



An
Bord
Pleanála

Inspector's Report ABP-316992-23

Development	Retention of pedestrian gate from rear garden onto Limekiln Close.
Location	12, Mountdown Road, Dublin 12
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD23B/0070
Applicant(s)	Gary Connolly.
Type of Application	Permission to Retain.
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant(s)	Maurice Micheau.
Observer(s)	N/A.
Date of Site Inspection	24 th of June 2023.
Inspector	Stephanie Farrington

1.0 Site Location and Description

- 1.1. The appeal site is located at no. 12 Mountdown Road and comprises a 2-storey semi-detached dwelling. The site shares a boundary with the road at Limekiln Close.

2.0 Proposed Development

- 2.1. The proposal seeks permission to retain the existing pedestrian gate from the rear access of no. 12 Mountdown Road onto Limekiln Close. The gate is 1.9m tall and 0.9m in width, wooden and opens inwards to the rear of no. 12 Mountdown Road.

3.0 Planning Authority Decision

3.1. Decision

South Dublin County Council issued a notification of decision to grant permission to retain the development. The decision of the Council was subject to 2 no. conditions, cited below:

- Condition no.1: The developer shall be retained and completed fully in accordance with plans, particulars and specifications lodged with the application, within XXX months of the grant of permission, save as may be required by other conditions attached hereto.

Reason: To ensure that the development is in accordance with the permission and that effective control is maintained.

- Condition no.2 outlines that: "The use of the development as outlined shall be for pedestrian access purposes only in accordance with the plans, particulars and specifications lodged with the application. It shall not be used for any other purpose.

Reason: In the interest of proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report reflects the decision of the planning authority. The following provides a summary of the points raised.

- The principle of the proposal is generally considered to be acceptable subject to design and having regard to pedestrian safety and the provisions of the South Dublin County Development Plan.
- A site inspection was carried out on the 6th of March and 4th of April 2023. The site notice was and remains in situ at the front boundary wall. The site notice did not appear at the rear of the property.
- The development includes the removal of an element of the existing wall, approximately 1.9m in height from the eastern rear boundary to provide a pedestrian gate of 0.9m in width.
- The report outlines that the principle of rear access pedestrian gates is established in the area at nos. 14, 16 and 16B Mountdown Road.
- A pedestrian access gate does not detract from the enclaved space. The residential amenity surrounding this enclave is not negatively affected and will provide a pedestrian access gate in line with neighbouring properties to the west. A grant of permission for retention is recommended.
- The report cross refers to the report on file from the Roads Department in SDCC which recommends a decision to refuse permission for the development. The planner's report outlines that the recommendation is noted, however it is deemed in this instance that the proposal is acceptable.
- In terms of Green Infrastructure, the report outlines that the development provides for pedestrian access on an established suburban residential site. The site is not located within a Primary GI Corridor or a Secondary GI link as identified in the Green Infrastructure Map (Figure 4.4 of South Dublin County Development Plan 2022-2028).
- No reports have been received from the Services & Drainage and Parks Department. No street tree or grass verge has been impacted by this retention proposal.

- In terms of Screening for Appropriate Assessment the report outlines that:
“Having regard to the small scale and nature of the development, the location of the development in a serviced urban location, the consequent absence of a pathway to the European site, it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is therefore not required”.
- In terms of EIA the report outlines that *“Having regard to the modest nature of the development, and the distance of the site from nearby sensitive receptors, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental assessment can therefore be excluded at preliminary examination and a screening determination is not required”.*
- The report recommends a grant of permission in accordance with the following reasons and considerations: *Having regard to the provisions of the South Dublin County Development Plan, the RES zoning objective, the overall design and scale of development proposed, the Planning Authority considers the rear side pedestrian entrance acceptable regarding the surrounding pattern of development in this instance. A grant of retention permission is therefore recommended.*

3.2.2. Other Technical Reports

Roads Report: Recommends a refusal of permission in accordance with the following considerations: *“SDCC Roads Department has serious concerns that a pedestrian access gate installed inside the boundary wall would set an undesirable precedent and lead to wall instability resulting in a serious safety hazard for pedestrians”.*

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

1 no. submission on the application was received from an adjoining resident. The issues raised reflect those within the grounds of appeal.

4.0 Planning History

PA Ref: SD21B/0205 – Permission granted in October 2021 for ground and first floor extension to the rear and first floor extension to side, attic conversion and associated site works.

Enforcement History

The planner's report which informs the decision of SDCC to grant permission details the following enforcement history.

- S9004 – Alleged creation of an entrance in rear boundary wall onto public road.
- S8034 – Creation of entrance in rear boundary wall. Closed – Exempted Development.

5.0 Policy Context

5.1. Development Plan

South Dublin County Development Plan 2022-2028

Zoning

- 5.1.1. The site is located within an area zoned Objective RES – *“To protect and/or improve residential amenity”*.

5.2. Natural Heritage Designations

- 5.2.1. There are no designated sites within the immediate vicinity of the site. The closest Natura 2000 site is Glenasmole Valley SAC approx. 6km to the southwest. The closest heritage area is Dodder Valley pNHA approx. 2.1km to the south.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third-party appeal from Ger Fahy Planning on behalf of Maurice Micheau, 25A Limekiln Close has been submitted in respect of South Dublin County Council's notification of decision to grant permission to retain the pedestrian access gate. The following provides a summary of the grounds of appeal:

- The appeal refers to the history of development at the site. It is stated that the rear wall of the appeal site was demolished, and a vehicular access was created without planning permission.
- The appeal questions the validity of the application and outlines that the site notice was not visible from the public road within Limekiln Road. The appeal cross refers to the extracts of the planner's report which informs the decision of SDCC to grant permission to retain the development which outlines that the site notice was not in place on 2 no. separate dates. The application is technically invalid on this basis.
- The appeal outlines that this is a clear procedural error which would constitute a breach of the Planning and Development Regulation and constitute grounds for a Judicial Review. The appeal outlines that ABP is precluded from granting permission for an application which should have been deemed invalid. The drawings submitted with the application are also inaccurate as they show a site notice to the rear, however none was erected.
- The drawings also inaccurately show a an "adjoining property access gate" which is not a pedestrian entrance but is an access to an ESB substation. The drawings are therefore misleading and inaccurate.
- The planning application form is also inaccurate as it doesn't provide details of the enforcement history on site.
- The appeal outlines that the site is zoned for RES purposes within the SDDP 2022-2028 which seeks "To protect and/or improve residential amenity". The access gate opens onto an area where the appellant has parked his vehicle. The development would not improve the residential amenity of the appellant as it removes his parking space and would give rise to serious pedestrian and

safety concerns as pedestrians using the gate would open straight onto the parking space.

- The appeal raises concern in relation to the visual impact of the replacement wall on site and questions its structural stability. There are no proposals for upgrading the wall or ensuring its structural stability.
- It is stated that the proposal would result in pedestrians walking out into a car parking area without separation between cars and pedestrians. The appeal outlines that the development would give rise to serious pedestrian safety concerns having regard to the lack of a footpath to the rear boundary wall.
- The development would give rise to serious concerns for pedestrian safety. The appeal cross refers to the recommendations of the SDCC Roads Report in this regard.
- The appeal refers to an error in Condition no. 1 of SDCC's notification of decision to grant permission for the development. It is stated that the lack of a date in the condition, citing a timeframe for which the development is to be retained, renders the development unenforceable.
- The development would have a serious negative impact on the visual amenity of the area. The appeal outlines that to retain the wall in its current state would be completely inappropriate and would seriously detract from the visual amenity of the area and would impact on the value of the appellant's home.
- It is requested that permission is refused to retain the development on the basis of the points raised within the grounds of the appeal.

6.2. Applicant Response

6.2.1. The applicant provided a response to the grounds of appeal. The following provides a summary of the key points raised:

- A site notice was erected to the front and rear of no. 12 Mountdown Road. The notice to the rear was and remains in place.
- The drawings submitted are accurate as they are identifying the existing double gated entrance to the rear of no. 16 Mountdown Road. They also identify an existing additional pedestrian entrance to the rear of no. 16 Mountdown Road.

- The pedestrian gate at no. 12 opens inwards to the rear garden not outwards.
- No enforcement action was received with regard to a vehicular entrance.
- The applicant intends to finish the rear wall to match the existing finish of the adjoining wall once the appellants horsebox trailer is removed.

6.3. Planning Authority Response

- 6.3.1. South Dublin County Council provided a response to the grounds of appeal. This outlines that the Planning Authority confirms its decision and that the issues raised in the appeal have been covered in the planner's report.

7.0 Assessment

The main issues are those raised in the grounds of appeal and the I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. I consider that the main issues in this appeal are as follows:

- Principle of Proposal
- Pedestrian Safety
- Visual Amenity
- Procedural Matters
- Appropriate Assessment

7.1. Principle of Proposal

- 7.1.1. The application seeks to retain an existing pedestrian gate from the rear of the applicant's property at no. 12 Mountdown Road onto Limerkiln Close. An opening on an existing wall has been made to facilitate the access gate. Limekiln Close has a cul de sac layout. The end of the cul de sac is defined by an existing wall which forms the rear boundary of nos. 10, 12 and 14 Mountdown Road. An existing informal parking area is provided on Limerkiln Close in the vicinity of the wall. A pedestrian laneway is provided between no's 14 and 16 Mountdown Road which link Mountdown Road to Limekiln Close.

- 7.1.2. The appeal site is zoned for RES purposes within the SDDP 2022-2028 which seeks “To protect and/or improve residential amenity”. The third-party appeal outlines that the principle of the proposal is contrary to the RES zoning objective as the access gate opens onto an area where the appellant has parked his vehicle. The appeal outlines that the development would not improve the residential amenity of the appellant as it removes his parking space.
- 7.1.3. In considering the appellant’s concerns relating to loss of a parking space, I note that the area adjacent to the access gate is open, forms part of the public road and is not a formal parking area. There is no loss of a designated parking space as alleged in the appellants grounds of appeal and on this basis, I do not consider that the principle of the proposal would detract from the residential amenity of the appellant or be contrary to the zoning objective pertaining to the area. On site inspection, I consider that there was sufficient space along Limekiln Close to accommodate parking of vehicles. I also note that existing dwellings along Limerkiln Close have in curtilage front garden parking.
- 7.1.4. I consider the principle of an access gate to be acceptable at this location and do not consider that it is contrary to the zoning objective pertaining to the area.

7.2. Pedestrian Safety

- 7.2.1. The appeal outlines that the access gives rise to serious pedestrian and safety concerns as pedestrians using the gate would open straight onto the parking space rather than a footpath.
- 7.2.2. The pedestrian gate opens inwards to the applicants back garden at no. 12 Mountdown Road. The gate provides access to residents of this property only. I do not consider that the gate constitutes a hazard to either pedestrians on Limekiln Close or the residents of no. 12, who would have full sight of existing parked vehicles on Limekiln Close.

7.3. Design and Visual Amenity

- 7.3.1. The access gate is wooden, 1.9m high and 0.9m wide. The principle of access gates onto Limerkiln Close is established in the area. On site inspection I note that views of the gate from Limerkiln Close were restricted by existing parked vehicles. I viewed the gate from the applicant’s property. I have no objection to the overall height, finish

and scale of the pedestrian gate and do not consider that it detracts from the visual amenity of the area.

7.3.2. The appeal refers to the history of the site wherein the boundary wall at Limerkiln Close was demolished and replaced. The appeal raises concern in relation to the visual impact of the replacement wall in the vicinity of the applicant's property and questions its structural stability. The appeal cross refers to the recommendations of SDCC Roads Department which recommends a refusal of permission in this regard.

7.3.3. The applicant's response to the grounds of appeal outlines that the applicant intends to finish the rear wall to match the existing finish of the adjoining wall once the appellants horsebox trailer is removed. I consider that the wall should be reinstated to match the existing in the interests of the visual amenity of the area. I consider that this should be addressed by means of condition.

7.4. Procedural Matters

Validity of the Application

7.4.1. The appeal questions the validity of the planning application on the following grounds:

- Site Notice: The appeal outlines that the site notice was not visible from the public road within Limekiln Close. The appeal cross refers to the extracts of the planner's report which informs the decision of SDCC to grant permission to retain the development which outlines that the site notice was not in place on 2 no. separate dates. The application is technically invalid on this basis.
- Application Drawings: The drawings also inaccurately show a an "adjoining property access gate" which is not a pedestrian entrance but is an access to an ESB substation. The drawings are therefore misleading and inaccurate.
- Application Form: The planning application form is also inaccurate as it doesn't provide details of the enforcement history on site.

7.4.2. The applicant's response to the grounds of appeal outlines that a site notice was placed and remains in place on the access gate and refutes the reference to inaccuracies on the application drawings. It is furthermore stated that no enforcement notice was issued in relation to the vehicular access.

7.4.3. I note that the application was deemed valid by South Dublin County Council. Having regard to the issues raised regarding the validity of the application, this is within the remit of the Council and while the documentation submitted is noted, it is not considered appropriate or within the remit of the Board to further comment on these matters. I am satisfied that the matters raised did not prevent the concerned party from making representations.

Error in Condition no. 1

7.4.4. The appeal refers to an error in Condition no. 1 of SDCC's notification of decision to grant permission for the development as follows:

- *The developer shall be retained and completed fully in accordance with plans, particulars and specifications lodged with the application, within XXX months of the grant of permission, save as may be required by other conditions attached hereto.*

7.4.5. The appeal outlines that the lack of a date in the condition, citing a timeframe for which the development is to be retained, renders the development unenforceable.

7.4.6. I acknowledge the omission of a timeframe within Condition no.1 of SDCC's notification of decision to grant permission. In the instance that the Board is minded to grant permission to retain permission for the development, I recommend the specification of a timeframe of 3 no. months in Condition no. 1.

7.5. Appropriate Assessment

7.5.1. Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and 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 permission is granted to retain the development in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the scale and design of the development to be retained and to the pattern of existing development in the area, it is considered that the development proposed to be retained, subject to compliance with the conditions set out below, does not seriously injure the amenities of the area or of property in the vicinity, would not present a pedestrian safety hazard and would not conflict with the objectives of the South Dublin County Development Plan 2022-2028. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The developer shall be retained and completed fully in accordance with plans, particulars and specifications lodged with the application, within 3 months of the grant of permission, save as may be required by other conditions attached hereto.</p> <p>Reason: To ensure that the development is in accordance with the permission and that effective control is maintained.</p>
2.	<p>The use of the development as outlined shall be for pedestrian access purposes only in accordance with the plans, particulars and specifications lodged with the application.</p> <p>Reason: In the interest of proper planning and sustainable development of the area.</p>
3.	<p>The developer shall reinstate the existing boundary wall in the vicinity of the access gate at Limekiln Close to match the existing wall within a period of 3 months of this decision, or an alternative period agreed with the planning authority.</p> <p>Reason: In the interest of visual amenity.</p>

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.

Stephanie Farrington
Senior Planning Inspector

26th of June 2023