



An
Bord
Pleanála

Inspector's Report ABP – 315562-23

Development

Retention and removal of timber fence, Permission for repair and extension of history boundary and block up existing vehicular gate and, new pedestrian gate on Portland Rd North, boundary, new pedestrian access gate to Whished Road, native hedging behind new and existing railing, new double garage and associated landscaping and site works.

Location

Whitshed Lodge, Whitshed Rd,
Burnaby, Greystones, Co. Wicklow.

Planning Authority

Wicklow County Council.

P A. Reg. Ref.

22 788

Applicant

Kevin O'Shea

Type of Application

Permission and permission for retention

Planning Authority Decision

Refuse Permission.

Type of Appeal

First . Party

Appellant.

Kevin O'Shea.

Inspector

Jane Dennehy

Date of Inspection

24th July, 2023.

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1.0 Site Location and Description

- 1.1. The application site is within the Burnaby Estate and has a stated area of 2,000 square metres and it has frontage to the Whitshed Road to the north and Portland Road to the southwest. It wraps around to the west and south sides of a corner site of a dwelling at the corner of Whitshed Road and Portland Road North
- 1.2. The detached house which has a stated floor area of circa 200 square metres is setback towards the southern boundary of the site in front of curtilage parking at the end of a driveway through the front garden from Whitshed Road. Side gardens extend as far as the frontage onto Portland Road North where there is a timber gate and fence on the frontage along with iron railing on a plinth wall. There is a residential property to the south side of the application site with access from Portland Road North and another dwelling with a detached garage to the side adjacent to the east boundary of the application site and it has access off Whitshed Road

2.0 Proposed Development

The application lodged with the planning authority indicates proposal for:-

Permission for Retention and removal of a timber fence,

Permission for repair and extension of history boundary,

Blocking up the existing vehicular gate

Construction of a new pedestrian gate on Portland Rd North, boundary a new pedestrian access gate to Whished Road,

native hedging behind the new and existing railings and,

construction of a new double garage with a stated floor area of seventy square metres and associated landscaping and site works. The garage is to be positioned at the front of the site facing towards Whitshed Road frontage. It is repositioned to a separation distance of two metres from the boundary protected tree roots in the further information submission, and a six metres' ridge height.

3.0 **Planning Authority Decision**

3.1. **Decision**

By order dated, the planning authority decided to refuse permission based on two reasons as outlined below:

Reason One: Undue negative impact on character and setting of properties in the vicinity, degradation and detracting from the character of the ACA, serious injury to visual amenities and overbearing impact in views from the property to the west. The proposed development would set precedent for similar development and would materially contravene the LAP and in particular, Objectives T14 and HER12.

Reason Two: There is an existing vehicular and pedestrian entrance serving the site and the proposed entrance is unnecessary for serving the existing dwelling and would endanger public safety by reason of traffic hazard and set undesirable precedent for similar entrances direct onto the road where there is a lack of public footpaths.

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

The planning officer, further to issue of a request for and receipt of additional information recommended refusal of permission based on the two reasons outlined above. It is stated that the proposed garage in size exceeds needs for a domestic dwelling, that the proposed entrance off Portland Road North is unwarranted as existing entrance facilities the needs of the occupants including access for a ride on mower and, that the details for landscaping and boundary treatment on Portland Road are inadequate having regard to request for a masterplan.

3.2.2. Other Technical Reports

There are no technical reports on file.

3.2.3. Third Party Objections

A submission was lodged in connection with the original application and the further information proposals by Michael and Mary Bannon of the adjoining property, “The Mews” to the east side in which concerns are expressed about:-

- Risk to the roots of mature trees which are subject to an objective for protection in the LAP (T17)
- Overbearing impact from the proposed garage, the size and scale of which it is contended is excessive.
- Unsuitable location for a proposed pedestrian entrance due to lack of footpath and safety considerations .
- Lack of masterplan details for landscaping.

4.0 Planning History

P.A. Reg. Ref. 21/803: Permission was refused for replacement of timber fencing on Portland Road to match that on Whitshed Rd, construction of a pitched roof garage (56.2 sq. m), a pitched roof garden shed (16.6 sq. m) and all site and ancillary works based on two reasons relating to:

- Consolidation of development having regard to protected tree removal, historic boundary removal on Portland Road and the proposed new entrance contrary to the LAP for the area,

The design height scale and siting of the garage and sheds and deficiencies in lodged documentation. Conflict with the LAP policies and objectives T14 and HER 12, the ACA for Burnaby and tree protection objectives, negative impact on ACA, and material contravention of the LAP.

Three prior planning applications referred to below are proposals for which permission was refused for reasons relating to site subdivision, density, design and layout resulting in excessive density for the area and having regard to the maximum of ten units per hectare provided for under the zoning objective, serious to residential

amenities and, adverse impact on the integrity and character of the ACA. These three applications are:

P.A. Reg. Ref. 19/544: PL 305898: Permission was refused for a one and a half storey detached house and reconfiguration of the entrance to provide for two entrances for the following two reasons:-.

P.A. Reg. Ref. 16/1167: PL 247849 The planning authority decision to refuse Permission for a two-storey detached house (146 sq. m) and reconfiguration of the entrance to provide for two entrances, revision to boundaries was upheld following appeal.

P.A. Reg. Ref. 16/390: Permission was refused for a two-storey detached house in the garden (207 sq. m) formation of a new driveway, reconfiguration of existing driveway and shared entrance, new boundary treatments . .

There is an enforcement history for the application site relating to opening of pedestrian entrances on Portland Road North on part of a gateway entrance considered extinguished by closure due to erection of the wooden fence. (Ref UD 330. September 2020 refers.) A second enforcement case relates to unauthorised opening of an entrance. (UD 4552 February 2016 refers.)

5.0 Policy and Context

5.1. Development Plan

The operative development plan is the Wicklow Development Plan, 2022-2028.

Development and Design Standards are in Appendix 1.

Built Heritage is within Chapter 8.

Burnaby is a statutory Architectural Conservation Area. Table 8.1, Maps 8.3.

5.2. Greystones and Kilcoole LAP 2013-2019

There is no official record of the plan' statutory period being extended. Further to an enquiry with the local authority it is understood that it is being taken into consideration in development management unless any provisions are in conflict with the CDP. (A Draft LAP is on public consultation at present.)

The site is within The Burnaby which is subject to the zoning objective "Existing residential" and also subject to the specific objective: . R10 – Residential – 10/ha

and, 'To provide for the development residential communities up to a maximum density of 10 units per hectare and to preserve and protect residential amenity'.

Whitshed Road is an 'Indicative Greenway' as per Map B – Heritage Map.

Objective T14 (also Map B – Heritage Map) refers to Protected Trees, 'Greystones, Portland Road'. And Objective T 17 refers to protected trees on Whitshed Road carried forward into the Draft LAP. Objective 'HER4: To protect and retain trees which contribute to the biodiversity value and the character and amenity of the area. (Note. The trees are subject of a development plan objective and not to statutory Tree Preservation Orders.)

Policy HER 12 provides for preservation of the character of the ACAs in accordance with policies and objectives provided for in Section 9 under Objective HER 12.

Policies and Tree protection objectives are in Section : T14 for Greystones Portland Road and T17 for Greystones Whitshed Road.

The Burnaby ACA is in Section 3.4 of the LAP

Heritage Features are in Appendix B

5.3. Natural Heritage Designations

The following designated sites are within 5 km of the appeal site: • Bray Head SAC (Site Code 000714) – circa 2 km to the north • Glen of the Downs SAC (Site Code 000719) – circa 2.7 km to the west • The Murrough Wetlands SAC (Site Code 000730 – circa 3 km to the south.

5.4. EIA Screening

- 5.5. Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from the applicant's agent on 17th January, 2023 in which the two reasons for the planning authority's decision to refuse permission are rebutted:

It is understood that two of eight elements of the proposed development to which the decision to refuse permission relates are the proposed garage and the proposed pedestrian entrance onto Portland Road. It is contended that the remaining concerns relating to these two elements can be addressed by condition but that the event of partial acceptance by the Board a split decision is requested.

The appeal grounds are outlined in brief below:

- The new garden building is fully acceptable but its position can be changed if it is deemed unacceptable. It is not for the planning authority (which should consider planning amenity and environmental factors), to adjudicate as to whether the shed is warranted as regards the householder's needs. The seventy square metres floor area is to be used for two cars and domestic and gardening equipment storage. A 100 square metres' garden building was permitted under PL 244527 in Newbridge and an outbuilding at 81 square metres in Maynooth.
- The garden building is not unduly high. It is single storey with the ridge height of 6.731 metres modelled on another outbuilding which is 6.16 metres in height, (0.57 metres lower than the proposal). For which permission was granted in 2011 under P. Reg. ref. 21194 at The Burnaby. There is no material difference between this permitted building and the proposed building.
- The position is consistent with the vehicular access, (immediately adjacent to the gateway to Whitshed Lodge), In the absence of 'planning harm' it is the prerogative of the applicant to choose a location for the garage.
- With regard to the arboriculture report it is not clear why the conclusions were rejected by the planning officer and why or how the garage would adversely affect nearby tree cover. Consideration was not given to a slight repositioning

of the structure. In the event that the Board agrees with the tree related issues, it is requested that a condition be attached to provide for increased separation from the trees on the site.

- The view of the planning officer that the proposed development would have overbearing impact on the adjoining property (on the corner site) is rejected. It would not be visually intrusive, there is dense and mature perimeter vegetation on the boundaries of the application site and given the orientation, no additional overshadowing would occur.
- Having regard to the location within the Burnaby, and to the prior grant of permission under P. A. Reg. Ref. 21 194 for a larger structure in it is not agreed that the proposed development would adversely affect the character of the built environment. Reference is made to the description of the Burnaby in Appendix B of the LAP.
- With regard to the arrangements relating to pedestrian access:
- There is no basis to support the planning authority concerns as to endangerment of pedestrian safety and as to traffic hazard. The proposal is a matter of a replacement pedestrian only gateway and there is no evidence of accidents and incidents. There is no footpath on Portland Road North, but it is lightly trafficked and speed is low. Use of this entrance by a pedestrian would not be in jeopardy as a result of passing traffic in comparison to use of the as opposed to use of the vehicular entrance onto Whitshed Road.

6.2. Planning Authority Response

There is no submission on file from the planning authority.

7.0 Assessment.

- 7.1. The proposed development in entirety is considered below notwithstanding the suggestion in the appeal that the assessment can be confined to two elements referred within the two reasons attached to the planning authority decision. However, having regard to provision for *de novo* consideration in the case an appeal before the Board under section 37 of the Planning and Development Act 2000 as amended. The assessment is set out under the following subheadings:-

Pedestrian entrance onto Portland Road North.

Portland Road North Boundary Treatment

Pitched Roof Double Garage Structure

Appropriate Assessment

Pedestrian entrance onto Portland Road North.

- 7.2. It is agreed with the planning officer that given the arrangements for pedestrian and vehicular entrances on the Whitshed Road frontage, a further pedestrian entrance on the Portland Road North frontage is inessential and unwarranted for a residential development comprising a single dwelling and ancillary development.
- 7.3. There is no public footpath on Portland Road North and as such assurance as to safe use of a proposed pedestrian entrance is doubtful. The carriageway is narrow at circa 3.5 metres in width although attainable speeds by vehicles are low due to the restrictive road conditions. Beyond the site to the south there is a bend, downward slope and further narrowing where the road joins Erskine Avenue leading to Old Mill Road and Quarry Road.
- 7.4. The likelihood of increased risk of endangerment to the safety by reason of occasional use of a simple pedestrian gate solely by pedestrians is not considerable. However, obstruction and hazardous conditions would be created by use of the pedestrian entrance in connection with deliveries, loading and unloading or other similar activities associated services necessitating stop offs and casual parking on the road. It is agreed with the planning authority that permission should be refused by reason of endangerment of public safety of road users due to obstruction and hazard. If permission is granted for the pedestrian entrance gate a condition should be included to restrict the gate to opening inward only in the interest of the safety of cyclists, pedestrians, and drivers on the road.

Portland Road North Boundary Treatment

- 7.5. With regard to the boundary along Portland Road North, it is agreed with the planning officer that the submitted information regarding the tree and root protection and boundary treatment which includes repair and stabilisation of the original railings and plinth are insufficient. Scope for adequate assessment and assurance as to

acceptability, having regard in particular to the designation of the area as an ACA and objectives for tree protection in the LAP which, it is noted, are carried. into the Draft L.AP is therefore compromised.

- 7.6. Permission is now sought for retention and subsequent removal of the unauthorised timber fencing along the frontage on Portland Road North within which vehicular timber entrance gates are located is to be blocked up. .However, it is considered that this unauthorised development belongs within the planning authority's enforcement remit. There is no case for positive consideration within a planning application for permission for retention in the absence of any merit for the structure in question on planning grounds and to provide for a planning status that allows for a grant of permission for its subsequent removal. The proposed pedestrian gate is interdependent with boundary treatment. The observation in the planning officer that use of existing entrance onto Portland Road has been extinguished by reason of its closure and erection of the unauthorised timber fence on the frontage is noted.
- 7.7. There are implications associated with the erection of the fencing also with regard to the historic railing on plinth wall a characteristic feature of the Burnaby ACA, works to which are proposed. In order to consider such a proposal a clear and distinct survey, and methodology with accompanying drawings should be made available for assessment.
- 7.8. Permission for retention of the timber fence, notwithstanding proposal for subsequent removal is not recommended in that the timber fence itself is out of keeping with and seriously injures the visual amenities and character of the ACA both by reason of the solid material, height. visual dominance and incompatibility with the original boundary treatment for the Burnaby which is understood to be intact. The Board may wish to consider this matter as a new additional issue bearing in mind that the proposed pedestrian gate is interdependent with boundary treatment.

Pitched Roof Double Garage Structure.

- 7.9. The proposed pitched roof double garage is considerable in mass, has a floor area of seventy square metres, and a ridge height in excess of six metres. It is similar in capacity to a dwelling and as such, it is excessive for parking and storage ancillary to the residential use of a dwelling.

- 7.10. By reason of the distance and separation from the main dwelling due to the position just inside the Whitshed Road frontage it also lacks functionality and connectivity for purposes ancillary to the residential use of the dwelling. The garage is positioned at two metres from the party boundary and well forward of the building line of the dwelling and detached garage structure on the adjoining property. This together with the proposed garage's height, mass and scale, would seriously injure the residential amenities of the adjoining property by reason of visual dominance, obtrusiveness and overbearing impact.
- 7.11. The observations of the planning officer as to a permitted garage structure referred to in the appeal in support the applicant's case as being incomparable in that it is positioned at the side of the existing dwelling has been noted. Furthermore, there is a lack of certainty that risk of damage to and adequate protection of trees and their roots at the boundary, also subject to the tree protection objectives in the LAP and draft LAP can be eliminated based on the information available. It is agreed with the planning officer that the proposed garage is unacceptable.
- 7.12. In view of the foregoing, it is recommended that the planning authority decision to refuse permission be upheld. However, the Board may wish to draw attention to the additional matters relating to the proposed retention of the timber fencing and the original historic boundary treatment on Portland Road North.

Appropriate Assessment Screening

- 7.13. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions and absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

8.0 Recommendation

- 8.1. Given the foregoing it is recommended that the planning authority decision to refuse permission and refuse permission for retention be upheld.

9.0 Reasons and Considerations

1. Having regard to the location for the proposed detached garage structure close to the Whitshed Road frontage and east side boundary, the position at considerable distance from the main dwelling and, forward of the dwelling and detached garage on the adjoining property to the east and to the size, capacity, mass and height it is considered that the proposed detached double garage structure would be excessive in scale and visually obtrusive, would not come within the scope of use for purposes ancillary to residential use of a main dwelling, would seriously injure the residential amenities of the adjoining property to the east by reason of overbearing impact and would seriously injure the visual amenities, integrity, features and characteristics of the Burnaby Architectural Conservation Area. As a result, the proposed development would be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed pedestrian gate directly onto Portland Road North would, due to the absence of pedestrian facilities and the narrow width of the carriageway, would lead to conflict with and obstruction of road users resulting in endangerment of public safety by reason of traffic hazard and would set undesirable precedent for further similar development of pedestrian entrances. As a result, the proposed development would 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.

Jane Dennehy
Inspector
25th July, 2023.