



An
Bord
Pleanála

Inspector's Report ABP-320801-24

Question

Whether a gated entrance (three metres in width) will be opened, joining the rear garden of Number 9 Kilbarrack Road and the lane, to facilitate access to the rear garden is or is not development or is or is not exempted development.

Location

9 Kilbarrack Road, Raheny, Dublin 5,
D05 VX00

Declaration

Planning Authority

Dublin City Council North

Planning Authority Reg. Ref.

0236/24

Applicant for Declaration

Stephanie Regan & Liam Scott

Planning Authority Decision

Is not exempted development

Referral

Referred by

Stephanie Regan & Liam Scott

Owner/ Occupier

Stephanie Scott & Liam Regan

Observer(s)

None

Date of Site Inspection

14/01/2025

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1. The subject site is located on the southwestern side of Kilbarrack Road in the north Dublin residential suburb of Raheny. The site comprises a detached dormer bungalow with garage to the side and a surfaced lane running to the east which provides access to a detached dwelling (no. 7 Kilbarrack Road).

2.0 The Question

- 2.1. Whether a gated entrance (3m in width) will be opened, joining the rear garden of no. 9 Kilbarrack Road and the lane to facilitate access to the rear garden is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 29th August 2024, the Planning Authority issued an order stating:

“The creation of a gate of 3m in width and 1.8m in height to the rear garden of no. 9 Kilbarrack under Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended and considering article 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended, a gateway to the rear garden of no. 9 Kilbarrack Road that is sufficiently wide to accommodate a vehicle entering and exiting the rear is not considered to constitute exempted dec as the works are considered to endanger public safety by reason of traffic hazard or obstruction of other road users. The Applicant is therefore advised that the exemption certificate is refused”.

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** creation of gate constitutes works under section 2(1) of the Act. As no height is given for the gate, cannot determine whether it falls within scope of Class 5 of Part 1 of Schedule 2. Exemption provided under article 9(1)(a)(ii) do not apply as laneway is not taken in charge. Without information on whether car parking would be provided on site, , cannot be determined whether limitation under article 9(1)(a)(iii) would apply. Applicant was requested to provide a scaled drawing of proposed gate.

- 3.2.2. Following a response to the above request, the **second planning report** notes that the proposed gate has a 1.8m height. The drawings submitted show that the laneway is in the applicants ownership and that a dwelling to the rear has access over the laneway. Recommendation that applicant be advised that 3mx1.8m gate is development and is not exempted development having regard to article 9(1)(a)(iii) as the works are considered to endanger public safety by reason of traffic hazard or obstruction of other road users.

4.0 Planning History

- 4.1.1. **ABP-319097-24:** Permission REFUSED for the demolition of garage and construction of a two-storey dwelling, one car parking space and a new vehicular entrance, for the following reasons:
- 1 The proposed development of an infill dwelling, which would sit substantially forward of the front building line of number 11 Kilbarrack Road, due to its proximity, scale and appearance would have a substantial and negative impact on the residential amenity of number 11 in terms of visual amenity, overbearance and overshadowing. Therefore the proposed development would be contrary to the proper planning and sustainable development of the area.
 - 2 The proposed development would, in its design, form and materials be a visually discordant, obtrusive and incongruous structure on the streetscape, would be out of character with the pattern of development in the area, would be out of character with the policies of the Dublin City Development Plan 2022-2028 relating to infill developments, and by the precedent established would seriously injure the residential amenities of the area. Therefore the proposed development would be contrary to the proper planning and sustainable development of the area.
- 4.1.2. **ABP-321170-24:** Currently before the Board, an appeal against the Planning Authority decision to refuse permission for the demolition of a garage, construction of house and all associated site works.

5.0 Policy Context

5.1. Dublin City Development Plan 2022-2028

- 5.1.1. The subject site is zoned Z1: Sustainable Residential Neighbourhoods in the 2022-2028 city Development Plan. Z1 lands have the stated objective to 'protect, provide and improve residential amenities'. Residential is a permissible use.

5.2. Natural Heritage Designations

- 5.2.1. None on the subject site.

6.0 The Referral

6.1. Referrer's Case

- Part of the referrers property includes a laneway over which two properties (5 and 7 Kilbarrack Road) have an easement. No. 5 has an easement to park in their front garden, no. 7 has right of access to their house.
- The Planning Authority reason for refusal refers to a traffic hazard to obstruction of other road users.
- Section 2(1) of the Planning and Development Act 2000, as amended defines a public road as one over which a public right of way exists.
- There is no public right of way over the laneway, the laneway is the referrers private property.
- The referrer has been advised that she is legally entitled to erect a gate to her private property, to protect her privacy provided that the two easements are not interfered with.
- The laneway is not a public road and so there are no 'other road users' other than those with an easement.
- The ground is not public space and members of the public are not entitled to enter without permission.
- Therefore the works cannot be considered to endanger public safety, nor constitute a traffic hazard nor an obstruction of other road users.
- There is a wall dividing two pieces of the referrers property, to the side of the house. Referrer has been advised that as the wall is within her property she is entitled to remove it.
- The Board is requested to review the decision of the City Council.

6.2. Planning Authority Response

6.2.1. None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**structure**" means any building, structure, excavation or other thing constructed or made on, in or under any land, or any part of a structure so defined and

(a) Where this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.

7.1.5. **Section 5(1):** If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

7.1.6. **Section 5(3)(a)** Where a declaration is issued under this section, any person issued with a declaration under subsection (2) (a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

- 7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. **Planning and Development Regulations, 2001**

- 7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development. Of relevance to the subject proposal:

- 7.2.2. “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

Article 9(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act, (a) if the carrying out of such development would, (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

7.2.3. **Class 5 of Part 1 of Schedule 2**

CLASS 5

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

8.0 **Assessment**

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

8.2. **Is or is not development**

- 8.2.1. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the creation of a gate of 3m in width is works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended.

8.3. **Is or is not exempted development**

- 8.3.1. The subject gate of 3m x 1.8m in height is within the curtilage of no. 9 Kilbarrack Road and as such is exempted development under Class 5 of Part 1 of Schedule 2 of the Regulations.

8.4. **Restrictions on exempted development**

- 8.4.1. The Planning Authority considered the subject gate to endanger public safety by reason of traffic hazard or the obstruction of other road users and as such was de-exempted under article 9(1)(a)(iii) of the Regulations.
- 8.4.2. The referrer submits that the laneway is not a public road as no public right of way exists over the laneway (only private easements) and as such article 9 does not apply.
- 8.4.3. The laneway may not be a public road but it is a *road*. I note section 2(1) of the Roads Act 1993 which defines as road as "(a) any street, lane, footpath, square, court, alley or passage". The subject road has 'users' and if they are obstructed by the subject development or if the works create a traffic hazard, then the works could not be considered exempted development as per to article 9(1)(a)(iii).
- 8.4.4. I note the gate in the laneway providing access to the front of no. 5 Kilbarrack and the gate providing access to no. 7. I consider the subject gate to no. 9 to be the same and see no reason why it would create a traffic hazard or obstruct any road users.

- 8.4.5. I consider the subject works do not fall under the restrictions provided for in article 9(1)(a)(iii) as no traffic hazard or obstruction of road users will arise from the creation of the subject gate. No other restrictions on development set out in Article 9(1)(a) of these Regulations apply in this instance.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether a gated entrance (3m in width) will be opened, joining the rear garden of no. 9 Kilbarrack Road and the lane to facilitate access to the rear garden is or is not development or is or is not exempted development:

AND WHEREAS Stephanie Regan & Liam Scott requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 29th day of August, 2016 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 12th day of September, 2024:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(e) Section 2(1) of the Roads Act 1993

AND WHEREAS An Bord Pleanála has concluded that a gated entrance (3m in width) joining the rear garden of no. 9 Kilbarrack Road and the lane to facilitate access to the rear garden is development and is exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that a gated entrance (3m in width), joining the rear garden of no. 9 Kilbarrack Road and the lane to facilitate access to the rear garden is development and is exempted development.

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.

Gillian Kane
Senior Planning Inspector

16 January 2025