



An
Coimisiún
Pleanála

Inspector's Report ABP-322602-25

Development	The development to be retained consists of an existing pedestrian access gate
Location	33 Pinewood Park, Rathfarnham, Dublin 14, D14XV29
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD25B/0130W
Applicant(s)	Kevin & Lesley Feeney
Type of Application	Retention Permission
Planning Authority Decision	Refuse Retention Permission
Type of Appeal	First Party vs Refusal
Appellant(s)	Kevin & Lesley Feeney
Observer(s)	Karen Crowe, Thomas Buckley and Lorraine Dowling
Date of Site Inspection	28 th August 2025
Inspector	David Freeland

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Appendix 1 – Form 1: EIA Pre-Screening		

1.0 Site Location and Description

- 1.1. The appeal site is located at No. 33 Pinewood Park, an established residential area predominantly consisting of two-storey semi-detached dwellings, c. 550m from the Ballyboden Road to the south-east and c. 750m to Butterfield Avenue to the north.
- 1.2. The subject site comprises a two-storey semi-detached dwelling with recent renovation and extension works comprising external insulation, a side and front two-storey extension, a rear single storey extension and works to the front entrance and driveway.
- 1.3. The dwelling has a pedestrian access to the side allowing access to the rear garden. The property has a relatively substantial rear garden (depth of c. 25m – 30m) of which the rear boundary adjoins Edenbrook Drive. The rear boundary comprises a blockwork wall (1.95m high) with an existing pedestrian entrance comprising a wooden gate (1.8m high) allowing access onto the public footpath on Edenbrook Drive.
- 1.4. There is an existing landscaped strip beyond the rear boundary of the subject site with a number of mature trees. At the time of the site visit, it was evident that the large trees and vegetation have relatively recently been pruned and thinned out with new vegetation planted at the base.
- 1.5. Informal car parking was observed to both Pinewood Park and Edenbrook Drive.

2.0 Proposed Development

- 2.1. The application is for retention of an existing pedestrian access gate within the rear boundary of the subject site which forms an access onto Edenbrook Drive.

3.0 Planning Authority Decision

3.1. Decision

Refuse Permission for the following reason:

1. The subject gate for retention would, if permitted, set an undesirable precedent for similar development in the immediate vicinity of the subject site leading to potential

traffic and public safety hazard, which would in themselves and cumulatively be harmful to the residential and visual amenities of the area, and would be contrary to the proper planning and sustainable development of the area

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report, is summarised as follows:

- The principle of the development was considered to be 'permitted in principle' subject to relevant provisions within the 2022-2028 South Dublin County Development Plan.
- The development to be retained would not adversely impact the amenities of adjacent properties or visual amenities of the area.
- The planner's report referenced the SDCC Roads Dept report which noted that the location of the gate was out of harm's way and does not create a public safety hazard and that the area outside the entrance was kept clear and there was no refuse/recycling bins left out.
- However, the Roads Dept noted the potential for 3no. pedestrian gates backing onto the cul-de-sac which would be of significant concern to the Road's Dept on the basis that, the area could be used for car parking for residents of Pinewood Park, it could result in an increase in traffic activity at this location which could create a public safety hazard on a quiet cul-de-sac and the area could be permanently used for bin storage.
- The Road's Dept recommended refusal based on the undesirable precedent the subject development would set for similar development in the immediate vicinity. The Planning authority concurred with the Road's Dept recommendation.
- The site is not located within a Green Infrastructure (GI) Corridor and the development will not result in a significant loss of any grassland or permeable surfaces.

- There is no requirement for appropriate assessment or environmental impact assessment.
- No reports were provided by Parks Department or relevant public realm dept or drainage departments. The planner's report did not address issues relating to the landscaped verge or legal interest.

3.2.2. Other Technical Reports

- Transportation Section: Refuse Permission

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Four third party observations were received objecting to the proposed development. The grounds of objection are similar to those raised in the appeal by the observers.

4.0 Planning History

SD24B/0222W: Planning Permission Granted for a development which included a single storey porch to the front, a two-storey extension to the side/front of the dwelling, a single storey extension to the rear, alterations to existing windows and installation of external insulation and the widening of the vehicular entrance.

The site visit clarified that the development permitted above has been subsequently constructed.

SD23B/0463: Planning Permission Granted for single storey extension to side and front of the dwelling, a single storey extension to the rear, alterations to existing windows, installation of external insulation and widening of existing vehicular entrance.

Enforcement History

Ref. S9444 – Active enforcement file opened 06/09/2024 in relation to the creation of a rear gate without planning permission.

5.0 Policy Context

5.1. South Dublin Development Plan 2022-2028

Zoning

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

5.2. Natural Heritage Designations

Not relevant.

5.3. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

5.4. Water Framework Directive

The subject site is located in an established residential area which adjoins the River Waterbody Owenadoher IE_EA_09O011700. The subject site is c. 355m from the River Waterbody.

The development proposed to be retained comprises a pedestrian gate within the rear boundary wall providing access onto Edenbrook Drive.

No water deterioration concerns were raised in the planning appeal.

I have assessed the development to be retained and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no

conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows:

- Nature of works e.g. small scale and nature of the development

Conclusion

I conclude that on the basis of objective information, that the development to be retained will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

6.0 The Appeal

6.1. Grounds of Appeal

A first party appeal has been submitted against the Planning Authority's decision to refuse permission. The main grounds of appeal are summarised as follows:

- The appellant explains that the pedestrian gate was installed following storm damage to the rear boundary wall, when a large tree beyond the site fell on the wall. In reconstructing the boundary, a pedestrian gate was included on the understanding that such works constituted exempted development under Class 5, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- It is contended that the Planning Authority's determination, in the issuing of a Warning Letter and Enforcement Notice is incorrect. The appellant disagrees that the restriction under Article 9(1)(a)(ii) applies to a pedestrian gate onto a public footpath.
- It is argued that Article 9(1)(a)(ii) is primarily concerned with vehicular access and traffic safety rather than pedestrian gates, and that "access" in this context refers to vehicular access. While the present appeal relates to permission rather than a section 5 declaration, the appellant considers this is directly relevant to the interpretation of the regulations.

- The application was lodged to regularise the situation arising from the enforcement notice.
- On the refusal reason relating to traffic hazard, the appellant notes that the Roads Department considered the gate to be out of harm's way and not a public safety issue. The gate opens inwards into the garden, does not obstruct the public footpath, and functions only for pedestrian/cycle access. Two off-street parking spaces are provided to the front of the property, with no intention of parking on Edenbrook Drive. Visitors use ample on-street parking along Pinewood Park. Bins are stored to the front and collected there; the gate is not intended to facilitate bin storage.
- It is further argued that day-to-day parking at the hammerhead is not generated by the occupants or visitors of the subject property. The appellant would support the introduction of yellow line markings at the hammerhead if the Roads Department deemed them appropriate.
- The appellant highlights that the Planning Authority's own reports acknowledged that the gate would not adversely affect the amenities of adjoining properties or the visual character of the area. They contend that neither the Planning nor Roads Departments raised objection to the gate when considered on its own merits, and that the refusal rested solely on precedent concerns.
- On precedent, the appellant argues that the gate is site-specific: it is located at the end of a public footpath, requiring no pedestrian movements across the carriageway. Reference is made to established Board practice that each case must be assessed on its merits and cannot be refused on the basis of potential future applications. Any subsequent proposals by adjoining properties would themselves require permission, as SDCC consider such works not exempted. Only two other properties (no. 31 and no. 35 Pinewood Park) could seek similar access.
- The appellant references a number of Board decisions where pedestrian gates to the rear of dwellings have been permitted.

- In response to issues raised by third party observations at application stage, the appellant submits that the location of the gate does not compromise residents' intentions to improve the landscaped strip at the hammerhead. It is also argued that the gate does not impact security in the area, nor does it affect access for emergency vehicles. It is further noted that, prior to recent pruning works, low-hanging branches of trees around the hammerhead were themselves a greater constraint on turning space than the presence of the gate.

6.2. Planning Authority Response

The planning authority confirmed its decision and that the issues raised in the appeal have been covered in the Chief Executive's Order.

6.3. Observations

Three observations (from residents of Edenbrook Drive) were submitted following the lodgement of the first party appeal. The main points raised are summarised as follows:

- The observers highlight that an Enforcement Notice issued to the appellant stated that the development was not exempted development and required the rear entrance use be ceased and the opening closed up. The observers suggest that the appellant ignored the Enforcement Notice and refused to seal the gate.
- A grant of permission for the pedestrian gate would set an undesirable precedent, as stated within the Planning Authority's reason for refusal. Observers contend that subsequent pedestrian gates are likely to be provided at nos. 31 and 35 Pinewood Park. It is argued that the cumulative effect would increase traffic congestion, compromise the hammerhead turning area and create safety hazards for road users and pedestrians.
- It is suggested that the pedestrian gate has potential for significant use beyond pedestrians, namely facilitating additional car parking for no. 33, bin storage, parcel deliveries, maintenance and for bicycle/scooter access.

- The gate reduces the available space for vehicles to turn within the cul-de-sac and could limit emergency vehicle access. Retention of the development and any subsequent gates would increase traffic movements at a point with restricted sightlines creating pedestrian and vehicular hazards. Observers note instances of the turning circle being obstructed by vehicles associated with the appellant. Observers highlight the use of the gate for purposes such as the delivery of a bouncy castle which was dragged through the landscaped strip despite alternative access to the front of the dwelling being available.
- Observers contend that the Planning Authority was correct to refuse permission and that both the planning authority and Roads Department would have been negligent had they not considered the implications of further pedestrian gates to neighbouring properties. They argue that the Planning Authority could not have restricted use of the gate by conditions, as such conditions are impossible to enforce.
- The area is intended for recreational purposes and it is argued that the gate is out of character involving the loss of open space and leaves the area vulnerable for further damage.
- A grant of permission would authorise access across SDCC owned and maintained communal open space. Observers note that no legal interest has been demonstrated for traversing the landscaped strip which they describe as a “biodiversity garden”. Funding for landscape works to the space had recently been provided by SDCC of which the residents undertook works following SDCC’s Notification of Decision to Refuse Permission.
- Observers dispute the comparability of examples referenced by the appellant. They suggest that the sites differ materially from the subject development. They reference a number of ABP referrals and appeal decisions where gates accessing public greens or wildlife corridors were determined not to be exempted development or not appropriate.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- The principle and nature of the development
- Impact on residential and visual amenities of the area
- Traffic Safety
- Other matters

7.2. The principle and nature of the development

7.3. The development proposed to be retained consists of a pedestrian gate within the rear boundary wall of no. 33 Pinewood Park providing access onto Edenbrook Drive. The gate opens onto a relatively narrow landscaped verge between the boundary wall and a public footpath. Based on the site inspection and historical Google Streetview imagery, the verge appears to have had limited maintenance until recent landscape works undertaken by residents with support of SDCC funding. While I acknowledge the landscape works undertaken to improve the appearance of the street, I am of the view that the space is residual in nature rather than a substantive area of meaningful public open space.

7.4. The appellant indicates that the pedestrian gate was installed alongside reconstruction of the boundary wall following storm damage on the understanding that such works constituted as exempted development under Class 5, Part 1, Schedule 2 of the Planning and Development Regulations (2001) as amended. The planning authority subsequently issued an Enforcement Notice on the basis that the development was not exempt under the conditions of Article 9(1)(a)(ii). While I acknowledge the extensive analysis undertaken by the appellant and observers relating to the interpretation of Article 9(1)(a)(ii), questions relating to exempted development are resolved under section 5 of the Act. The current appeal has been lodged under section 34 of the Act and shall be assessed on its planning merits.

- 7.5. The site is zoned 'Res' with the accompanying objective "To protect and/or improve residential amenity". Having regard to the location of the site within an established residential area and to the Residential zoning objective, I consider that the principle of a pedestrian access is acceptable subject to assessment regarding the impacts on the amenities of the area.
- 7.6. **Impact on residential and visual amenities of the area**
- 7.7. The access gate is wooden, 0.95m wide and 1.85m high. The site visit highlighted that on approach from the north, views are screened by its positioning and by the mature conifer trees. The gate is more prominent when viewed from the immediate east on the public footpath. Overall, I do not consider the pedestrian gate to be visually obtrusive or harmful to the character and visual amenity of the street.
- 7.8. The appellant contends that the location of the gate does not compromise resident's intention to improve the landscaped strip. This is strongly contested by the observers who highlighted concerns about the potential loss and further erosion of the landscaped strip in use as a biodiversity garden. The planning authority did not include any assessment of the impacts of the development on this space.
- 7.9. I acknowledge that residents have recently undertaken works to enhance the strip which is supported by SDCC funding and that this has improved the appearance of the cul-de-sac. However, I consider the potential area required for passage across the space to facilitate access to the pedestrian gate is limited and I do not consider that it undermines the wider qualities of the landscaped space and biodiversity function subject to normal care. I do not consider that the intensity of use associated with the pedestrian entrance would be likely to negatively impact the root systems of the mature conifer trees.
- 7.10. I note concerns relating to security. Considering the gate serves a single dwelling and is of a sufficient height in-keeping with other boundaries in the area, I consider, there is no significant loss of privacy or allows for excessive overlooking. I am satisfied that the development would not have any significant undue impacts on the residential amenities of the area.

7.11. Traffic Safety

7.12. I note that the constructed gate provides access onto the public footpath and does not require pedestrians to step directly into the carriageway. The gate opens inwards and is set-back from the public footpath thereby avoiding potential obstruction of the path. Further, no step has been provided to enable access. On this basis, I am of the view that development will not be a significant risk to pedestrian safety.

7.13. The observations have raised concerns that the turning head to the cul-de-sac could be used for car parking associated with the subject site or for deliveries and maintenance. The observers highlighted instances where maintenance vehicles were parked awkwardly to the turning head. While it is likely that cars or other vehicles may be parked on occasion gaining access to no. 33 via the pedestrian gate, I note that the front driveway comfortably provides for car parking of two cars and that there is ample informal car parking to Pinewood Park. I consider that there is no functional reason for permanent or long-term reliance on the turning head for parking. Occasional maintenance or delivery vehicles are not unusual in residential areas and in my view, would not result in a traffic hazard or obstruction to road users.

7.14. The SDCC planning authority and Roads Department noted that the existing pedestrian gate did not adversely impact the residential and visual amenities of the area and would not create a public safety hazard. However, concerns were raised about the potential precedent, particularly if the adjoining properties (no. 31 & 35) carried out similar. Having undertaken a site visit, I am satisfied that even if such gates were provided, they would most likely open onto the public footpath. I consider that the marginal increase in traffic movements such as periodic maintenance or servicing would be unlikely to generate a significant or prolonged obstruction or safety issues. With 14 dwellings to Edenbrook Drive, I consider the cumulative impacts of additional pedestrian entrances would be limited and I do not consider refusal on traffic safety grounds are justified.

7.15. Other Matters

7.16. Observers contend that no legal interest has been demonstrated for traversing the landscaped verge. The planning authority did not make any comment relating to the

pedestrian gate opening onto the landscaped strip and public footpath. Having regard to Section 34(13) of the Planning and Development Act, 2000, as amended, a grant of permission does not infer rights for anybody to carry out a development. Having regard to the scale of the development and general planning acceptability, I do not consider the Commission is precluded from a grant of permission. The developer must be certain under civil law that they have all necessary rights to exercise the grant of permission.

8.0 AA Screening

The development proposed to be retained comprises a pedestrian gate within the rear boundary wall providing access onto Edenbrook Drive. No nature conservation concerns were raised in the planning appeal.

Having considered the nature, small scale and location of the project, and taking account of the screening determination of the planning authority, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Appropriate Assessment, therefore, is not required.

9.0 Recommendation

I recommend that retention permission be granted for the pedestrian gate based on the below reasons and considerations and subject to the conditions hereunder.

10.0 Reasons and Considerations

Having regard to the scale of the development to be retained and the capacity of the road and pedestrian infrastructure adjoining the site, it is considered that the development proposed to be retained, subject to compliance with the conditions set out below, does not seriously injure the amenities of the area or of property in the vicinity, would not present a traffic safety hazard and would not conflict with the

objectives of the South Dublin County Development Plan 2022-2028. The development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained 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.

Reason: In the interest of clarity.

2. The pedestrian gate shall be inward opening.

Reason: In the interest of clarity.

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.

David Freeland
Planning Inspector

28th August 2025

Form 1 - EIA Pre-Screening

Case Reference		
Proposed Development Summary	The development to be retained consists of an existing pedestrian access gate	
Development Address	33 Pinewood Park, Rathfarnham, Dublin 14, D14XV29	
		In all cases check box blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)		<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
		<input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?		
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.		State the Class here <div style="border: 1px solid black; height: 40px; width: 100%;"></div>
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3		
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?		
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.		
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required		State the Class and state the relevant threshold <div style="border: 1px solid black; height: 40px; width: 100%;"></div>

<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	State the Class and state the relevant threshold
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4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____