

Inspector's Report ABP- 322724-25

Question

Whether a vehicular entrance gate, wooden fencing and decorative railing is or is not development or is or is not exempted development.

Location

73 Grosvenor Road, Dublin 6.

Declaration

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

0151/25.

Applicants for Declaration

Eugene and Amy Jane O'Reilly.

Planning Authority Decision

Not exempt from the requirement to obtain planning permission.

Referral

Referred by

Eugene and Amy Jane O'Reilly.

Owner/ Occupier

Eugene and Amy Jane O'Reilly.

Observer

Philip O'Reilly.

Date of Site Inspection

29 August 2025.

Inspector

B. Wyse.

1.0 Site Location and Description

- 1.1. No.73 Grosvenor Road is a substantial detached Victorian house on the southern side of the road. The property includes front and rear gardens. The front garden road side boundary comprises a red brick wall, with granite coping and metal railing above, and a central vehicular entrance with metal gates. The side boundaries include a granite wall and timber fence to No.74 and a granite wall to No.72.

2.0 The Question

- 2.1. The question put to the planning authority for a declaration was as follows:

Whether certain works carried out as part of the overall refurbishment works at 73 Grosvenor Road, Rathmines, Dublin 6 permitted under planning permission Ref. 3758/22 constitute development and, if so, are they exempted development.

The works in question comprise:

1. *Vehicle entrance gate with backing, as constructed.*
2. *Wooden fencing at part of side boundary of 73 Grosvenor Road with 74 Grosvenor Road.*
3. *Decorative railing on front boundary wall of 73 Grosvenor Road.*

- 2.2. The application documentation included a cover letter with photographs. The letter included:

- The works are very similar to those at other properties in the neighbourhood and improve the visual amenity of the area.
- The original gates contained a railhead design which was typical of the Victorian period. A welder was approached to find the closest possible railhead design currently available. Using traditional techniques, the patterns chosen faithfully replicate those found in the original Victorian gate.
- The railings are a complementary and consistent extension of the gate around the originally restored pillars, with the same design, colour and materials. They fall within the current planning permission as long as they 'incorporate the design and materials' of the previous railings, which is the case.

- The wooden fence at the side boundary with No.74 is a temporary measure until the shrubbery matures.
- The works that have been carried out are in all material respects in accordance with the planning permission Ref.3758/22. Any differences perceived are trivial or minor in nature.

It is noted that the photographs included are mainly of similar developments in the vicinity with only one partial view of the new entrance and gate and one of the new railing head.

3.0 Planning Authority Declaration

3.1. Declaration

The declaration reads as follows.

In pursuance of its functions under the Planning and Development Act 2000 (as amended), Dublin City Council has by order dated 13 May 2025 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended) for the following reason:

Having regard to Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended) and Part 1 of Schedule 2, the Planning and Development Regulations 2001, as amended, the Planning Authority has concluded that:

- (a) The provision of a vehicular entrance gate with backing, as constructed, wooden fencing as part of side boundary at 73 Grosvenor Road with 74 Grosvenor Road and a decorative railing on the front boundary wall at 73 Grosvenor Road is development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,*
- (b) The provision of a vehicular entrance gate with backing, as constructed, wooden fencing as part of side boundary at 73 Grosvenor Road with 74 Grosvenor Road and a decorative railing on the front boundary wall at 73 Grosvenor Road would not constitute exempted development, as they are not in accordance with the Conditions and Limitations under Class 5 of Part 2 of*

Schedule 1 of the Planning and development Regulations (2001, as amended) as they are forward of the front building line of the house and exceed 1.2m in height.

(c) And the abovementioned works were not shown in the drawings approved under the planning permission (Reg. Ref. 3758/22), and therefore fall outside the scope of the permission of Condition 1 and would not be in accordance with the submitted plans and particulars, contravening Condition 1 of the above-mentioned permission.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for planning authority decision. Includes:

- The vehicular gate, as constructed, replaced a previous pedestrian gate.
- Permission was granted for widening the vehicular gate to 3m. The approved drawings showed a widened entrance with the existing pillars relocated but did not show any gate.
- Condition 9 of the permission required the vehicular railings to incorporate the design and materials of the existing pedestrian railing.
- According to street view imagery the previous pedestrian gate comprised decorative railings with a pillar on either side.
- The new gate consists of decorative railings in the shape of an arch and backed with an unidentified material in black colour.
- It is noted that the residential conservation area zoning (Z2), to which the property is subject, does not have a statutory basis and exempted development operates as normal with no further restrictions.
- A gate could be provided as exempted development under Class 5 of Schedule 2 of Part 1 of the Regulations if the height did not exceed 1.2m. The elevational drawings provided with the original application show the gate pier as being 1.7m high and the total height of the gate exceeds this.

- The existing front boundary wall was previously shown as 1.3m high and the provision of railings above this would therefore not be exempted development.
- In both cases as the gate and railings were not shown on the approved drawings they would not be considered to be covered by Condition 1 of the permission.
- The wooden fencing is in excess of 1.2m in height and, therefore, would not be exempted development.
- The development is not a class for the purposes of Environmental Impact Assessment and does not require Appropriate Assessment.

4.0 Planning History

PA Ref. 3758/22

This is the recent (2022) permission for refurbishment and extensions to No.73. The application included the widening of the existing front access gate to 3m to allow vehicular access. The permission has been implemented.

Condition 8(i) specified that the driveway entrance be at most 3m in width and not have outward opening gates.

Condition 9 specified that *the proposed vehicular railings are to incorporate the design and materials of the existing pedestrian railing.*

5.0 Policy Context

5.1. Development Plan

Dublin City Development Plan 2022-2028

Zoning: Z2 – *to protect and/or improve the amenities of residential conservation areas.*

5.2. Natural Heritage Designations

None relevant.

6.0 The Referral

6.1. Referrer's Case

The main grounds include:

Backing to a Vehicular Entrance Gate

- Part 1, Schedule 2 of the Regulations exempts certain works to gates, fences, and walls within specified height limits provided they are not within an Architectural Conservation Area or associated with a Protected Structure. The property is not subject to either of these designations.
- Minor alterations to gates, such as applying a backing (for privacy, security or aesthetic purposes) generally constitute works of a minor nature.
- Such works typically do not materially affect the external appearance of the gate in a way that would render it inconsistent with the character of the structure or the area. Examples of similar gates in the area provided to illustrate this.
- By reference to Class 5, Schedule 2, Part 1 of the regulations it is clear that, while the exemption for a wall or fence within or bounding any garden or other space in front of a house is restricted to 1.2m, the exemption for a gate or railing is actually restricted to 2m.
- The gate complies fully with Condition 9 of planning permission PA Ref.3758/22 as the railings in the gate incorporate both the design and materials of the railings in the pedestrian gate which it replaced (photograph of original gate enclosed).

Temporary Wooden Fencing

- The wooden fence was needed temporarily in connection with works being carried out under permission PA Ref. 3758/22 and other exempted development works. This comes within the ambit of the exemption set out in Class 16, Part 1, Schedule 2 of the Regulations. The period within which the permitted and exempted works are being carried out has not yet expired.

- The intention to remove the fencing once all of the works are completed and the hedge matures reinforces its temporary and minor character.

Decorative Railing on Front Boundary

- The railings are a complementary and consistent extension of the gate around the originally restored pillars, with the same design, colour and materials, and fall within the current planning permission as long as they 'incorporate the design and materials' of the previous railings, which is the case. Examples of similar railings in the area provided to illustrate that the railings are a characteristic of the area.
- The front boundary wall has been in existence for more than a century. The decorative railing is a mere 50cms in height.
- By reference to Class 5, Schedule 2, Part 1 of the regulations it is clear that, while the exemption for a wall or fence within or bounding any garden or other space in front of a house is restricted to 1.2m, the exemption for a gate or railing is actually restricted to 2m.
- The height of the front wall and railings is less than 2m.

Conclusion

- The sheer scale of identical examples available in the direct locality evidences the fact that the works in question are minor and do not materially affect the external appearance or use of a structure so as to render it inconsistent with the character of the structure or the area.

6.2. Planning Authority Response

None received.

6.3. Observation

This is lodged by Phillip O'Reilly. The submission requests that the decision of the planning authority be upheld.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 2(1) *'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...*

Section 3(1)(a) *'development' means the carrying out of any works in, on, over or under land, or the making of any material change in the use of land or structures situated on land.*

Section 4(1) *The following shall be exempted development for the purposes of this Act –*

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

7.2. Planning and Development Regulations, 2001 (as amended)

Article 6(1) provides that, subject to Article 9, certain classes of development specified in column 1, Part 1 (Exempted Development – General), Schedule 2 shall be exempted development.

The relevant classes of development are:

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.

Conditions and Limitations

- 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.*

CLASS 16

The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

Conditions and Limitations

Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Article 9(1) provides that development to which article 6 relates shall not be exempted development;

(a) if the carrying out of such development would-

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

7.3. Previous Relevant Decisions

Database search – none identified.

8.0 Assessment

8.1. Introduction

- 8.1.1. The Commission is aware that the purpose of a referral is not to determine the acceptability or otherwise of the matter in question in respect of the proper planning and sustainable development of the area but rather to decide whether or not the matter constitutes development and, if so, falls within the scope of exempted development.
- 8.1.2. In this regard it will be noted that much of the referrer's submissions refer to the merits of the subject structures and the need for or purpose of them. I have minimised references to these at Section 6.1 above as they are not relevant considerations.
- 8.1.3. It will also be noted that the planning authority declaration includes a reference, at paragraph (c), to the matter of compliance with the planning permission. This is also an irrelevant consideration as the question of whether or not something is development and/or exempted development is completely separate to the question of compliance with a planning permission. Furthermore, a contravention of a Condition 1 of a permission can never be relevant [where the issue of contravening a condition might arise in the context of article 9(1)(a)(i) of the Regulations] as such an interpretation would effectively rule out almost all exemptions.

8.2. Is or is not development

- 8.2.1. There is no dispute in this case as to whether or not the gate, the wooden fence or the railing constitute development. All three items clearly fall within the definition of works, as per Section 2(1) of the Act, and, therefore, do constitute development.

8.3. Is or is not exempted development

- 8.3.1. Taking each item in turn my assessment here is as follows.

The Gate

- 8.3.2. The gate as erected is a metal railing type. It has a metal backing, giving it a solid appearance, with a series of decorative finials across the top. It is painted black. In the closed position it has an arched shape with the top of the arch at the centre. At this point the gate is approximately 2.1m high – base of the gate to the top of the highest finial. From the ground, allowing for a c.70mm gap at the bottom of the gate,

the maximum height is approximately 2.17m. The finials are approximately 190mm in length. If these were to be excluded the main structure or solid part of the gate would, even at its highest point, be less than 2m in height, either by reference to the gate structure itself or its maximum height above ground level. Given its arched shape the majority of the gate, with or without the finials, is less than 2m in height, noting that the gate pillars are in the region of 1.7-1.8m in height.

- 8.3.3. There is no possible exemption for the gate under the Act.
- 8.3.4. Contrary to the assertion of the planning authority the referrer is correct that the relevant threshold height under Class 5 of the Regulations for the gate is 2m (see Section 7.2 above). As outlined above the exceedance in this instance is due entirely to a small number of the decorative finials at the centre of the gate with the great majority of the gate structure, including finials for most of its width, would be less than 2m in height. I consider the exceedance in this case to be in the nature of *de minimis*, that is of little importance or significance, a concept not uncommonly referred to in the courts in planning cases. Substantively, therefore, I consider that the gate satisfies the height limitation of Class 5. It is not in the nature of palisade or a security fence so it also satisfies this limitation. The gate, therefore, falls within the scope of Class 5 and is exempted development.

The Wooden Fence

- 8.3.5. There is no possible exemption for the wooden fence under the Act.
- 8.3.6. The referrer argues that the wooden fence is temporary in nature and that the intention is to remove it once the planting along the verge matures. In this it is submitted that it should be considered under Class 16 of the Regulations, being works associated with the implementation of the planning permission for the refurbishment of the house and other exempted works.
- 8.3.7. In my view the fence as constructed has all the characteristics of a permanent boundary fence. It is of robust construction, has a painted/colour finish and features decorative finials over each post. I do not accept that it should be considered to fall within the scope of Class 16. In my view Class 5 is the relevant class.
- 8.3.8. Under Class 5 the relevant limitation in relation to the fence is a height restriction of 1.2m (see Section 7.2 above). Clearly the fence greatly exceeds this height. It does not, therefore, constitute exempted development.

The Railing

- 8.3.9. As the railing in this case is a relatively minor addition to the existing front boundary wall an argument could be made that Section 4(1)(h) of the Act applies. That is that the railing, comprising a c.500mm high relatively transparent addition to the wall, does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- 8.3.10. In the alternative the railing can be considered under Class 5 of the Regulations. Noting again that the wall already exists, and that the works in this instance are confined to the fixing of a railing to the top of the wall, the proper interpretation of Class 5 as it might apply to this case presents a few challenges. There seems to be two options. The first is to consider the railing as an alteration to the wall in which case the height limitation for the altered structure is 1.2m. This is clearly exceeded as even the existing wall is substantially higher than this. The second is to consider only the railing in which case the height limitation is 2m. The railing alone is clearly well below this. Even the combined height of the existing wall and the new railing, at approximately 1.7-1.8m, is well below this threshold.
- 8.3.11. In relation to the first option my reading of Class 5 is that the alteration to a wall as provided for envisages a substantive addition to a wall, most likely of additional blocks, stone, bricks or concrete, forming a solid structure that might obviously have potential impacts on neighbouring properties or on the public domain. Hence the height limitation of just 1.2m. This also applies in the case of fencing. In relation to the second option gates, gateways and railings are dealt with differently, presumably given the usual nature of their construction, being much lighter and much less likely to give rise to significant impacts on neighbouring properties or the public domain. Hence the height limitation is raised to 2m.
- 8.3.12. While perhaps not an exact fit I consider that the second option provides a better context for considering the railing in this case under Class 5. Noting that the wall itself in this case is not being altered or raised and that the overall height of the new railing above ground level is well below the 2m height limit, I consider that the railing satisfies the height limitation. It is not in the nature of palisade or a security fence so

it also satisfies this limitation. The railing, therefore, falls within the scope of Class 5 and is exempted development.

- 8.3.13. In this instance, I consider the Class 5 route of assessment to be preferable to pursuing the possibility that Section 4(1)(h) might apply.

8.4. Restrictions on exempted development

- 8.4.1. As the wooden fence is not exempted development it need not be considered further.
- 8.4.2. In relation to the gate and railing the only possibly relevant restrictions arise from Article 9(1)(a)(i) of the Regulations, relating to contravention of a condition of a permission and Article 9(1)(a)(viiB) and (c) of the Regulations relating to requirements for appropriate assessment (AA) or environmental impact assessment (EIA).
- 8.4.3. Condition 9 of planning permission PA Ref. 3758/22 specified that the proposed vehicular railings are to incorporate the design and materials of the existing pedestrian railing. Although difficult to interpret exactly the meaning of 'vehicular railings' I take it to refer to any new vehicular gate. The referral submission includes a photograph of the original pedestrian gate and I am satisfied that the new gate could not reasonably be held to contravene the terms of the condition. The new railing does not contravene any relevant condition of the permission.
- 8.4.4. Neither the gate nor the railing constitute a class of development 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 so no requirement for EIA or EIA screening can arise (See Form 1 below). Given the very minor nature of the works involved and the location within an established urban area there is no conceivable basis to consider that AA could be required.

8.5. Conclusion

- 8.5.1. I conclude that the gate and the railing are exempted developments and that the wooden fence is not exempted development.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether; (1) vehicular entrance gate with backing; (2) wooden fencing; and (3) decorative railing, all at 73 Grosvenor Road, Rathmines, Dublin 6 is or is not development or is or is not exempted development:

AND WHEREAS Eugene and Amy Jane O'Reilly requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 13th day of May, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Eugene and Amy Jane O'Reilly referred this declaration for review to An Coimisiun Pleanála on the 6th day of June, 2025:

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 5 and 16, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site,
- (e) the report of the planning inspector;

AND WHEREAS An Coimisiun Pleanála has concluded that:

- (a) The gate, the wooden fence and the railing are works that constitute development.
- (b) The gate and decorative railing fall within the scope of Class 5, Part 1, Schedule 2 of the Regulations.
- (c) The wooden fence is not a temporary structure and, therefore, does not fall within the scope of Class 16, Part 1, Schedule 2 of the Regulations,
- (d) The wooden fence falls to be considered under Class 5 of the Regulations. Being in excess of 1.2m in height it does not satisfy all of the conditions and limitations of this class and, therefore, does not fall within its scope.
- (e) There are no restrictions on exempted development that apply to the gate and the railing.

NOW THEREFORE An Coimisiun Pleanála, in exercise of the powers conferred on it by section 5 (3)(a) of the 2000 Act, hereby decides as follows:

- (1) The vehicular entrance gate with backing and the decorative railing are development and are exempted development.
- (2) The wooden fence is development and is not exempted development.

B. Wyse
Planning Inspector

3 September 2025

Form 1 - EIA Pre-Screening

Case Reference	322724
Proposed Development Summary	Vehicular gate, decorative railing and wooden fence.
Development Address	73 Grosvenor Road, Dublin 6
	In all cases check box /or leave 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 <u>Part 1</u>, 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
<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	If a development is not a Class –

<p>prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	<p>State the Class and state the relevant threshold</p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>State the Class and state the relevant threshold</p>

<p>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)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>

No <input type="checkbox"/> <input checked="" type="checkbox"/>	Pre-screening conclusion remains as above (Q1 to Q3)
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