



An
Bord
Pleanála

Inspector's Report

ABP-316496-23

Development	Retention of alterations to vehicular access.
Location	59, Bath Avenue, Sandymount, Dublin 4, D04 CY58.
Planning Authority	Dublin City Council South.
Planning Authority Reg. Ref.	3153/23.
Applicant	Conor Treacy.
Type of Application	Retention.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Conor Treacy.
Observer(s)	Philip O'Reilly.
Date of Site Inspection	15 th June 2023.
Inspector	Terence McLellan

1.0 Site Location and Description

- 1.1. The appeal site refers to the dwelling and plot located at 59 Bath Avenue, a residential street in Dublin 4. Located on the southern side of Bath Avenue, the existing Victorian dwelling is two-storey and mid-terrace. The front garden is enclosed with railings and a gate.
- 1.2. There is permit controlled and 'pay and display' parking on both sides of Bath Avenue, as well as the immediate surrounding streets. Several of the properties on Bath Avenue have vehicular entrances with off-street parking, including the neighbouring property.

2.0 Proposed Development

- 2.1. Permission is sought to retain alterations to the existing railings in order to facilitate vehicular access to the front garden.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Refuse Retention Permission for the proposed development was issued on 31st of March 2023. The reasons for refusal are as follows:
 1. The proposed development, which is to facilitate a private vehicular entrance, would result in the loss of on-street parking facilities available to the wider community for daytime use in connection with short stay commercial and leisure needs and evening use by residents in an area in which residential permit parking is available. The proposed development would materially contravene the provisions of the Dublin City Development Plan 2022 – 2028 in respect of maintaining and managing on-street parking and would, therefore, be contrary to the proper planning and sustainable development of the area.
 2. The proposed development would negatively impact upon the health and stability of an existing semi-mature street tree, which forms part of a row of trees along Bath Avenue. These trees are of importance due to their visual amenity value and their role in the overall greening of Dublin City. The proposed

development would contravene Section 15.6.9 of the Dublin City Development Plan 2022 – 2028 and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. Planning Report: The report from the Deputy Planning Officer was issued on the 29th of March 2023 and forms the basis of the Councils assessment and decision.

3.2.2. **Other Technical Reports**

3.2.3. Drainage Division (28.02.23): No objection, subject to conditions.

3.2.4. Parks, Biodiversity and Landscape Services (15.03.23): Objection on the basis that the tree located to the front of the application site may be negatively affected by works to dish the kerb.

3.2.5. Transportation Division (13.03.23): Recommend that planning permission be refused on the basis that it would reduce the supply of on-street parking and would set an undesirable precedent for similar developments.

3.3. **Prescribed Bodies**

3.3.1. The application was referred to Irish Rail and Irish Water. No comments were received.

3.4. **Third Party Observations**

3.4.1. None.

4.0 **Planning History**

4.1.1. **ABP-307330-20 / Planning Authority reg. ref. 2357/20:** Retention permission was refused by the Board in September 2020, for the retention of alterations to the existing railings to facilitate a vehicular access. This upheld an earlier decision of Dublin City Council. The reason for refusal reads:

The proposed development, which is to facilitate a private vehicular entrance, involves the loss of on-street parking facilities available to the wider community for daytime use in connection with short stay

commercial and leisure needs and evening use by residents in an area in which residential permit parking is available. The proposed development would materially contravene Policy MT14 and Section 16.38.9 of the Dublin City Development Plan 2016-2022, according to which it is the policy of the planning authority to retain on-street parking as a resource for the city and would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1.2. **Planning Authority reg. ref. 3420/18:** Planning permission was granted in October 2018 (split decision) for the alteration/extension of the existing two storey terraced house at 59 Bath Avenue. The development comprised the demolition of the existing two storey rear extension and construction of a new three storey and two storey extension to the rear, with alterations to the existing fenestration including provision of 1 no. Velux roof-light to the inner valley roof slope and the provision of a new vehicular entrance and hardstanding to the front garden with associated internal alterations. Condition no. 4 stated:

This permission excludes the following elements of the proposal:

- A new vehicular entrance and associated hardstanding to the front garden.

Reason: In the interests of clarity and for the avoidance of doubt as to the elements granted permission.

4.1.3. As part of the split decision, permission was refused for the provision of a new vehicular entrance and hardstanding to the front garden with associated internal alterations and site development for the following reason:

Policy MT14 of the Dublin City Development Plan 2016-2022 seeks to minimise the loss of on-street car parking. Section 16.38 of the Development Plan (on-street car parking) provides for the preservation of available on-street parking where appropriate, and states that there will be a presumption against the removal of on-street car parking spaces. The proposed vehicular entrance would result in the loss of on-street car parking that is available to the community. The proposed development would, therefore, contravene Policy MT14 of the

Development Plan, and would be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The Dublin City Development Plan 2022 – 2028 (CDP), categorises the site as zone 'Z1 – Sustainable Residential Neighbourhoods'. The stated objective for these areas is 'to protect, provide and improve residential amenities.'
- 5.1.2. Chapter 3: Climate Action, contains the policies and objectives adopted by Dublin City Council to help tackle climate change. Policy CA25: Electric Vehicles (EV), seeks to ensure that rapid charging infrastructure and sufficient charging points are provided on existing streets and in new developments, subject to appropriate design, siting and built heritage considerations.
- 5.1.3. Objective CAO4 aims to support and implement the Regional Strategy for Electric Vehicle (EV) Charging Infrastructure.
- 5.1.4. Chapter 8: Sustainable Movement and Transport, seeks to promote ease of movement within and around the city as well as playing a key role in safeguarding the environment and adapting to the impacts of climate change. Policy SMT2: Decarbonising Transport, supports the decarbonising of motorised transport and aims to facilitate the rollout of alternative low emission fuel infrastructure.
- 5.1.5. Policy SMT25: On-street Parking, aims to manage on-street car parking to serve the needs of the city alongside the needs of residents, visitors, businesses, kerbside activity and accessible parking requirements. The policy acknowledges that some spaces will be lost to serve sustainable development targets such as in relation to sustainable transport provision, greening initiatives, sustainable urban drainage, access to new developments, or public realm improvements.
- 5.1.6. Policy SMT29: Expansion of the EV Charging Network, seeks to support the expansion of the EV charging network by increasing the provision of designated charging facilities for electric vehicles on public land and private developments.

- 5.1.7. Chapter 15: Development Standards, sets out the development management policies. Section 15.6.9: Trees and Hedgerows, should be implemented alongside the Dublin City Tree Strategy for the long term planning, planting, protection and maintenance of trees, hedgerows and woodlands within Dublin city.
- 5.1.8. Appendix 5, Section 4.1: On-Street Parking, makes clear that there will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car parking spaces or where there is a demand for public parking serving other uses in the area.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is approx. 1.1km from the South Dublin Bay and River Tolka Estuary SPA (004024) and the South Dublin Bay SAC (000210).

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal has been lodged by Conor Treacy of 59 Bath Avenue, Dublin 4, against the decision of Dublin City Council to refuse permission for the retention of the alterations to the railings to create a vehicular access. The grounds of appeal are as follows:
- Off-street parking is required due to the busy nature of Bath Avenue and the danger/difficulty in unloading children from the car.
 - Off-street parking would allow for EV charging and the switch to an electric vehicle.
 - The application is supported by the policies and objectives of the new Dublin City Development Plan and the application has not been considered in the context of the overall policies.
 - Dublin City Council are prioritising the needs of car parking for occasional visitors over the safety of a young resident family as well as the environmental benefits of switching a car from diesel to electricity.
 - There is inadequate EV charging infrastructure in place.

- Dropping the kerb would have no impact on the health and stability of the existing tree.
- The proposal would result in the loss of just one space and there is ample car parking in the area.

6.2. **Planning Authority Response**

6.2.1. No response.

6.3. **Observations**

6.3.1. An observation has been submitted by Philip O'Reilly of 18 Grosvener Place, Rathmines, Dublin 6. The main points raised are set out below:

- It has long been policy not to permit off-street parking at the expense of on-street parking for the greater community.
- There has been a presumption in favour of on-street parking and Bath Avenue is no exception.
- There is high demand for on-street parking and the existing spaces should not be further eroded.
- The refusal should be upheld, and the original front boundary of the property should be reinstated.
- There are many examples of applications for off-street parking being repeatedly refused in order to protect on-street parking for the benefit of the wider community.
- Existing examples of off-street parking should not be accepted as a precedent.

6.4. **Further Responses**

6.4.1. None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development
- Impact on Street Tree
- Appropriate Assessment

7.2. Principle of Development

7.2.1. The appeal scheme seeks to retain the alterations that have taken place to the front of 59 Bath Avenue to facilitate a vehicular entrance. The initial application seeking permission for these works was refused. A subsequent application seeking retention of the works, which had since been carried out without permission, was also refused, and that decision was upheld by the Board. The previous refusals were issued under the Dublin City Development Plan 2016-2022. The appellant considers that the policy basis for the previous refusals has now changed due to the adoption of the Dublin City Development Plan 2022-2028, and that the development is now supported in policy terms.

7.2.2. The appellant argues that the application should have been assessed against policies/objectives SMT2, SMT29, CA25 and CAO4, and that these policies support the application. I have considered these policies in my assessment. In broad terms, these policies and objectives all seek to promote the provision of EV infrastructure.

7.2.3. The appellant claims that an off-street parking space would allow for the provision of an EV charging point. However, as noted by the previous Inspector, whilst the provision of on-street charging facilities is more difficult, it has been achieved elsewhere and is possible. I am satisfied that an off-street parking space is not a prerequisite for EV charging, particularly when balanced against the needs of the wider community in terms of access to on-street parking.

7.2.4. The appellant argues that the development would only result in the loss of one space. The need to manage on-street parking to serve the needs of the city alongside the

needs of residents, visitors, and businesses, is covered by Policy SMT25. Additionally, Section 4.1 of Appendix 5 of the CDP relates to on-street parking. This section makes clear that there is still a presumption against the loss of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas like the appeal site, where residents are largely reliant on on-street parking spaces, or where there is a demand for public parking serving other uses in the area.

- 7.2.5. Concerns have been raised that it is unsafe to load and unload children from the car due to the busy nature of Bath Avenue and the need to park on the street. Parking on-street is generally typical of living in urban areas, and this is certainly the case on Bath Avenue. Children can be loaded and unloaded from the pavement side of the vehicle if the street is busy. Additionally, vehicles crossing the pavement to access off-street parking pose additional risk to pedestrians and other highway users.

7.3. Impact on Street Tree

- 7.3.1. The second reason for refusal from Dublin City Council relates to the existing street tree outside the subject property. The concern is that the health and stability of the tree would be affected by the works to dish the kerb. I viewed the tree and others during my site inspection. Whilst the root ball of the tree is slightly exposed immediately at the base of the tree, this was contained within the tree pit. There are other examples of dropped kerbs next to larger trees along Bath Avenue and the health and stability of the trees has not been compromised. This includes cases where the tree pit would be closer to the dished kerb. I am satisfied that works to dish the kerb would not compromise the health and stability of the tree and that, should permission be granted, relevant conditions could be applied to protect the tree during site works.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature of the development, its location in a serviced urban area, and the separation distance to any European site, it is concluded that no appropriate assessment issues arise as the 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. I recommend that planning permission should be refused for the reason set out below.

9.0 Reasons and Considerations

- 9.1. The development, by virtue of the removal of an on-street parking space to accommodate a private vehicular access, is contrary to Dublin City Council policy and would reduce the supply of on-street parking to the detriment of the amenities of the wider community in terms of parking for short stay commercial and leisure needs and for residential parking by permit holding residents, and would set an undesirable precedent for the further loss of the supply of on-street parking. The proposed development would materially contravene Policy SMT25 and Section 4.1 of Appendix 5 of the Dublin City Development Plan 2022-2028 which seeks to retain on-street parking to serve the needs of the City. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 9.2. 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.

Terence McLellan
Senior Planning Inspector

11 July 2023