



An
Bord
Pleanála

Inspector's Report

ABP-319364-24

Development	Retention of works on open space lands
Location	90 Boot Road, Clondalkin, Dublin 22
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD24A/0010
Applicant(s)	Darren Dunne
Type of Application	Retention permission
Planning Authority Decision	Refusal for 2 no. reasons
Type of Appeal	First Party v. Refusal
Appellant(s)	Darren Dunne
Observer(s)	None
Date of Site Inspection	10 th May 2024
Inspector	Bernard Dee

1.0 Site Location and Description

- 1.1. The appeal site is located on a portion of a triangular-shaped green area to the immediate front (southwest) of existing property of 90 Boot Road, Clondalkin, Dublin 22. Boot Road is comprised of typical Council suburban housing with detached and short terraces of two storey houses with front gardens. In the case of Nos. 89 to 92 Boot Road (a terrace of 4 no. houses including the appellant property) there is a triangular open space area extending in front of these houses. There is insufficient room in the front garden areas of these houses to accommodate car parking and these houses front the green area directly, i.e. there is a footpath in front of this terrace but no carriageway.
- 1.2. The open space area is grassed but has no other planting other than some trees and there are several instances of owners of the houses to the south of the appeal site (on the eastern side of Boot Road) having paved over a separate green space to accommodate private car parking areas but the appeal site is one of two developments of this type in the block of 4 no. houses within which the appellant property is located. The other paved area to the north of the appeal site serves as a parking area for No. 89 Boot Road. There is a similar triangular area of open space to the south of the appeal site that does not have any incidences of having been paved over for private parking spaces.

2.0 Proposed Development

- 2.1. Retention permission is sought for a tarmac surfaced parking area to accommodate 2 no. cars (potentially 4 no. cars can be accommodated given the depth of the parking area) in front (to the west) of 90 Boot Road. The stated area of this space is 0.0083ha.
- 2.2. The appeal site is not in the ownership of the appellant but is the property of South Dublin County Council.

3.0 Planning Authority Decision

3.1. Decision

Permission for the development to be retained was refused on 8th March 2024 for 2 no. reasons.

1. Having regard to the nature and scale of the development to be retained, comprising an impermeable hardstanding area approximately 80sqm on previously grassed open space, it is the opinion of the Planning Authority that the development for retention would be contrary to the OS zoning objective of the subject site under the South Dublin County Development Plan (2022-2028), which seeks; 'To preserve and provide for open space and recreational amenities'. Separately, the impermeable (tarmac) finish of the development to be retained would not accord with the provisions of the current CDP regarding Sustainable Drainage Systems (SuDS), notably Policy GI4 seeks to 'Require the provision of Sustainable Drainage Systems (SuDS) in the County and maximise the amenity and biodiversity value of these systems', and GI4 Objective 1 seeks 'To limit surface water run-off from new developments through the use of Sustainable Drainage Systems (SuDS) using surface water and nature-based solutions and ensure that SuDS is integrated into all new development in the County and designed in accordance with South Dublin County Council's Sustainable Drainage Explanatory Design and Evaluation Guide, 2022'. Due to the extent and materiality of the hardstanding area to be retained, a grant of retention permission for the subject development would set an undesirable precedent for similar development which, in themselves and cumulatively, would be contrary to the provisions of the 2022-2028 CDP and to the proper planning and sustainable development of the area.

2. Having regard to the plans and particulars lodged with this application, the Planning Authority is not satisfied that the application has been made by a person who has sufficient legal estate or interest in the land subject to the application, or the approval of the local authority who has sufficient legal interest in said lands. In these circumstances, it is considered that the Planning Authority is precluded from granting permission for the development subject to retention under this application.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Planner's Report states that having regard to the zoning of the site as open space, and its existing use as a car parking area, the development for which retention is sought would not accord with the OS zoning objective of the subject site.
- Having regard to the fact that South Dublin County Council is the owner of the application site, the Planning Authority is not satisfied that the application has been made by a person who has sufficient legal estate or interest in the land subject to the application, nor with the approval of the local authority who has sufficient legal interest in said lands. In these circumstances, it is considered that the Planning Authority is precluded from granting retention permission for the development subject to this application.
- As per particulars submitted, the hardstanding area for retention comprises an impermeable (tarmac) finish, which would not accord with the provisions of the current CDP regarding Sustainable Drainage Systems (SuDS). The development to be retained would thus be contrary to the provisions of Policy GI4 and GI4 Objective 1.
- Due to the extent and materiality of the hardstanding area to be retained, it is the opinion of the Planning Authority that a grant of retention permission for the subject development would set an undesirable precedent for similar development which, in themselves and cumulatively, would be contrary to the provisions of the 2022-2028 CDP and to the proper planning and sustainable development of the area.
- Neither EIA nor AA is required in relation to the development for which retention is sought.

3.2.2. Other Technical Reports

- Water Services - no objections subject to conditions.

3.2.3. Prescribed Bodies

- None received.

3.2.4. Observations

- None received.

4.0 Planning History

4.1. On the Appeal Site

- Ref. S8848 – Enforcement Live File, Nature of Problem: Construction of dish of kerb and extension of driveway without planning permission.
Status: Warning Letter Issued.

4.2. In the Vicinity of the Site

- Ref. S01B/0353 – 104 Boot Road Inner, Clondalkin, Dublin 22. Provide car parking on green area in front. Decision: Grant permission.
- Ref. S01B/0352 – 102 Boot Road Inner, Clondalkin, Dublin 22. Provide car parking on green area in front. Decision: Grant permission.

5.0 Policy and Context

5.1. Development Plan

The South Dublin County Council Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is located and the following policies and objective in the plan are of relevance to this appeal.

- The appeal site is zoned 'OS' (open space), which seeks; 'To preserve and provide for open space and recreational amenities'. The subject of this appeal does not fall into any of the uses listed as 'Permitted in Principle' or 'Open to Consideration' under the 'OS' zoning objective.
- GI1 Objective 4: To require development to incorporate GI as an integral part of the design and layout concept for all development in the County including but not restricted to residential, commercial, and mixed use through the explicit identification of GI as part of a landscape plan, identifying environmental assets and including proposals which protect, manage, and enhance GI resources providing links to local and countywide GI networks.

- GI2 Objective 4: To integrate GI, and include areas to be managed for biodiversity, as an essential component of all new developments in accordance with the requirements set out in Chapter 12: Implementation and Monitoring and the policies and objectives of this chapter.
- Policy GI4: Require the provision of Sustainable Drainage Systems (SuDS) in the County and maximise the amenity and biodiversity value of these systems.
- GI4 Objective 1: To limit surface water run-off from new developments through the use of Sustainable Drainage Systems (SuDS) using surface water and nature-based solutions and ensure that SuDS is integrated into all new development in the County and designed in accordance with South Dublin County Council's Sustainable Drainage Explanatory Design and Evaluation Guide, 2022.
- Section 11.2.1 Sustainable Urban Drainage Systems (SuDS)- Policy IE3: Surface Water and Groundwater Manage surface water and protect and enhance ground and surface water quality to meet the requirements of the EU Water Framework Directive.
- Chapter 12 Implementation and Monitoring, Section 12.6.10 Public Open Space.

5.2. Natural Heritage Designations

The appeal site is not located in the vicinity of any natural Heritage designated sites.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity to any sensitive location, 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

The First Party puts forward the following planning grounds of appeal.

- There are several other instances of similar car parking spaces, some unauthorised, having been constructed in the vicinity of the appeal site – Nos. 89, 93, 94, 97, 99, 100, 101, 102 and 104 Boot Road – and the areas of these parking areas are tabulated for the Board's consideration.
- The car parking areas of Nos. 89, 93, 94, 97 and 102 Boot Road range from + 2m² to + 18m² in comparison with the area of the car parking for which retention permission is sought. These areas are also unauthorised and are similar in nature and scope to the appeal site.
- The car parking areas of Nos. 99 and 100 Boot Road combined is 13m² greater than the area of the car parking for which retention permission is sought.
- All of the car parking areas on Boot Road have been finished in a tarmac/concrete surface material and all on lands where the occupiers have no legal interest and the Local Authority in fact has legal interest in said lands.
- The tarmac/concrete surfacing does not impede surface water runoff and is not therefore contrary to SuDS requirements.
- Ref. S01B/0353 refers to a grant of permission for a similar parking area in front of 104 Boot Road where the Planner's Report noted that finding parking for residents in the area was problematic. A letter attached to this appeal shows that the Council was willing to cede legal interest of the open space area to the applicant in this instance.
- This off-street parking is safer than on-street parking and there are no traffic hazard issues relating to the use of the appeal site as a car parking area.
- The parking area as constructed does not interfere with underground utilities infrastructure in the vicinity of the appeal site.

6.2. Planning Authority Response

- The Planning Authority has responded that it confirms its decision in this case and that the issues raised in the appeal have been covered in the Chief Executive's Report.
- In the event of a grant of retention permission in this case, the Board should consider attaching a financial contribution condition.

6.3. Observations

- None received.

7.0 **Assessment**

7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The primary planning issue therefore is whether the car parking area for which retention is sought is an appropriate development at this location. The issue of AA Screening is also addressed in this assessment.

7.2. Car Parking

7.2.1. Firstly, I would comment that this is an unusual situation where an applicant for retention permission makes an application to the Planning Authority for a development on lands which the applicant has no legal interest in. Indeed, the subject site is in the ownership of South Dublin County Council to which the retention application was submitted. This case is even more unusual in that the application which did not have a letter of consent from the landowner to make the application was not invalidated upon receipt as per the requirements of Article 22(2)(g)(i) of the Planning and Development Regulations 2001 (as amended). This lack of a legal interest in the application site was noted in the Planner's Report on file but the application was processed normally and a decision to refuse retention permission was issued for 2 no. reasons.

- 7.2.2. As the Board has neither validation nor enforcement powers, these peculiar set of circumstances need not form part of the Board's consideration of this appeal but I felt that the Board should nevertheless be aware of the planning history of this case in the interests of the completeness of this report.
- 7.2.3. It is the appellants case that as there are multiple examples of parking areas constructed in Council owned and designated open space areas, either with planning permission or, as in the majority of cases cited, by means of unauthorised development, the present case should be treated positively by the Board having regard to the established precedent for similar development in the vicinity of the appeal site.
- 7.2.4. Having visited the appeal site I can confirm to the Board that there are indeed multiple cases on Boot Road of similar car parking spaces being constructed on open space areas in front of houses where the lack of space within the curtilage of the houses means that the provision of parking within the curtilage of the houses is not physically possible. The parking options therefore are on-street parking (unregulated) or the creation of parking areas, with or without planning permission, in the open space areas to the front of the existing houses.
- 7.2.5. While I have a good deal of sympathy with the residents of Boot Road and with the appellant in this particular case regarding the lack of parking provision within the curtilage of the houses on this estate, the appropriation by private individuals of public land without any legal interest in said land, or the consent of the actual land owner to carry out development on this land, the Planning Authority being the landowner in this case, the Board cannot be seen to condone such procedurally incorrect planning practice by a grant of retention permission in this instance.
- 7.2.6. Leaving aside the legalities attached to this case, the lands are zoned for open space purposes which does not permit car parking as a use that is either permitted in principle or open for consideration in the zoning matrix in the Development Plan. As such, the development for which retention is sought would be contrary to the zoning objectives of the Development Plan and should be refused for this reason.

- 7.2.7. In addition, the Development Plan contains policies and objectives which seek to protect biodiversity and green infrastructure which the development for which retention is sought, by virtue of the sterile use of tarmac finishing, is not in compliance with. The use of this impermeable material to surface the car park is also contrary to best practice and procedure with respect to SuDS.
- 7.2.8. I note also that other car parking areas referenced by the appellant have indeed occurred on open space areas to the front of these houses which could be classed as space left over after planning (SLOAP) with little amenity value for the residents of the area. In contrast, aside from the driveway (which is used for parking vehicles) to the north of the appeal site and which serves No. 89, there are no other instances of land being appropriated by private individuals for parking spaces from the large green open space area (effectively a green island) where the appellant has constructed a parking area. The same holds true for the large triangular green space to the south of the appeal site.
- 7.2.9. Finally, I would comment that while the appellant cites multiple examples of similar development in the vicinity of the appeal site as a supporting precedent for the retention of the car parking area which is the subject of this appeal, I would comment that the precedent in the area is undesirable and should not be reinforced by an additional permission for this type of development in the area.

7.3. AA Screening

- 7.3.1. Having regard to the relatively minor development for which retention is sought within an existing urban area, 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

I recommend that retention permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the South Dublin County Development Plan 2022-2028, and to the OS zoning objective of the appeal site, which seeks; 'to preserve and provide for open space and recreational amenities', the nature and scale of the development for which retention is sought, comprising an impermeable hardstanding car parking area of approximately 80sm² on previously grassed open space in public ownership, would be contrary to the policies and objectives of the statutory Development Plan, and would set an undesirable precedent for similar development in the area. The proposed development would, therefore, not be in accordance with the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Bernard Dee
Planning Inspector

13th May 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-319364-24		
Proposed Development Summary	Retention of car parking area in area zoned open space in the Development Plan		
Development Address	90 Boot Road, Clondalkin, Co. Dublin 22		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	√
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			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				Proceed to Q.4

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

Inspector: _____

Date: 13th May 2024

Bernard Dee