



An
Bord
Pleanála

Inspector's Report

ABP-317469-23

Development	Gated serviced laneway.
Location	1-14 Lock House View, Tullamore, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	23159
Applicants	DCAN Ltd
Type of Application	Retention
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellants	Srah and Castlevew Residents c/o Catherine Redmond.
Date of Site Inspection	15 th December 2023
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at 1-14 Lock House View, Tullamore, Co. Offaly at the western end of the town, north of the grand canal, where a group of two storey terraced housing (nos 8-14) and single storey terraced housing (nos 1-7) face onto a triangular green around which runs a cul de sac access road. This housing scheme backs onto larger detached housing at Castleview to the west and Srah Road to the north. An older house, a former lock house, is also served by the access road.
- 1.1.2. The subject site comprises parts of the former gardens of Nos 1 to 12 where an access laneway has been provided to the rear of the subject houses, between these houses and the rear boundaries of dwellings on Srah Road and Castleview. The laneway is wide enough for a single vehicle only to access. A spur laneway runs between the blocks of two storey and single storey housing, that is, between the flanks of plots 7 and 8, to join the other laneway (roughly midway) to the road. This spur is not for vehicles.
- 1.1.3. Both laneway entrances are closed by solid gates. The walls along either side of the laneway are supported by piers on the laneway side.
- 1.1.4. The entrance for vehicles is across a green area surfaced in grass pavers.
- 1.1.5. The site is given as 0.0825ha.

2.0 Proposed Development

- 2.1.1. The proposed development is described in the notices as retain (a) a privately controlled, gated, service laneway with new rear boundary walls including fire access gateways to the rear of existing units 01-09 and between existing units 7-8 (b) installation of support pillars to the original, shared rear boundary walls of units 01-09 (c) the partial demolition and minor alterations of rear boundary walls to existing properties 01-14. Development also includes planning permission for the continuation of existing privately controlled, gated service laneway at a reduced width of 1.5m, with proposed new rear boundary walls including fire access gates to existing dwelling 10-13 and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decision, dated 2nd June 2023, was to grant retention, subject to 3 conditions, including:

2) The laneway shall be secured against general public access in perpetuity and access shall only be available to the owners of the laneway, and to the owners and residents of the dwellings 1-13 Lock House View, and to the Fire Service. No change in the management of access arrangements from that specified in this planning application shall occur, without the prior written agreement of the Planning Authority.

In the interests of clarity and public safety.

3) (a) to (f) as Area Engineers report

3.2. Planning Authority Reports

3.2.1. Planning Reports

3.2.2. The planning report recommending permission, includes:

- Noting that a small portion of the site, where grasscrete is situated, is zoned as open space and the development is considered compatible with the zoning objective.
- A total of 18 observations/ objections is noted.

3.2.3. Other Technical Reports

Water Services and Environment, 16/05/23 – no objection.

Tullamore Municipal District, Area Engineer, 17th May 2023 – conditions:

- The applicant shall provide a drop kerb on the existing footpath adjacent to the access gates to accommodate vehicular access to the laneway.
- The boundaries between the proposed development and the existing dwellings to the north and west of the site shall be constructed in such a manner as to ensure there is no area in between the existing boundaries and the proposed boundaries

which could be used for unauthorised illegal dumping. The applicant shall agree a common boundary with the adjoining property owners.

- No surface water shall be allowed to discharge onto the existing roads/footpaths or adjoining private dwellings from the development. Surface water shall be accommodated by soakaways where required within the site. Soakaways are to be designed, installed and maintained in accordance with BRE Digest 365.
- No construction vehicles will be permitted to park on the public road during construction works. No loading or unloading will be permitted on the public roadway. Road network shall remain unaffected by the construction at all times.
- All necessary measures shall be taken by the applicant to prevent any spillage or deposition of clay, dust, rubble or other debris, whether arising from vehicle wheels or otherwise, on the adjoining and or adjacent public road and footpath network during the course of the construction works.
- Any damage to roads, footpaths or other public property caused by the development shall be made good to the satisfaction of the District Engineer.
- All wastes arising from/at the proposed development shall be managed in accordance with the Waste Management Acts 1996 as amended.

3.3. Third Party Observations

- 3.3.1. Third party observations on the file have been read and noted. Issues raised are similar to those raised in the appeal.

4.0 Planning History

Dec 22/7 - section 5 declaration request in relation to the question: whether the demolition of existing rear garden walls and construction of new rear garden walls creating a private service corridor with a private service gate to the eastern end is or is not development and is or is not exempted development. Decision: is development and is not exempted development.

PD3610 - permission granted for demolition of a house and permission for single storey and two storey houses.

PD4191 - permission granted for an additional single storey house at the eastern end.

UD 22/36 - warning letter issued in relation to access and private lane development.

5.0 Policy Context

5.1. Development Plan

The site is zoned – ‘Existing Residential’ It is an objective of the Council to: LUZO-03 Protect and enhance the amenity and character of developed residential communities.

The green at the front of the housing development is zoned – ‘Open Space, Amenity and Recreation.’ No part of the subject site is within this zoning.

5.2. Natural Heritage Designations

- 5.2.1. Charleville Wood SAC (site code 000571), 2.7km straight line distance to the south west, is the nearest Natura site.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Sean Lucy & Associates Ltd Town Planning Consultants has submitted the appeal on behalf of Srah and Castlevue Residents c/o Catherine Redmond. The grounds include:

- They are concerned at the process by which this development was carried out, the response of the enforcement Section of Offaly Co Co, and the lack of action with regard to the carrying out of further works by the applicant following the issuing of a warning letter.
- The appeal site consists of a strip of land, formerly private rear garden areas, to the rear of house no's 1-14 Lock Houst View, which has been developed as a hardcore-surfaced roadway, without planning permission.
- The roadway has split the rear boundary of Lock House View from the appellants, undermined the wall that previously constituted the shared boundary and reduced the privacy of the Lock House View houses and raised security fears among appellants.
- They request the Board to ignore the fact that this is a retention application.
- They request the Board to consider this as an application to reduce private rear garden areas to facilitate the development of a privately controlled gated laneway.
- All houses were already accessible by way of individual gates to enable deliveries and maintenance.
- The roadway significantly reduces private open space to the rear of a number of these properties, most particularly house No. 1.
- The object to the planning report stating that the site consists of an existing laneway to the rear of existing terraced houses. They are not satisfied that the application was assessed as retention, as if it had not taken place.
- Consideration of the original layout was restricted to two references: that the proposed development improves residential amenity by removing the necessity of impacting on neighbours to gain access through their rear garden areas; and the loss of private garden to house no. 1. It has reduced both the side and rear garden of house no. 1, to left over space.
- The site is zoned existing residential. Conservation and enhancement of the quality and character of existing residential areas...LUZO-03 is also quoted.
- It would be contrary to LUZO-03.

- The applicant has failed to provide a drawing of the original estate. The Board is requested to consider the development in the context of the original drawing submitted with application TU3610.
- They question whether the development protects and enhances the amenity and character of this developed residential community, including the appellants' rear gardens, which have been significantly impacted.
- The development will do nothing to improve the lives of future residents/homeowners in Lock House View.
- It benefits only the applicant's agents who will no longer have to seek permission from residents to access.
- The appellants are concerned regarding the security of their rear gardens, and also with regard to the unsupervised nature of the laneway.
- The gateway is not a barrier similar to the existing access.
- They note the application letter, which states that DCAN will have sole access.
- Refusal of permission is warranted.

6.2. Applicant Response

6.2.1. The applicant has responded to the grounds of appeal, which response includes:

- It is a privately controlled, gated, serviced laneway not a roadway.
- The original layout is shown on drawing DCAN 01.
- The laneway is fully secured and inaccessible to the public, with a steel framed gateway and 2m high walls.
- Access will only be granted by way of a request and appointment, through the management company, and is restricted to residents for valid purposes, to emergency services and the local authority on request.
- The serviced laneway will be controlled by the applicant.
- It is intended to provide regulated access and emergency access, to allow for deliveries not suitable to be brought in from the front. It allows the

owners/estate company to service and maintain the properties, without interfering with every other property.

- The shortcomings in the previous layout are outlined.
- The green areas to all rear gardens is far in excess of area requirements. All gardens are now usable, safe and private areas.
- It improves private amenity and is in keeping with the zoning LUZO-03.
- It benefits residents and service providers.
- All properties are owned by the company, none have been sold.

6.3. Further Responses

6.3.1. Colm & Paul McCabe have responded to the applicant response to the grounds of appeal. Their response includes:

- The sewerage system was altered without controls.
- No engineer's report was provided. There are no support pillars on the Sragh Road and Castle View side of the wall. Raising the ground levels has put undue pressure higher up the walls and when HGV's use the lane the vibration is higher up and can cause damage. The 2m height is diminished by raising the ground level.
- The lane is too narrow for emergency vehicles.
- Referring to the boundary wall being a civil law matter suggests that the report was not impartial and did not address the development as if it did not already exist.
- No precise details are given of how the lane will be monitored.
- Ownership is not questioned; the owners will be held responsible for unsocial behaviour, burglary etc.
- Access by request? Will it be monitored by CCTV.
- The previous access worked well for 20 years. It disturbed only 3 or 4 back gardens, not 8 as stated.
- LUZO-03 – permitted in principle does not imply automatic approval. Non-compliance, unauthorised development, cannot be rewarded.

- They object to the impact during construction.
- The right to private property is protected by the European Convention on Human Rights, Article 1, protocol 1.

6.3.2. Felix and Catherine Redmond have responded to the applicant response to the grounds of appeal. Their response includes:

- The gate and walls do not secure the laneway anyone entering the properties in Lock House View, whether resident or visiting, has unrestricted access to the rear of all the houses.
- It will not allow for emergency access as the previous access did.
- The applicant cannot ensure the security of the laneway.
- Access to the rear is not required for health and safety purposes over and above what was already in place. All three fire hydrants within the estate are located to the front of the site.
- The private gardens would be accessed from both ends with a maximum of 3 houses to open internal gateways. The current management company could still control and regulate access for the existing residents by way of appointment to the unaltered rear gardens.
- All rear gardens are not in excess of area requirements. The laneway reduces the outdoor amenity space and residential amenity.
- The laneway provides no benefit over and above that which was already in place. It benefits only the applicants and their agents.
- Rahan Road (Srah Rd) and Castle View are also residential communities and the development reduces the amenity and character of their community: level of security, privacy and peace of mind.
- All the houses have been retrofitted with solar panels and air to water as part of the high standard upgrade works. This would eliminate the need for oil deliveries. The recently developed Jackson Hill is terraced housing with no rear access.
- Rear laneways have a high level of anti-social behaviour. It will make the development more attractive to other management companies and increase the option for individual resale.

- The development has caused high levels of anxiety in the community, by a company which has shown no consideration. The company has been awarded construction contracts by the local authority.

6.3.3. Sean Lucy & Associates Ltd Town Planning Consultants have responded to the applicant response to the grounds of appeal. Their response includes:

- It is unlikely that the estate and laneway will remain privately owned. Residents have no access to the laneway without authorisation from the first party.
- The estate operated perfectly well for 20 years. It is not an improvement to provide unfettered access to the appellants' properties.
- Emergency access without notification is not being provided.
- Emergency access through the front doors is adequate. The original estate was granted a fire certificate.
- Access to public services for the Council was also adequate as was delivery of goods and services.
- Reducing rear garden area cannot be considered to improve amenity and character.
- It is contrary to the zoning and LUZO-03.
- The proposed development would not contribute to the improvement of residential amenities, would detract from the character of the area and is not in accordance with the established character and pattern of development in the area.

7.0 **Assessment**

7.1. I consider that the main issues which arise in relation to this appeal are as follows: appropriate assessment, the principle of the development, residential impact, and other issues, and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. The Principle of the Development

- 7.3.1. The site, is zoned 'Existing Residential'. LUZO-03 is the land use zoning objective: to protect and enhance the amenity and character of developed residential communities.
- 7.3.2. This zoning allows for the conservation and enhancement of the quality and character of existing residential areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the area. Existing residential zoned land may also provide for small-scale home based employment uses where the primary residential use will be maintained.
- 7.3.3. In my opinion the proposed development, which is a laneway to serve an existing residential estate for residential use only, is acceptable in principle.

7.4. Residential Impact

- 7.4.1. The issues raised by the appellants mainly concern the impact on their residential properties. They are concerned that the laneway will impact on their privacy and security by allowing access to the rear of their properties, where previously the private gardens on the adjoining Lock House View estate provided more secure boundary conditions. For this reason the access to the laneway and how the consent for access will be managed has been the subject of claim and counterclaim. The applicants state that they will manage the access, which will only be available on request, to residents, public authorities and emergency services. The appellant's query whether or not security cameras will be used. They disagree that access by consent could be considered as offering emergency access. They claim that the previous access arrangements were satisfactory.
- 7.4.2. The previous access arrangements required the crossing of adjoining back gardens to get to a destination back garden. This type of arrangement is in place in some older terraced housing developments. The alternative of a defined laneway which doesn't require crossing individual properties is far preferable, in my opinion.

- 7.4.3. If the laneway was left unsecured, I would share the appellants' concerns regarding the security of their back gardens, however the laneway is not unsecured, it is provided with solid gates.
- 7.4.4. The applicant states that access will be by request, but the appellants are not satisfied that the process of seeking / granting consent is clear. It appears clear to me that the persons who will be permitted to access the laneway will be limited to residents and to such others who have a bona fide need for access such as to satisfy the estate management. I consider that this means that the laneway is a secure space.
- 7.4.5. Once within the laneway a person has easier access to all back gardens. However someone who might be sufficiently agile and sufficiently determined to make the effort to cross the high gates, would not be deterred by the multiple boundaries in the pre-existing situation.
- 7.4.6. In my opinion the access arrangements adequately provide for the security of all the residents, both sides of the laneway.
- 7.4.7. If the Board considers it necessary, the gates could be fitted with self-closing hinges to ensure that users forgetting to close the gates, or neglecting to close the gates, do not prejudice the security of the gated laneway.
- 7.4.8. Privacy is raised as an issue. In my opinion there is no impact on privacy due to the height of the boundary walls.
- 7.4.9. It is stated that the residential amenities of the residents of Lock House View estate are adversely impacted by the reduction in private open space which the creation of the laneway has involved. The applicant response is that the green areas to all rear gardens is in excess of area requirements and that all gardens are now usable, safe and private areas.
- 7.4.10. The private amenity spaces of all the dwellings, with the exception of numbers 13 and 14, have been reduced in size. No 1 has been particularly impacted because of the shape of the plot. Even in the case of No 1 adequate private space is available to the side of the dwelling, and this area can be made more useable by landscaping/screening. I accept the argument made by the applicant that excluding

third party users from rear gardens improves the residential amenities of the private amenity spaces and improves the quality of those spaces.

- 7.4.11. I am satisfied that the proposed development greatly enhances the residential amenities of the houses in Lock House View estate without unduly detracting from the residential amenities of adjoining properties.

7.5. Other Issues

- 7.5.1. It is stated that the lane is not of sufficient width to allow access for emergency vehicles.
- 7.5.2. The laneway appears to me to be sufficient only for limited vehicular access, i.e. a small standard vehicle, one-way. In the context of the proposed development being an improvement on an existing poor residential layout, I consider that the laneway width is acceptable.
- 7.5.3. It is stated that the development impacts / has impacted on the structure of adjoining boundary walls. It is noted that the boundary walls have been supported by pillars. Issues regarding impact on property, which require the production of evidence, are for the courts to determine and are not matters on which the Board has any adjudicating role.
- 7.5.4. It is stated that the works involved in carrying out of the development has impacted on the amenities of adjoining property owners. It is also stated that the development was unauthorised, was not subject to any consultation, and that the developer should not be rewarded for carrying out unauthorised development.
- 7.5.5. The subject application for retention has facilitated the involvement of all interested parties. The determination of the application, taking account of the proper planning and sustainable development of the area, is a matter for the Board.

8.0 Recommendation

- 8.1.1. Having regard to the foregoing assessment it is considered that the proposed development should be granted for the following reasons and considerations and in accordance with the following conditions.

9.0 Reasons and Considerations

- 9.1.1. The proposed retention of works carried out to provide a service laneway for rear access to existing dwellings at Lock House View will obviate the need to cross multiple adjoining gardens to gain access and will thereby improve the residential amenities of all the properties accessing the laneway. The control of access to the laneway via gateways will ensure the security of the laneway and of all properties which bound it. The proposed development is accordingly in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The laneway shall be used as an access to the rear of the dwellings served and for no other purpose. It shall be secured against general public access and access shall only be available to the owners of the laneway, the owners and residents of the dwellings 1-13 Lock House View, and other parties by agreement of the owners/residents. No change in the management of access arrangements from that specified in this planning permission shall occur, without the prior written agreement of the Planning Authority.</p> <p>Reason: In the interests of orderly development.</p>

3.	<p>The applicant shall provide a drop kerb on the existing footpath adjacent to the access gates to accommodate vehicular access to the laneway.</p> <p>No surface water shall be allowed to discharge onto the existing roads/footpaths or adjoining private dwellings from the development.</p> <p>Surface water shall be accommodated by soakaways where required within the site. Soakaways are to be designed, installed and maintained in accordance with BRE Digest 365.</p> <p>Reason: In the interests of orderly development.</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.

Planning Inspector

12th January 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Retention of privately controlled, gated, service laneway with new rear boundary walls including fire access gateways to the rear of existing units 01-09 and between existing units 7-8 (b) installation of support pillars to the original, shared rear boundary walls of units 01-09 (c) the partial demolition and minor alterations of rear boundary walls to existing properties 01-14. Development also includes planning permission for the continuation of existing privately controlled, gated service laneway at a reduced width of 1.5m, with proposed new rear boundary walls including fire access gates to existing dwelling 10-13 and all associated site works		
Development Address	1-14 Lock House View, Tullamore, Co. Offaly		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		Yes	/
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	/		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
	Threshold	Comment (if relevant)	Conclusion

No	/	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	/	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____

Appendix 1 Photographs

Appendix 2 Offaly County Development Plan 2021-2027, extracts.