates would be positioned across this same access point. They are to be fitted and operated via multiple access controls, including a keypad, FOB and telephones. An emergency override would also be installed as part of the system.
- 7.1.3. The application includes limited detailed information of the proposed materials, finishes and design of the gates. However, it would appear they would be constructed using vertical iron or steel rods placed along horizontal rails and adopt a decorative style / appearance. The gates would be affixed to two posts on either side of the driveway entrance and have an overall height of 1.5m, approximately.
- 7.1.4. The Appellants raise concerns that the new gated entrance would give rise to accessibility issues, particularly during a potential emergency. They state that the proposed gates could fail or malfunction and that this is particularly concerning given some residents may require urgent medical attention, due to their advancing years, as well as others who have conditions limiting their mobility and movement. Therefore, the main concern is that the gates could impede, hinder or slowdown critical emergency services and response times.

- 7.1.5. The Development Plan under Section 3.1.14 of Appendix 1 ('Development and Design Standards') is in relation to entrances to developments. It includes a specific standard which states that gated developments will not be permitted, except in exceptional circumstances. I have reviewed the application and do not consider that the proposal would be in accordance with this. The application provides very limited detail, in my opinion, justifying the installation of the proposed gates – operable only by electronic means – and how they might qualify as an 'exceptional circumstance'.
- 7.1.6. I note that there is no response on file from the Applicant in relation to the third party concerns, which I consider are reasonable, and no operational management strategy has been prepared setting out the functionality of the gate mechanism proposed. I further note that no information has been provided describing the ongoing management and maintenance of the gates, or of how a situation where they might malfunction, or become stuck, such that continued access to the property would still be possible.
- 7.1.7. I acknowledge that the application form states the gates would have an emergency override and that the Planner received verbal feedback from the Council's Chief Fire Officer, who had no objection to the proposal. However, I do not consider that this adequately addresses the third party concerns or that the requirements of the Development Plan have been properly considered.
- 7.1.8. In summary, it is my view that insufficient information has been provided to address a scenario involving an accident, or potentially life-threatening emergency, where a timely response could be critical to its outcome. The application has also failed to demonstrate that the development proposed is for an 'exceptional circumstance' as required under Section 3.1.14 of Appendix 1 of the Development Plan.
- 7.1.9. I conclude that the proposed development would be inappropriate for the reasons outlined above and recommend that permission be refused.

7.2. Legal and Procedural Issue

- 7.2.1. The application was submitted by the directors of Tudor Violet Hill Management Company who are residents within Violet Hill.
- 7.2.2. The third party appellants are also members of the management company and of the residential development.

- 7.2.3. The Appellants submit that all residents of Violet Hill have an equal legal right to access the private avenue leading to their homes and that it would be unlawful to install the proposed security gates without first obtaining their permission. They indicate in their grounds of appeal that they have received legal advice stating that anything more than unlocked or decorative gates would be unlawful without the written permission of all residents as it could interfere with residents trying to gain access to their homes.
- 7.2.4. There is no response on file from the Applicant in relation to this. However, it is apparent to me that the issue is a potential legal dispute centred on the matter of access and property rights. The Board cannot adjudicate on such matters.
- 7.2.5. In this regard, I note the provisions of Section 34(13) of *Planning and Development Act, 2000* (as amended) relating to 'Permission for Development', which states that "*a person shall not be entitled solely by reason of a permission under this section to carry out any development*". Therefore, in the event permission is granted, there may be other legal considerations that apply, of which the Applicant may need to address outside of the planning system.
- 7.2.6. I further note Section 5.13 of the 'Development Management Guidelines for Planning Authorities (2007)' where it is stated that the planning system is not designed as a mechanism for resolving disputes regarding rights over land. These are ultimately matters for resolution in the Courts and I would reiterate that the Applicant must be certain under civil law to ensure that they have all rights in relation to the land for which they intend to implement any grant of planning permission.

7.3. **Appropriate Assessment**

- 7.3.1. Having regard to the nature and small scale of the proposed development, which is for the installation of electric gates at the entrance of a private avenue to residential houses in an established urban and serviced area, the distance from the nearest European site, no Appropriate Assessment issues arise.
- 7.3.2. Therefore, 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 that planning permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the Wicklow County Development Plan 2022 – 2028, including Section 3.1.14 of Appendix 1 (Development and Design Standards), which is in relation to entrances to developments, it is considered that the proposed development is not an exceptional circumstance and that it would create a potential barrier and impede access to homes within an existing residential development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

[I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.]

Ian Boyle
Senior Planning Inspector

9th May 2023