



An  
Bord  
Pleanála

## Inspector's Report ABP318351-23

<b>Development</b>	Retention: Pedestrian access gate, alterations to boundary treatment and provision of fence.
<b>Location</b>	Hamilton Gardens, 2-4 Carnlough Road, Cabra West, Dublin 7.
<b>Planning Authority</b>	Dublin City Council.
<b>Planning Authority Reg. Ref.</b>	4011/23.
<b>Applicant(s)</b>	Seven Cabra Real Estate Limited.
<b>Type of Application</b>	Retention permission.
<b>Planning Authority Decision</b>	Grant retention.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Seven Cabra Real Estate Limited.
<b>Observer(s)</b>	(1) Gavin Roche.
<b>Date of Site Inspection</b>	11/12/2023.
<b>Inspector</b>	Anthony Abbott King

## **1.0 Site Location and Description**

- 1.1. The applicant site comprises part of a newly completed predominantly residential development at Hamilton Gardens located on the former CIE marshalling yard to the north of the city centre and to the west of Phibsborough;
- 1.2. Hamilton Gardens is bounded by the rear gardens of the houses on the east side of Carnlough Road, the railway line to the west of the development, by Cabra Road to the south and Fassaugh Avenue to the north.
- 1.3. The site at Hamilton Gardens is insular in nature given the historic industrial use of these lands. There is low permeability with the surrounding residential network of streets to the north, south and west. The railway line to the east creates an impermeable barrier.
- 1.4. A north-south pedestrian link known as 'Hamilton Walk' has been created along the eastern boundary of the new development between the building line of Hamilton Gardens and the boundary fence with the railway line;
- 1.5. The vehicular access into the development is to the south from Carnlough Road off Cabra Road. There is a pedestrian access to the north of the development from Fassaugh Avenue. The retention of the access gate to 'Hamilton Walk' from Fassaugh Avenue is the subject of this appeal.
- 1.6. The entrance threshold to 'Hamilton Walk' from Fassaugh Avenue is defined by a double opening controlled access gate;
- 1.7. The linear 'Hamilton Walk' provides a direct route to the vehicular entrance to the south of the development at 'Rowan Place' providing permeability through the development from Fassaugh Avenue to Carnlough Road / Cabra Road and permeability of the Hamilton Gardens development itself including the public space at 'Observatory Square' and a neighbourhood centre to the south including an Aldi supermarket;
- 1.8. 'Hamilton Walk' to the west is tight to the building line of Hamilton Gardens. There are ground floor apartments that elevate onto the walkway with dedicated balconies separated from the walkway by low railings. The walkway to the east is defined by a high wall and fence for the entirety of its length from the access point at Fassaugh Avenue to 'Rowan Place'.

## **2.0 Proposed Development**

- 2.1. The retention of the pedestrian access gate, alterations to boundary treatment and provision of fence.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Grant planning permission subject to conditions.

Condition 3 (a) states:

*The pedestrian access gates shall be open and have unrestricted access between the hours of 06.30hrs and 22.30hrs Monday to Sunday (inclusive) all year round.*

*Reason: To allow for ease of access to retail and other neighbourhood facilities operating on this site to the community of the wider area, particularly those accessing the site from Fassaugh Avenue and ensure a satisfactory standard of development.*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The decision of the CEO of Dublin City Council reflects the recommendation of the planning case officer.

#### **3.2.2. Other Technical Reports**

- Transportation Planning Division have no objection subject to condition. The following commentary is relevant:

*It is noted that an Aldi supermarket is open within Hamilton Gardens and a crèche is proposed to open in the coming weeks also. Following a site visit, the proposed crèche appears to be at fit-out stage with outdoor signage currently in place. This division would have concerns with regards to the proposed access being limited from dusk to dawn as the fluctuation of daylight*

*hours during each season leading to inconsistencies in the times of access, creating inconvenience and confusion to those wishing to access local amenities. As the opening hours of the Aldi are generally 9.00-22.00, with the store closing at 21.00 on Saturdays, Sundays and Mondays, this would impact on access to the supermarket in winter time/early spring particularly in terms of access. Time should additionally be provided to allow pedestrians to exit the amenities in order to walk home or to public transport links. Similarly in terms of the proposed crèche, in order to allow access to the crèche for early morning drop off and evening collection times, the gates must be open to the general public to allow this access in this regard.*

*This division have no objections to the principal of controlled access to Hamilton Gardens, however the proposed timings are vague and do not take into account access to local amenities existing and proposed. This division recommends therefore that the proposed timing be conditioned to ensure that access to amenities is provided when they are open and not be restricted by daylight hours only.*

- Engineering Department – Drainage no objection subject to condition.

## **4.0 Planning History**

- The parent permission for the development at Hamilton Gardens was granted as a strategic housing development under Register Ref: ABP305979-19 for the construction of 485 number residential units and a neighbourhood centre comprising of 4 number commercial units including Unit 2 a convenience supermarket. Permission was granted, subject to conditions, including Condition 3(d) which required that:

*Pedestrian access shall be maintained from the north-eastern corner of the development to Fassaugh Avenue at all time. A stile may be erected to require cyclists using this access to dismount. However, any such structure shall allow unimpeded passage for persons with impaired mobility and at least 20cm clearance in each direction for a dismounted cyclist pushing a bicycle of*

*the type used for Dublin bikes. Any structure which does not allow such passage and clearance shall be removed.*

**Reason:** *In order to comply with the guidance given in the Design Manual for Urban Roads and Streets (DMURS) issued by the Minister in 2013 and to provide an integrated street network that is safe and convenient for all road users and that achieves an acceptable standard of urban design.*

- Under Register Ref: 2387/16 planning permission was granted for a commercial development at a site of c.3.88 ha. at The Former CIE lands, Carnlough Road, Cabra, Dublin 7 to include the demolition of 2no. houses No.'s 2 (c.52.8 sq.m) & 4(c.52.8 sq.m) Carnlough Road. The proposed development will consist of 320 no. apartments and c.3,259 sq.m GFA of commercial floor space.

The following further information was requested on the 18<sup>th</sup> August, 2023:

*(1) The applicant is advised that the planning authority has concerns that the application material does not provide an adequate justification for the need for the pedestrian access gates to be retained. The applicant is requested to address these concerns. This may include any information (including any information from the Gardai) in relation to the level of anti-social activity within the development. The applicant is also requested to submit details of measures currently employed or proposed to be employed, by the management company of the development to deter anti-social activity (such as lighting, CCTV, on-site management presence etc).*

A further information response from John Spain Associates, on behalf of the applicant, Seven Cabra Real Estate Limited, is summarised below:

- The requirement for a access-controlled pedestrian gate arises from on-going anti-social behaviour. The applicants advise that the levels of anti-social behaviour have resulted in residents being fearful and intimidated within the development including apartment break-ins. The anti-social instances from August 2023 are detailed in the response statement;

- The applicant introduced temporary controlled access in December 2022 significantly reducing anti-social behaviour. The subsequently constructed pedestrian gates provide for open access during daylight hours, thereby maintaining permeability through the site, and fob access for residents at other times;
- The applicant has advised that the residential development has appropriate site lighting and provision of CCTV cameras throughout the site, which have not deterred against anti-social behaviour.
- The security company identified that the vast majority of anti-social behaviour incidents were a result of youths accessing the development via the Fassaugh Avenue entrance;
- A new security firm was engaged in March 2023 following repeated incidents and the hospitalisation of two security guards. Security provision has almost doubled and the static security regime has been replaced by security patrols;
- There has been extensive engagement with the Garda. The Garda now carry out multiple patrols per week;
- The applicant proposes the gates would be open and closed as follows:  
07.00 to 18.30 / 18.31 to 06.59. Hamilton Garden staff and residents would have access via fob access control.

## 5.0 Policy and Context

### 5.1. Development Plan

The following policy objectives *inter alia* of the Dublin City Development Plan 2022-2028 are relevant:

The applicant site is zoning objective Z1 (Map E) (Residential): *to protect, provide and improve residential amenities*. The proposed development is a permissible use.

In context the substantive zoning objective for the Hamilton Gardens development is residential. However, the southern section of the site in the location of the neighbourhood centre is zoned Z3 : 'neighbourhood centre'.

The development plan seek to resist gated communities with a general presumption against such developments and to support the creation of a permeable, connected and well-linked city.

- Social Inclusion

Chapter 5 (Quality housing and sustainable neighbourhoods) provides that provides *inter alia* for the provision of affordable, accessible, quality homes and sustainable community infrastructure which meets the needs of the city's population and which contribute to the making of good, connected neighbourhoods is a key priority of the development plan.

Section 5.5 (Social Inclusion) *inter alia* states social inclusion is about ensuring that everyone has equal opportunity to participate in and contribute to, community life regardless of their age, ability, nationality, ethnic group, religion or any other of the many characteristics that contribute to diversity in our communities and society.

- Safety and Security

Policy Objective QHSN12(Neighbourhood Development) is relevant and states *inter alia* that neighbourhood development will be designed to promote safety and security and avoid anti-social behaviour.

- Chapter 15 (Development Standards) Section 15.4.5 (Safe & Secure Design) *inter alia* states new developments and refurbishments should be designed to promote safety and security and avoid anti-social behaviour.
- And Chapter 7 policy objective CCUV40 states:

*To promote the development of a built environment and public spaces which are designed to deter crime and anti-social behaviour and which promote safety, as set out in the 'Your City Your Space' Public Realm Strategy 2012.*

- Gated Communities

Policy Objective QHSN21 (gated Residential Development) is relevant and states:

*It is the policy of Dublin City Council to support the creation of a permeable, connected and well-linked city and to avoid gated residential developments which exclude the public and local community and prevent development of sustainable neighbourhoods.*

Chapter 15 (Development Standards) Section 15.8.10 (Gated Communities) *inter alia* states:

*The Dublin City Council will resist gated communities within the city and there is a general presumption against same in order to promote permeability and accessibility in the urban area. Where a gated scheme is proposed, the applicant must demonstrate the operational management strategy for the development and clearly set out the functionality of the gate mechanism proposed.....*

- Active travel & permeability

Chapter 8 (Sustainable Movement & Transport) Section 8.5.6 (Sustainable Modes - Active Travel – Walking and Cycle) is relevant and encourage active travel and permeability and *inter alia* states:

*To make active travel an attractive alternative choice to car-based transport, and to facilitate the 15-minute city concept of creating active, healthy communities with ease of access to amenities and services, certain critical factors are required. These include the provision of a permeable pedestrian and cycling network that allows for multiple direct connections between key destinations such as residential areas, shops, schools, employment centres and public transport links, as well as an attractive and safe pedestrian and cycling environment where high quality facilities are provided supporting their use by all ages and abilities.*

- Policy objective SMT16 (Walking, Cycling and Active Travel) is relevant, which prioritises the development of safe connected walking and cycling facilities and active travel in line with the city's mode share targets.
- Policy objective SMT18 (The Pedestrian Environment) is relevant, which supports strengthened permeability by promoting a network of pedestrian routes in accordance with best accessibility practice.



Chapter 7 (the City Centre, Urban Villages & Retail) is relevant including:

- Policy objective CCUV39 which states:

*To deliver a permeable, legible and connected public realm that contributes to the delivery of other key objectives of this development plan namely active travel and sustainable movement, quality urban design, healthy placemaking and green infrastructure.*

Other relevant documents:

'Dublin City Parks Strategy 2019-2022', Section 4.1 in the matter of standard opening hours.

The schedule of opening hours for the Dublin City Council park at Merrion Square for example is the following (Dublin City Council online customer information):

January	10:00 - 17:00
February	10:00 - 17:30
March	10:00 - 18:30 before clocks go forward 10:00 - 19:30 after clocks go forward
April	10:00 - 20:30
May	10:00 - 21:30
June and July	10:00 - 22:00
August	10:00 - 21:30
September	10:00 - 20:30
October	10:00 - 19:30 before clocks go back 10:00 - 18:30 after clocks go back
November	10:00 - 17:30
December	10:00 - 17:00

## 5.2. EIA Screening

5.3. The proposed development is not within a class where EIA would apply.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal statement was prepared by John Spain & Associates on behalf of the appellant. The appeal statement is accompanied by an Anti-social incident report (Appendix 2). The grounds of appeal are summarised below.

- This first party appeal requests that the Board revises the wording of condition 39a) as follows (see underlined the proposed change): the pedestrian access gates shall be open and have unrestricted access between the hours of 6.30 hrs and 18.30 hrs (Condition states 22.30 hrs) Monday to Sunday (inclusive) all year round;
- The appellant requested the board to exercise its discretion and to restrict its consideration to the subject condition;
- Hamilton Gardens is a recently completed residential development (485 units) comprising residential and commercial land use including an Aldi supermarket. It is accessible by public transport;
- The requirement for the access controlled pedestrian gates from Fassaugh Avenue entrance arises from ongoing anti-social behaviour in and around the residential development since August 2022 documented in Appendix 2 referencing 152 anti-social behaviour issues reported by the security team over the last 14 months;
- Residents are fearful and intimidated within the development arising from incidents of anti-social behaviour including apartment break-ins, significant damage to property and personal injury;
- The erection of a temporary fence in December 2022 at the Fassaugh Avenue access, which significantly reduced the level of anti-social behaviour. The applicant subsequently erected the permanent access gates;

- The gates provide access to “Hamilton Walk” during the daytime hours maintaining permeability and foot access for residents in the evenings in order to reduce anti-social behaviour;
- The requirement by way of condition of the retention permission to maintain the pedestrian route to “Hamilton Walk” open until 22.30 hrs is problematic by reason of a total of 97 number anti-social incidents occurred while the gates were open following installation of the gates. The conditional gate opening times will severely limit the benefits of the pedestrian gates. The majority of the incidents happened after 6.30 pm;
- Noting the requirements of the parent permission and given that the subject application had not been decided upon the security team were instructed not to lock the gates in the late evening and night time hours;
- The proposed amended closing restriction would be consistent with Objective QHSN21, which supports permeability, and Policy CCUV39, which supports active travel of the Dublin City development Plan 2022-2028. Section 7.5.8 of the plan states that public realm must be carefully managed and maintained including decluttering and deterring anti-social behaviour. In addition Section 15.4.5 is relevant as the development has just completed, which outlines that new developments should be designed to promote safety and security and avoid anti-social behaviour;
- The Hamilton Gardens development has appropriate lighting and CCTV provision throughout the site. However, these measures have not deterred anti-social behaviour incidents;
- A security company ‘YSS Security’ has been engaged by the applicant to address anti-social behaviours. The security company reports that the vast majority of anti-social behaviour incidents were the result of youths accessing via Fassaugh Avenue after 6.30 pm. The security man hours have increased from 80 hours a week to 150 hours, including mobile patrols, a week to address anti-social behaviour incidents – see Appendix 3 (letter from YSS Security);
- There has been extensive engagement between the security team and the property management company with the Gardai, the Cabra local area policing

forum and with local Dublin City Councillors. The Garda now make multiple patrols of the development per week;

- In response to access to the Aldi supermarket and the report of the report of the Transport Planning Division of the planning authority, the residents in the surrounding area will have access to the store through the main entrance at Carnlough Road when the pedestrian access at Fassaugh Avenue to “Hamilton Walk” is closed. It is claimed the majority of customers access via the vehicular access and will not be effected by the proposed 18.30 hrs. closing.

## **6.2. Planning Authority Response**

The reasoning on which the Planning Authority's decision on this application is based is set out in the Planner's Report and has already been forwarded to An Bord Pleanála. The Planning Authority considers that the comprehensive planning report deals fully with the relevant issues raised and justifies its decision.

## **6.3. Observations**

There is one observation, from Gavin Roche, no. 221 Saint Attract Road, Cabra, Dublin 7, which is summarised below.

- The Dublin City Council decision on the application for retention of the access gates into Hamilton Gardens from Fassaugh Avenue with condition was measured decision and struck a balance between permeability facilitating non-residents of Hamilton Gardens and addressing the applicant's concerns;
- The requirement to review the permission authorising the access gates is also an acknowledgement of the transitory nature of anti-social behaviour;
- The statement by John Spain Associates that the majority of visitors to the Aldi supermarket are purchasing convenience household goods and therefore typically travel by car is unfounded. The majority of customers observed by the third party access via the pedestrian entrance. It is further observed that 50% of households in the Saint Attracta area based on census returns have no car;

- The closure of Hamilton Walk would double the journey time to the Aldi supermarket from Saint Attracta's Road, which is very significant in particular when carrying groceries;
- The impact on residents in the area is greater than just the access to the Aldi supermarket, as there are other services within Hamilton Gardens serving the broader area including a nail salon open until 8pm and a café and chemist are being fitted out;
- There is a playground within Hamilton Gardens for which the ability for local residents to access walking, scooting or cycling on long summer evenings is particularly important;
- The letter from the applicant's security company is noted. However, evidence of engagement with the Garda or the Cabra Community Policing forum would be more revealing and provide evidence that the garda and police forum support restricted access at the Fassaugh avenue gate to Hamilton Walk as an appropriate means of addressing anti-social behaviour in Hamilton Gardens;
- The list of anti-social behaviour occurrences are very disappointing to hear. However, no evidence is provided to support that these incidents would have been prevented if the access to Hamilton walk from Fassaugh Avenue was closed;
- Putting up barriers between the existing community and the new development is inconsistent with planning policy, including a number of policies in the Dublin City development Plan and the Greater Dublin Transport Strategy, and should only be considered as a last resort. The applicant in closing off access risks alienating the local community;
- The Hamilton Gardens development has not embedded into the local community as of yet and the commercial units are not all operational. However, it is considered anti-social behaviour will become a think of the past in time.

## 7.0 Assessment

- 7.1. Having reviewed the application, the appeal and conducted a site visit, I consider that the only planning matter at issue in this case is Condition number 3 (a), which is the sole subject of the appeal and that no other planning matters need to be considered by the Board. Condition number 3 (a) states:

*The pedestrian access gates shall be open and have unrestricted access between the hours of 06.30hrs and 22.30hrs Monday to Sunday (inclusive) all year round.*

The appellant requests the amend of the wording of Condition 3 (a) to provide for restricted access between the hours 06.30 hrs to 18.30 hrs Monday to Sunday (inclusive) all year round.

- 7.2. The appeal grounds, the observations of third parties, the rationale for the wording of Condition number 3 (a), as attached by the planning authority, and the proper planning and sustainable development of the area are assessed under the following headings:

- Reoccurring anti-social behaviour at Hamilton Gardens;
- Active travel, permeability and social inclusion and the principle of controlled access;
- The residential amenities of the residents of Hamilton Gardens;
- The impact of restricted access on the surrounding community and area level permeability;
- Control access restrictions and the achievement of a reasonable level of permeability at Hamilton Gardens while protecting the amenity of residents;
- The appropriate wording of Condition 3 (a)

### Reoccurring Anti-social behaviour at Hamilton Gardens

- 7.3. The appellant requests that Condition 3 (a) be reworded to provide for the restriction on movement through the pedestrian gates to be retained. It is observed on the day of my site visit that the walkway at 'Hamilton Walk' was in use by both pedestrians

and cyclists who had to negotiate the access gate, which was partly open. It is also observed that two security guards were patrolling the development at mid-day.

The appellant justifies the requirement for a more restricted time control on the access gates with an evidenced base detailing anti-social behaviour incidents at Hamilton Gardens in a supporting document to the appeal statement – Appendix 2 (Anti-Social Incidents report). Appendix 2 details anti-social incidents from Saturday 13/08/2022 until Monday 23/10/2023. The security company identified that the vast majority of anti-social behaviour incidents were a result of youths accessing the development via the Fassaugh Avenue entrance.

A total of 154 incidents of anti-social behaviour are recorded. The events detailed during that timeline include minor public realm incidents and more serious incidents, including apartment break-ins, documenting a broad spectrum of anti-social activity - notwithstanding the presence of active on-site security. I do not agree with the observer that these incidents are not evidence based without a documented engagement with the Gardai or the 'Cabra Community Policing Forum'. Furthermore, the appellant states that there has been extensive engagement with the Gardai, the Cabra local area policing forum and with local Dublin City Councillors

Active Travel, permeability and social inclusion and the principle of control access

- 7.4. 'Hamilton Walk' provides an north-south axial linkage through a relatively impermeable suburban area north of Cabra Road, from Fassaugh Avenue to Carnlough Road and vice versa, while also giving direct access to the neighbourhood facilities within the Hamilton Gardens development particularly from Fassaugh Avenue.

The Dublin City Development Plan 2022-2028 provides a policy framework governing permeability. The policy framework does not support gated developments *inter alia* on social inclusion and active travel grounds. Section 15.8.10 and policy objective QHSN21 of the Dublin City Development Plan 2022-2028 seek to resist gated communities with a general presumption against such developments and to support the creation of a permeable, connected and well-linked city. Furthermore, climate action favouring improved modal split dictates that pedestrians and cyclists

require safe unobstructed movement corridors through the urban / suburban cityscape.

Section 8.5.6 (Sustainable Modes - Active Travel – Walking and Cycle) of the Dublin City Development Plan 2022-2028 states *inter alia* in order to make active travel an attractive alternative choice to car-based transport, and to facilitate the 15-minute city concept of creating active, healthy communities with ease of access to amenities and services, certain critical factors are required *including the provision of a permeable pedestrian and cycling network that allows for multiple direct connections between key destinations*. The development plan includes comprehensive active travel policies including CCUV39, SMT16 and SMT18, which all encourage permeability.

The third party observer documents the extended journey time that would be doubled from an origin at Saint Attracta Road to the destination at the neighbourhood centre at Hamilton Gardens without the benefit of the direct access via 'Hamilton Walk' facilitated by the Fassaugh Avenue access. However, such considerations must be balanced with the residential amenities of the residents of Hamilton Gardens.

The residential zoning objective *to protect, provide and improve residential amenities* is relevant and would support the protection and improvement of the residential amenity of the residents of Hamilton Gardens – a predominantly residential development comprising 485 residential units. It is considered that it is desirable that residents of medium and high density developments are accorded a reasonable level of residential amenity, and protection from anti-social behaviours, while balancing active travel and area level permeability.

Notwithstanding the merits of open and accessible street networks, it is considered that there is a rational for controlled access to predominantly residential neighbourhoods, such as, Hamilton Gardens in certain instances. I would concur with the planning case officer that controlled access should apply in the instance of the subject development to be retained. It is considered the appellant has copper fastened the supporting evidence for control access in Appendix 2 (anti-social incident report) of the appeal statement. Furthermore, condition 2 of the permission



provides for a temporary permission for the subject control access gate, which in effect is a two-year monitoring provision.

*The Residential amenities of residents in Hamilton Gardens*

- 7.5. The appellant claims that residential amenities of residents of Hamilton Gardens are severely compromised by anti-social behaviour originating in part by reason of access through 'Hamilton Walk'. Hamilton Gardens comprises 485 residential units mostly apartments and 4 number retail units including An Aldi supermarket.

The parent permission was granted under the provisions of Strategic Housing Development (SHD). The inspector's report (dated 7<sup>th</sup> February, 2020) states *inter alia* that the development includes a convenience supermarket (1,627sq.m), 2 no. shop / café / restaurant units, a gym and a creche. The inspector notes that these commercial facilities will benefit future residents and the wider community. The inspector acknowledges the role of management in facilitating and restricting public access to the community space at Block H. However, in aggregate the Inspector recommends that *pedestrian access shall be maintained from the north-eastern corner of the development to Fassaugh Avenue at all time* (Condition no. 3(d) of ABP305979-19)). This access point is the subject of this appeal.

The planning case officer notes that the Hamilton Gardens development was designed to allow for permeability with pedestrian access through to the neighbourhood centre from Fassaugh Avenue and passive surveillance of the new pedestrian route from the residential blocks. I observe on the day of my site visit that ground floor apartments facing 'Hamilton Walk' are open to the walkway with limited defensive arrangements to the public realm. I also note that the majority of the anti-social incidents happened after 6.30 pm.

Furthermore, I consider that the effectiveness of passive surveillance is highly questionable given the intensity and in instances the extreme anti-social behaviour evidenced, including the hospitalisation of security guards. The undisputed requirement for active security patrols rather than static on-site security. And the efficacy of passive surveillance after dark. I further consider that the appellant has demonstrated the requirement for controlled access and a reasonable timed

restriction on access to 'Hamilton Walk' *inter alia* by reason of the 154 incidents documented in Appendix 2 (Anti-Social Incident Report) of the appeal statement.

*The impact of restricted access on the surrounding community and area level permeability*

- 7.6. The appellant requests that condition 3 (a) be modified to opening between the hours 06.30 hrs to 18.30 hrs Monday to Sunday (inclusive) all year round principally justified on the grounds of the residential amenity of the residents of Hamilton Gardens. However, the proposed amendment will place restrictions on residents living in the surrounding neighbourhoods.

In instances these restrictions may be onerous as documented by the third party observer *inter alia* in the matter of access on summer evenings to the neighbourhood services in Hamilton Gardens. The observer documents a circuitous route to access the Aldi supermarket, located on the south of the Hamilton Gardens site, from the north at Fassaugh Avenue providing for a doubling of journey time, which is claimed is significant in particular when carrying groceries. The observer also states that car ownership in the Saint Attracta Road area north of Fassaugh Avenue is only 50% based on census returns. Furthermore, it is observed that access to the playground within Hamilton Gardens is particularly important for local residents to have the ability to walk, scoot or cycle on long summer evenings.

The appellant / applicant in their response to additional information request of the planning authority stated that the unauthorised pedestrian gates would provide for open access during daylight hours, thereby maintaining permeability through the site, and fob access for residents at other times. It is considered that access to the Aldi store and other commercial uses in the neighbourhood centre would be accessible via 'Hamilton Walk' in the late evening in late Spring, Summer and early Autumn until closing time (Aldi opening hours are until 10pm), which would in part mitigate the impact on the residents living in the surrounding area.

It is further considered that the applicant's original proposition to restrict access only after daylight hours may be an optimum solution that would mitigate anti-social behaviour, given the stated prevalence of extreme instances of anti-social behaviour in the late evening or at night (see Appendix 2 Anti-social incident report – following the erection of a temporary fence), that would protect the residential amenities of

residents within the development while providing permeability through the development during day light hours.

Control access restrictions and the achievement of a reasonable level of permeability at Hamilton Gardens while protecting the amenity of residents

- 7.7. What is the optimum use of 'Hamilton Walk' that would facilitate access for the surrounding community living in the area and would also facilitate a reasonable level of residential amenity for the residents of Hamilton Gardens. The planning authority concluded in the grant of retention permission a limited restriction on access in order to preserve wider area-based permeability and to allow access, until the closure of the Aldi store at 10.00pm, from the north of the development at Fassaugh Avenue to the neighbourhood services within Hamilton Gardens.

Initially the planning case officer expressed concern in the proposition to limit access for an undetermined time as requested by the applicant (dusk to dawn), which it was considered would not achieve satisfactory compliance with the policies of the Dublin City Development Plan 2022-2028. In the planning authority assessment the planning case officer requested *inter alia* further information given these concern that closing the gates at indeterminate times would unnecessarily exclude, or at the very least inconvenience, the non-resident community from accessing the neighbourhood centre at Hamilton Gardens. The case officer also considering that the applicant had not provided a sufficient justification for the need for the control gates.

The rationale for the planning authority further information request is supported by the relevant policy framework of the development plan, the parent permission requirement for unrestricted access from Fassaugh Avenue (Condition 3 (d) of ABP305979-19 ), the ambiguity of the opening times requested by the applicant 'dusk to dawn' and the recommendation of the Transport Planning Division. The Transport Planning Division require that the pedestrian access gate be open to the public between 06.30 hrs and 22.20 hrs for the entirety of the year by reason of: *the proposed timings are vague and do not take into account access to local amenities existing and proposed*. I consider all of these considerations valid. I concur with the planning case officer in the restriction in the use of the control access gate and with the imposition of Condition 3 (a).

The appropriate wording of Condition 3 (a)

- 7.8. The applicant requested by way of the further information response that the gate be restricted to defined opening and closing times as follows: 07.00 hrs to 18.30 hrs / 18.31 hrs to 06.59 hrs. Hamilton Garden staff and residents would have access via fob access control when the gate was closed. The surrounding community would not have access from 18.31 hrs to 06.59 hrs to the northern end of 'Hamilton Walk' by reason of the closure of the gate restricting access from Fassaugh Avenue. The applicant request was supported by the claim that the majority of anti-social behaviour incidents occurred after 6.30pm.

The planning case officer rejected the applicant request on the grounds that the development would be closed off from its surrounding neighbourhood, which would inhibit surrounding community access to the neighbourhood centre, including the Aldi supermarket. The Aldi supermarket closes at 10 pm. The planning case officer concluded that the retention of the gate is acceptable subject to a condition, which requires the gates be open from 06.30 hrs until 22.30 hrs Sunday to Monday (inclusive) for the full calendar year. I do not concur with the planning case officer in the matter of opening times notwithstanding the considerable evidence base supporting the recommendation.

I consider that the Hamilton Garden residents would be exposed to a potential unreasonable level of dis-amenity in late autumn and in winter and early spring after day light hours arising from anti-social behaviour facilitated in part through access via the subject pedestrian gate given the current wording of the condition. This is supported by the evidence of anti-social incidents documented by the appellant to date in Appendix 2 of the appeal statement. However, I do concur with the case officer that access control for an undetermined time as originally requested by the applicant (dusk to dawn) would not be satisfactory.

I consider that a restriction on access based on summer and winter opening times would be optimum providing unrestricted access to the surrounding community to the neighbourhood centre within the Hamilton Gardens from Fassaugh Avenue in summer during daylight hours, including the playground at 'Observatory Square', and unfortunately restricting access in winter after daylight hours when the majority of

anti-social behaviour incidents happen or as requested by the appellant after 6.30 pm (18.30 hrs).

In this regard the opening time of Dublin City Council public parks is informative. Dublin City Parks Strategy 2019-2022 (Pg. 73) Section 4.5.1 states: Opening hours for enclosed parks are standard and respond to available daylight through the seasons, with shorter opening hours in the winter months and longer in the summer months. The seasonal closing times for Merrion Square Park in Dublin City centre are nuanced to provide a seasonal response closing between 17.00-17.30 in winter and between 21.00-22.00 in summer.

The standard seasonal closing times for public parks would represent a compromise between the request of the appellant to restrict access to between the hours 06.30 hrs to 18.30 hrs Monday to Sunday (inclusive) all year round and the existing Condition 2 (a) requirement to maintain the access until 22.30hrs Monday to Sunday (inclusive) all year round. In the instance of Hamilton Gardens, it is considered that the existing active security patrols employed by the management company can police seasonal gate closing times, which can be advertised at all access points to the Hamilton Gardens development.

The management of access to Dublin City Council enclosed parks is informative and is regulated by daylight through the seasons, with shorter opening hours in the winter months and longer in the summer months. I consider that the following access gate closing times aligned with daylight with reference to seasonality, the existing Condition 3 (a) wording and the amendment proposed by the appellant to restrict opening hours to 'Hamilton Walk' between hours 06.30 hrs to 18.30 hrs, Monday to Sunday (inclusive) all year round, would be desirable:

- October to March (inclusive) 18.30 hrs.
- April 20.30 hrs.
- May to August (inclusive) 10.00 hrs.
- September 20.30 hrs

Finally, it is noted that Condition 2 provides a timeline of 2 years for the retention of the subject pedestrian gate, which has a temporal conditionality and will be removed

2 years from the final grant of the retention permission subject to the circumstances prevailing at the time. It is considered that the removal of the gates would be desirable subject to prevailing circumstances.

- 7.9. In conclusion, the merits of greater permeability of the cityscape in terms of movement and social inclusion are not disputed. The planning objective of freedom and safe movement is supported by a comprehensive policy framework contained within the Dublin City Development Plan 2022-2028. It is considered that these policy objectives can be satisfied notwithstanding the introduction of limited controlled access arrangements at 'Hamilton Walk'.

The residents including residents of medium and high density developments require a reasonable level of residential amenity and protection from anti-social behaviours. It is further considered that an optimum restriction on the use of 'Hamilton Walk' through controlled access of the pedestrian gates at the Fassaugh Avenue entrance would both protect the residential amenity of the residents of Hamilton Gardens by restricting access after dark while providing permeability through the development principally during day light hours.

I consider that the following access gate closing times aligned with daylight with reference to seasonality, the existing Condition 3 (a) wording and, the amendment requested by the appellant to control access to 'Hamilton Walk' between 06.30 hrs to 18.30 hrs, Monday to Sunday (inclusive) all year round, would be desirable:

- October to March (inclusive) 18.30 hrs.
- April 20.30 hrs.
- May to August (inclusive) 10.00 hrs.
- September 20.30 hrs

#### 7.10. **Appropriate Assessment Screening**

The proposed development comprises retention of a pedestrian access gate and minor changes to boundary treatment in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

## 8.0 Recommendation

- 8.1. I recommend the amendment of the subject Condition 3 (a) having regard to the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to the grounds of appeal, including Appendix 2 (Anti-Social Incident report), the observations of third parties, my site visit, the zoning objective, which seeks to protect, provide and improve residential amenities, and the policy framework of the Dublin City Development Plan 2022-2028, it is considered that Condition 3 (a) should be amended to allow for restricted access after dark, thereby maintaining permeability through the site for the community of the wider area, particularly those accessing the site from Fassaugh Avenue, during daylight hours and fob access for residents at other times. Thus the proposed amendment would be in accordance with social inclusion and the safe active travel policy objectives of the Dublin City Development Plan 2022-2028, including policy objective QHSN21, CCUV39 and CCUV40 while protecting the residential amenities of the residents of Hamilton Gardens and, as such, would be consistent with the proper planning and sustainable development of the area.

## 10.0 Conditions

3(a)	<p>The pedestrian access gates shall be open and have unrestricted access all year round from Monday to Sunday (inclusive) between the hours of 06.30hrs and the seasonal listed closing times below, which shall be advertised at all access points to Hamilton Gardens:</p> <ul style="list-style-type: none"><li>- October to March (inclusive) 18.30 hrs.</li><li>- April 20.30 hrs.</li><li>- May to August (inclusive) 10.00 hrs.</li><li>- September 20.30 hrs</li></ul> <p><b>Reason:</b> To allow for ease of access to retail and other neighbourhood facilities operating on this site to the community of the wider area,</p>
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	particularly those accessing the site from Fassaugh Avenue and in the interests of the residential amenities of the residents of Hamilton Gardens.
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Anthony Abbott King  
Planning Inspector

15 December 2023