



An
Bord
Pleanála

Inspector's Report

ABP-315044-22

Development

Permission for development. The development will consist of the installation of 20sq.m. of solar panels to the inner faces of the double A roof, the re-instatement of the front vehicular gate with a new sliding gate together with all associated ancillary works.

Location

No. 23 Waltham Terrace, Blackrock, Co. Dublin, (A Protected Structure).

Planning Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

D22A/0618.

Applicant(s)

Orla & Graham Flannery.

Type of Application

Planning Permission.

Planning Authority Decision

Grant.

Type of Appeal

First Party.

Appellant(s)

Orla & Graham Flannery.

Observer(s)

None.

Date of Site Inspection

17th day of July, 2023.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. No. 23 Waltham Terrace, the rectangular shaped appeal site, has a stated 0.0774ha area and it contains a period two storey semi-detached dwelling that is designated Protected Structure, RPS No. 340, that at the time of inspection was undergoing significant internal and external works. The site itself is located c90m to the north of Waltham Terrace's intersection with Green Road and c207m to the south of Mount Merrion Avenue, in the Dublin city suburb of Blackrock and to the rear the site backs onto Blackrock Bowling and Tennis Club.
- 1.2. This period property is setback from the eastern side of Waltham Terrace with the setback area to the front accommodating an area that was in use for parking and a driveway running from its roadside entrance along the northern side of the site to where the subject property contains a much extended recently constructed rear addition which was also in use for parking. There is a single storey corner building in the northernmost rear corner. This structure has also been recently refurbished.
- 1.3. The site adjoins its matching pair on its southern side, i.e., No. 25 Waltham Terrace. This property is accessed via an electric gate.
- 1.4. Waltham Terrace whilst predominated by once highly coherent and uniform semi-detached pairs also includes a number of period detached properties. The surrounding area has a mature residential character.

2.0 Proposed Development

- 2.1. Planning permission is sought for the installation of 20m² of solar panels to the inner faces of the double A roof, the re-instatement of the front vehicular gate with a new sliding gate together with all associated ancillary works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. By order dated 10th day of October, 2022, the Planning Authority issued notification of the decision **grant** permission subject to 4 mainly standard in nature conditions. Of relevance to this appeal case is the requirements of Condition No. 2. It reads:

“The proposed electronic sliding vehicular gate shall be replaced by inward opening manual gates.

Reason: In the interest of traffic safety.”

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer’s report is the basis of the Planning Authority’s decision. It includes the following point:

- Having regard to the provisions of Section 12.4.8 of the Development Plan it is recommended that the vehicular entrance is replaced with a manual operating gate.

3.2.2. Other Technical Reports

Drainage: No objection.

Conservation: No objection.

3.3. Prescribed Bodies & Third-Party Observations

3.3.1. None.

4.0 Planning History

4.1. Site

- **P.A. Ref. No. D21A/0329:** Planning permission was **granted** subject to conditions for alterations and additions to this Protected Structure. Decision date: 09/06/2021.
- **ABP Ref No. PL06D.247525 (P.A. Ref. No. D16A/0610):** On appeal to the Board planning permission was **refused** for a development consisting of a new 3m wide vehicular entrance gates to replace existing pedestrian gate in front boundary wall to serve no. 23a Waltham Terrace and construction of new section of side boundary wall to match existing between nos. 23a and 23 Waltham Terrace. The stated reason for refusal reads:

“Having regard to planning history and to the pattern of development in the area , the

fact that the houses on Waltham Terrace on both sides of the road are protected structures and within a cACA , it is considered that the increased visibility of the infill dwelling house no. 23A that would result from the proposed vehicular entrance, would seriously injure the amenities of the protected structures in the vicinity, and would, therefore, be contrary to the proper planning and sustainable development of the area”.

*This proposal relates to the roadside boundary to the front of No. 23A Waltham Terrace.

Decision date: 20/03/2017.

- **P.A. Ref. No. D08A/0914:** Planning permission was **refused** for a new 2.8m wide vehicle access gates in boundary wall on to Waltham Terrace and construction of new section of boundary wall to match existing between No.s 23A and 23 Waltham Terrace. (Protected Structures). The stated reason for refusal reads:

“Having regard to the protected status of no. 23 Waltham Terrace and the houses along Waltham Terrace, and to the existing rhythm of the pairs of houses when viewed up or down the terrace, it is considered that the proposed development would negatively affect the character of the protected structure, would seriously detract from the character of the streetscape and would establish an undesirable precedent for similar inappropriate development along the terrace. The proposed development would therefore be contrary to the Council's policy to 'protect the architectural heritage of the County' and contrary to the proper planning and sustainable development of the area.”

Decision date: 06/08/2006.

4.2. **Setting**

- **No. 25 Waltham Terrace**

P.A. Ref. No. D20A/0384: Planning permission was granted subject to conditions for a development consisting of alteration and addition works to a Protected Structure which included but was not limited to new gate.

* Of note the drawings accompanying this application show that the new gate consisted of a painted metal railing style sliding electric gate.

Decision date: 02/09/2020.

- **No. 22 Waltham Terrace**

ABP. Ref. No. PL06D.246061 (P.A. Ref. No. D15A/0672): On appeal to the Board planning permission was **granted** for a development consisting of the removal of extensions to side and rear, refurbishment of house, internal and external alterations, widening of vehicular access and all associated site works at no. 22 Waltham Terrace (protected structure), Blackrock, Co. Dublin.

Decision date: 25.05.2016.

5.0 Policy Context

5.1. Development Plan

5.1.1. Dún Laoghaire-Rathdown County Development Plan, 2022-2028, is the operative plan.

5.1.2. The site is subject to land use zoning 'A' which has the objective "*to provide residential development and improve residential amenity while protecting the existing residential amenities.*" Residential land uses are permitted in principle under this zoning objective.

5.1.3. The existing property on the site is a Protected Structure (RPS No. 340) and is located in 'Waltham Terrace' Architectural Conservation Area (ACA).

5.1.4. Policy Objective HER8 of the Development Plan which deals with the matter of works to Protected Structures sets out that it is a Policy Objective to:

(i) Protect structures included on the RPS from any works that would negatively impact their special character and appearance.

(ii) Ensure that any development proposals to Protected Structures, their curtilage and setting shall have regard to the 'Architectural Heritage Protection Guidelines for Planning Authorities' published by the Department of the Arts, Heritage, and the Gaeltacht.

(iii) Ensure that all works are carried out under supervision of a qualified professional with specialised conservation expertise.

(iv) Ensure that any development, modification, alteration, or extension affecting a Protected Structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout, and materials.

(v) Ensure that the form and structural integrity of the Protected Structure is retained in any redevelopment and that the relationship between the Protected Structure and any complex of adjoining buildings, designed landscape features, or views and vistas from within the grounds of the structure are respected.

(vi) Respect the special interest of the interior, including its plan form, hierarchy of spaces, architectural detail, fixtures and fittings and materials.

(vii) Ensure that new and adapted uses are compatible with the character and special interest of the Protected Structure.

(viii) Protect the curtilage of protected structures and to refuse planning permission for inappropriate development within the curtilage and attendant grounds that would adversely impact on the special character of the Protected Structure.

(ix) Protect and retain important elements of built heritage including historic gardens, stone walls, entrance gates and piers and any other associated curtilage features.

(x) Ensure historic landscapes and gardens associated with Protected Structures are protected from inappropriate development (consistent with NPO 17 of the NPF and RPO 9.30 of the RSES)

5.1.5. Policy Objective HER13 of the Development Plan deals with the matter of Architectural Conservation Areas and set out that it is a Policy Objective to:

(i) Protect the character and special interest of an area which has been designated as an Architectural Conservation Area (ACA).

(ii) Ensure that all development proposals within an ACA be appropriate to the character of the area having regard to the Character Appraisals for each area.

(iii) Ensure that any new development or alteration of a building within an ACA or immediately adjoining an ACA is appropriate in terms of the proposed design, including scale, height, mass, density, building lines and materials.

(iv) Seek a high quality, sensitive design for any new development(s) that are complementary and/or sympathetic to their context and scale whilst simultaneously encouraging contemporary design which is in harmony with the area. Direction can also be taken from using traditional forms that are then expressed in a contemporary manner rather than a replica of a historic building style.

(v) Ensure street furniture is kept to a minimum, is of good design and any redundant street furniture removed.

(vi) Seek the retention of all features that contribute to the character of an ACA including boundary walls, railings, soft landscaping, traditional paving, and street furniture.

5.2. National

5.2.1. Architectural Heritage Protection Guidelines for Planning Authorities (2011).

This guidance, which is a material consideration in the determination of applications, sets out comprehensive guidance for development in conservation areas and affecting protected structures.

5.3. Natural Heritage Designations

5.3.1. None within the zone of influence.

5.4. EIA Screening

5.4.1. See completed Form 2 on file. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations I have concluded at preliminary examination that there is no real likelihood significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The First Party grounds of appeal can be summarised as follows:

- Seeks omission of Condition No. 2.
- Condition No. 2 requires the applicant to fit manual side hung gates to the vehicular entrance and this type of gate would create delays for occupants of No. 23 Waltham Terrace as well as the occupants of No. 23A Waltham Terrace who have a right of way through this entrance to park. It would also have the potential to create delays on the public road.
- Permission was granted for No. 25 Waltham Terrace under P.A. Ref. No. D20A/0384 to install an automatic gate and these as implemented do not give rise to any traffic delays.
- This purpose of the electric gate is to improve the security of their home.
- The design has had regard to the built heritage sensitivity of its setting.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response requests the Board to have regard to their Planning Officers Report. It also indicates that the grounds of appeal do not raise any new matters which would justify a change of their attitude towards the proposed development.

6.3. Observations

6.3.1. None.

7.0 Assessment

7.1. This is a First-Party appeal only against Condition No. 2 attached to the Planning Authority's decision to grant permission for the development sought under P.A. Ref. D22A/0618. Condition 2 requires the proposed electronic gate to be replaced with an

inwardly opening manual gate. The stated reason for the Condition No. 2 is given as being in the interest of traffic safety.

- 7.2. The Appellants in this case seek that the Board omit this condition on the basis that the electronic sliding gate proposed would give rise to no adverse traffic impacts. They assert that it is a type of development that has been permitted on this street and as there is an existing right of way over the subject property providing vehicle access to No. 23A Waltham Terrace in the absence of electronic gates there is more likelihood of traffic issues to arise for other road users using Waltham Terrace.
- 7.3. In relation to other examples on the street they note that a similar development was permitted for its adjoining pair, i.e., No. 25 Waltham Terrace (See: Section 4 of this report above). I note to the Board that this determination to grant permission for a development that included the installation of an electronic gate was made by the Planning Authority under the previous Development Plan whereas this planning application was determined by the Planning Authority determined under the Dún Laoghaire Rathdown Development Plan, 2022-2028, which contains more robust criteria for vehicle entrances. This I note is similarly the case for the Boards decision in relation to appeal cases that relate to this appeal site as well as No. 22 Waltham Terrace to the north.
- 7.4. The appeal site setting, which can be described as forming part of suburban setting residentially zoned but where its buildings and urbanscape are extremely sensitive to change. This is due to the fact that No. 23 Waltham Terrace is a Protected Structure, that forms part of a semi-detached pair and group of semi-detached period properties that are afforded protection by way of their designation as Protected Structures.
- 7.5. In addition, given the architectural quality of this consciously designed and laid out group of period properties the urbanscape of Waltham Terrace has been designated an Architectural Conservation Area.
- 7.6. This provides an additional layer of protection and any proposed developments to it and the Protected Structures it contains must demonstrate that they would give rise to no serious injury to their special character and intrinsic qualities.
- 7.7. Of particular relevance therefore are Policy Objectives HER8 and HER13 of the Development Plan. In addition, the provisions set out under Section 12.4.8 of the said plan are also in my view relevant.

- 7.8. In this regard I note that Policy Objective HER8 of the Development Plan sets out that the Council will seek to protect structures included on the RPS from any works that would negatively impact their special character and appearance. It also seeks that: *“any development, modification, alteration, or extension affecting a Protected Structure and/or its setting is sensitively sited and designed, and is appropriate in terms of the proposed scale, mass, height, density, layout, and materials”* through to it seeks the protection and retention of important elements of built heritage including entrance gates and piers and any other associated curtilage features.
- 7.9. I also note that Policy Objective HER13 of the Development Plan seeks that the character and special interest of the Architectural Conservation Area is protected. It also seeks to ensure that all developments within such areas are appropriate to their character through to that they employ appropriate designs including materials,
- 7.10. These policy objectives are consistent with the guidance that is set out in the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts Heritage and the Gaeltacht in October, 2011.
- 7.11. It is therefore of note that the original entrance gate serving No. 23 Waltham Terrace has at some point in time been lost through to its plot has been subdivided to accommodate the construction of No. 23A Waltham Terrace. This later property whilst served by a pedestrian opening in an attractive granite roadside boundary wall is dependent upon the entrance serving No. 23 Waltham Terrace for vehicle access to its front semi-private domain. As such there is an opening on the northern side boundary of the reduced subdivided plot of No. 23 Waltham Terrace that provides for this access.
- 7.12. At the time of inspection this opening was blocked due to on-going construction works at No. 23 Waltham Terrace. Notwithstanding, it is contended by the Appellants that a right of way exists between this opening and the entrance serving No. 23 Waltham Terrace. It is a concern that the presence of such a right of way is not indicated in the suite of documentation provided with this application given that where they exist a valid planning application requires this is detail to be shown. Notwithstanding, validation of a planning application is outside of the Boards remit in the determination of this appeal case.

- 7.13. In relation to No. 23 Waltham Terrace at the time of inspection vehicles were parked to the side and in the front setback area of No. 23 Waltham Terrace.
- 7.14. In addition, I observed that access to No. 23 Waltham is via a single vehicle sized entrance in its attractive granite roadside boundary wall that contains no gates. Having regard to the planning history of No. 23 Waltham Terrace it would appear at some point in time the original gates were removed. The submitted documentation suggests that they were likely to have been removed in the 1990s and the Appellants now seek to reinstate gates in the form of electric sliding gates.
- 7.15. In relation to the proposed gates the drawings show that the design and materials seek to harmonise with the design and materials of the original gates that would have originally been present in the roadside boundary of No. 23 Waltham Terrace. The design also seeks to harmonise with replacement gates that have been provided along Waltham Terrace, including to No. 25 Waltham Terrace. The Planning Authority's Conservation Officer raised no concerns in relation to this component of the proposed development. However, their Planning Officer raised concerns that the use of automatic electronic gates conflicts with the criteria set out under Section 12.4.8 of the Development Plan.
- 7.16. I note inter alia that Section 12.4.8 of the Development Plan states that: "*automatic gates into residential developments are not favoured and should be omitted. Electronic or automatic gates are not acceptable in terms of road safety unless the entrance is setback from the back of the footway, to avoid the roadway or footway being obstructed by a vehicle while the gate is opening.*"
- 7.17. In this case the gate would not be setback from the public footpath but would immediately align with it and it is a further concern that the adjoining stretch of public footpath is of restricted width as well as contains on-street car parking on the opposite side of the road which when in use would effectively result in a situation where the carriageway is only suitable for one car to pass.
- 7.18. In this context I consider that whilst electronic gates would be more convenient for those accessing and egressing the entrance to No. 23 Waltham Terrace. Notwithstanding, they would not only be contrary to Section 12.4.8 of the Development Plan but would also have the potential to give rise to additional traffic hazard for other road users. In particular vulnerable road users using the adjoining stretch of the public

footpath. The requirements of Condition No. 2 do not interfere with the Appellants given purpose for proposed gates which is security and this desire for security whilst reasonable does not override ensuring that no additional or undue traffic hazards or road safety issues arise for road users, including more vulnerable users. I consider that in this context that the Planning Authority's requirements under Condition No. 2 are reasonable and appropriate. I therefore recommend that the Board direct the Planning Authority to maintain its requirements in the interests of traffic safety as well as in the interests of proper planning and sustainable development. I consider that no other substantive planning issues arise in this appeal case.

7.19. **Appropriate Assessment**

- 7.19.1. Having regard to the nature and scale of the proposed development in a fully serviced built-up urban area, no appropriate assessment issues arise, and it is considered 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. It is recommended that the Planning Authority be directed to **attach** condition number 2 for the reasons and considerations hereunder.

9.0 **Reasons and Considerations**

- 9.1. Having regard to the nature and scale of the proposed development, the residential land use zoning objective which applies to the site, the provisions of the Dún Laoghaire-Rathdown County Development Plan 2022-2028; the Architectural Heritage Protection Guidelines for Planning Authorities issued by the Department of Arts Heritage and the Gaeltacht in October, 2011, it is considered that the modifications to the development sought under this application, as required by the planning authority in its imposition of condition number 2, are warranted, and that the proposed development, with the attachment of condition number 2, would be in accordance with the provisions of the Development Plan, in particular the criteria set out under Section

12.4.8 for this type of development and would safeguard road users from any undue additional traffic hazard and safety issues. Therefore, development as sought would be in accordance with 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.

Patricia-Marie Young
Planning Inspector

7th day of September, 2023.