

Inspector's Report ACP-322948-25

Development Change of use to public open space,

construction of gate and railing with all

associated site works

Location Site circa 0.0235 ha, 1-3 Station Road

and 136-137 Drumnigh Wood,

Portmarnock, Co. Dublin.

Planning Authority Fingal County Council

Planning Authority Reg. Ref. F25A/0320E

Applicant(s) Ballymore Portmarnock Limited

Type of Application Permission

Planning Authority Decision Grant Permission

Type of Appeal First Party v Conditions

Appellant(s) Ballymore Portmarnock Limited

Observer(s) Michelle Allen

Date of Site Inspection 26/9/25

Inspector Ronan Murphy

1.0 Site Location and Description

- 1.1. The site is located on the northeastern boundary of Drumnigh Wood and the southwestern boundary of Station Walk.
- 1.2. The appeal site has a stated area of 0.023ha and has a polygonal in shape and currently comprises of a utility services cabinet within the Drumnigh Wood area of the site and a fenced area of open space which is adjacent to No.28 Station Walk on the Station Walk part of the site.
- 1.3. The site is bounded to the east by Portmarnock train station, by Station Walk to the north, by No.28 Station Walk to the west and to the south by Drumnigh Wood.

2.0 **Proposed Development**

- 2.1. The proposed development comprises of the following:
 - Revisions to Approved Development 1-3 Station Road Reg Ref F21A/0378
 Condition 6(e), change of use to Public Open Space adjoining no. 28 Station
 Walk at the southeast corner of the Approved Development.
 - Proposed Pedestrian Gate and Railings, 2.4m high at Northeast Boundary to Cul De Sac between house no's 136 and 137 Drumnigh Wood.
 - Pedestrian access/egress through No's 1-3 Station Road, Portmarnock, including all ancillary site works.

3.0 Planning Authority Decision

3.1. **Decision**

- 3.1.1 By order dated 6th June 2025 the planning authority decided to grant planning permission, subject to 7 conditions. Condition 2 required the following:
 - 2) The development shall be amended as followed:

- a. The proposed gates at both ends of the proposed path and the proposed timber/concrete boundary fence at the Drumnigh Wood/Station Walk boundary shall be omitted.
- b. Prior to commencement of development, revised plans and drawings at an appropriate scale shall be submitted for written agreement of the Planning Authority, detailing boundary details including railings instead of fencing to the Drumnigh Wood/Station Walk boundary, and the use of bollards or alternative proposals to allow universal pedestrian/active travel and maintenance/wayleave access, while restricting unauthorised vehicular access.

REASON: In the interest of accessibility and residential amenity.

3.2 Planning Authority Reports

- 3.2.1 Planning Reports
- 3.2.1.1 There is one area planners report on file dated 5th June 2025. The area planners report assesses the application in terms of the principle of development, compliance with the County Development Plan, Parks and Landscaping, Water and Drainage, EIAR and Appropriate Assessment.
- 3.2.1.2 The area planners report notes the Development Plan provides strong support for permeability and the opening of new pedestrian / active travel links between residential areas. The proposed link would improve connectivity and permeability between Drumnigh Wood, the adjoining Station Walk Estate and the rest of Portmarnock.
- 3.2.1.3 The previous application for a pedestrian gate was refused permission on the basis that it would contravene condition 6(e) of Reg. Ref. F21A/0378. This condition required the area of open space in the Station Walk Estate to be reserved for private amenity space. The applicant proposes to amend this condition and designate the grassed area as public open space which would address the previous reason for refusal.
- 3.2.1.4 It is noted that the Parks and Green Infrastructure Section recommends that the fencing and gates should be omitted but the bollards or other traffic measures may be considered to prevent vehicular access.
- 3.2.1.5 The area planners report concludes that the proposed development would promote safe and active travel, permeability in line with Development Plan policy. However, full

accessibility measures to protect residential privacy and amenity could be secured through conditions.

3.1.1. Other Technical Reports

Parks and Green Infrastructure Section: Report dated 13/5/25. No objection subject to conditions including that the no fencing or gates are provided in relation to the pedestrian access.

Transportation Planning Section: Report dated 19/5/25 outlining no objection, subject to conditions. The report recommends that pedestrian connectivity should not have lockable gates and should be permanently open to the public in order to provide permanent accessible connectivity.

Water Services Department: Report dated 19/5/25 outlining no objection, subject to conditions.

3.2. Prescribed Bodies

larnród Eireann: Response dated 1/5/25 outlining no objection, subject to conditions.

4.0 **Planning History**

4.1 There are a number of planning applications for the surrounding area and the most pertinent to the proposed development are set out below:

F24A/0372 (**Previous application**). Application for proposed Pedestrian Gate and Railing 2.4m high at Northeast Boundary to Cul De Sac between house no's 136,137 Drumnigh Wood and pedestrian access/egress through No's 1-3 Station Road, Portmarnock Development currently under construction reg ref F21A/0378 onto Station Road, Portmarnock, Co Dublin including all ancillary site works. Permission refused for the following reason:

1. The proposed pedestrian access would open onto land reserved for the private amenity space of no. 28 Station Walk, Portmarnock, and as a result would

contravene materially a condition attached to an existing permission for development, Condition 6 (e) of the grant of permission ref. F21A/0378.

F21A/ 0378 (Parent Permission- Station Walk). Application for the demolition of the existing no. 3 Station Road (a habitable house) and associated garages and outhouses and the development of 59 dwellings with access from Station Road. Condition 6 (e) required that:

6 (e) The southeast corner open space to be incorporated into the private open space of the proposed adjoining dwelling, in order to minimise anti-social behaviour. A 1.2m high metal railing/gate finished black in colour to be installed along the front boundary (to facilitate any utility wayleave access)

Reg. Ref. F04A/1089 (Parent permission-Drumnigh Wood). Application for phase three of an overall development to consist of the construction of 91 no. houses in total, including garages, parking spaces, internal road network with footpaths, pumping station and landscaped, open space foul and surface water drainage.

5.0 Policy Context

5.1 Development Plan

- 5.1.1 The *Fingal County Development Plan 2023-2029* is the operative plan for the area. The appeal site is within the RS (Residential).
- 5.1.2 Relevant policies and objectives include:

CMP1: Which seeks to Support the decarbonisation of motorised transport and facilitate modal shift to walking, cycling and public transport and taking account of National and Regional policy and guidance, while supporting an efficient and effective transport system

CMP14: Which seeks to ensure that all pedestrian entrances are opened as soon as any new development is occupied where feasible and seek opportunities to improve permeability in existing developed areas in accordance with NTA's Permeability Best Practice Guide.

CMO6: Which seeks to maintain and improve the pedestrian and cyclist environment and promote the development of a network of pedestrian/cycle routes which link residential areas with schools, employment, recreational destinations, and public transport stops.

CMO19: Which seeks to support and facilitate improvements to the pedestrian and cycle network and public realm that prioritise the removal of barriers to active movement, to improve connectivity and permeability and optimise accessibility for all users.

CIOSO51: Which seeks to ensure permeability and connections between public open spaces including connections between new and existing spaces, in consultation with residents.

DMSO30: Prohibit proposals that would create a gated community for any new residential developments.

Design Manual for Urban Roads and Streets (DMURS). This document seeks to put well-designed streets at the heart of sustainable communities and supports boarder government policies on the environment, planning and transportation.

Active Travel Strategy for Fingal. This strategy details ambitions to increase the number of people choosing Active Travel for everyday short journeys and sets out a wide array of infrastructure and initiatives designed to support that goal.

5.2 Natural Heritage Designations

- 5.2.1 There are no designated sites in the immediate vicinity of the appeal site. The closest sites are the Baldoyle Bay SAC (Site Code: 000199) and the Baldoyle Bay SPA (Site code: 000199) which are 570m to the east of the site.
- 5.2.2 In addition to this, the appeal site is located c. 480m to the south of the Sluice River Marsh pNHA (Site Code: 001763) and c. 570m to the east of the Baldoyle Bay pNHA (Site Code 000199).
- 5.2.3 There is no connection to any European (Natura 2000) sites and no pathways.

5.3 EIA Screening

5.3.1 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.

6 The Appeal

- 6.1 A first party appeal against condition 2 has been lodged by Downey Chartered Town Planners on behalf of Ballymore Portmarnock Limited. The grounds of appeal can be summarised as follows:
 - The applicant welcomes the Notification of Decision to Grant Planning Permission; however, it is respectfully submitted hat condition 2 be omitted to allow for the inclusion of the required gates to maintain the legal covenant of Drumnigh Wood and maintain the residential amenity and right to privacy of the residents of the estate.
 - The Planning Department unknowingly attached Condition No.2, and this contravenes the legal rights of the existing estate by conditioning the omission of the gates on the boundary of the two estates. The gate would be operated by the estates' resident's association or management company allowing privacy and security to be preserved by the residents of Drumnigh Wood. The management company requires the gate in terms of their agreement.
 - Drumnigh Wood has been established for over 20 years and as such is not a new residential development. Therefore, Objective DMSO30 does not apply.
 - There is an existing barrier between Drumnigh Wood, and the proposal would provide improved permeability for residents to safely access Portmarnock Train Station. Residents must go out onto the main road travel north and then turn east onto Station Road in order to get to the train station. This is a 1.44km distance which would be reduce to 447m.
 - The proposal would improve the permeability of two housing estates and improve the access of Drumnigh Wood to the train station.

- Under Section 5.5.6.1 the legibility of the path would only be navigable for those in Drumnigh Wood and by design already precludes due to its lack of visibility from Station Road.
- This connection between the two communities has not been indicated as part
 of the wider greenway and therefore will have little impact on the existing or
 future recreational uses other than those of Drumnigh Wood.
- The community has shown they need and support the construction of the gates
 to connect and create a more permeable route to the local train station.
 However, the legal requirement that forms part of the houses of Drumnigh
 Wood means that the provision of a fully open connection is not legally possible.
- The options are to facilitate the proposed development as applied for or not implement the permission in light of the legal covenant.
- The recent active travel strategy includes that 'a gate in a fence can make it easier for pedestrians and cyclists to move through an area (making an area more permeable.
- The residents of Drumnigh Wood are required to be part of the Management Company and all maintenance and security is the responsibility of Management Company. The provision of an open link would contravene this.
- Section 3.16 of the OPR Practice Note PNO3-Planning Conditions states that there is no provision for the imposition of a condition which would require landowners to allow other parties access through their private lands.
- There would no advantage in the distance travelled for people outside
 Drumnigh Wood and the gate would not encourage surrounding residents to use this new connection for its intended purpose.
- The substitution for metal railings would allow for more visual integration with adjacent areas reducing exclusionary visual aspects of the area and would allow for clear sightlines. Metal railings would be more durable and less likely to be vandalised.

6.2 Planning Authority Response

- 6.2.1 A response from the Planning Authority was received on 29th July 2025 and states that the Planning Authority concluded that the proposed pedestrian gate would be hugely beneficial to the area and would enhance pedestrian access, safety and permeability and would be strongly supported by Development Plan policies and objectives, particularly policy CMP14 and Objectives CMO6, CMO19 and CISO51.
- 6.2.2 Condition 2 is necessary due to the requirements of Objectives CMO19 and DMSO30 of the Development Plan which strongly presumes against gated developments. While it is acknowledged that Drumnigh Wood is already gated, Objective CMO19 supports the removal of barriers to active movement and ties connectivity and permeability to universal access. The construction of a restricted-access gate would therefore contravene Objective CMO19 and therefore Condition 2 is necessary.
- 6.2.3 While the Planning Authority acknowledges that a legal covenant is in place, it does not consider this to be a planning matter within the scope of the proper planning and sustainable development of the County. The Planning Authority does not consider there to be any recent precedent within the county for a restricted access gate, the application cited by the applicant (Reg. Ref. F18A/0390) did not propose gates.
- 6.2.4 An Coimisiún Pleanála is requested to uphold the decision of the planning authority and if permission is granted then a condition requiring financial conditions should be applied.

6.3 Observations

- 6.3.1 A third party response has been received from Michelle Allen. The observation can be summarised as follows:
 - Full endorsement to the appeal made by Ballymore regarding condition 2. The
 application is for one gate placed at the current fenced boundary between
 Drumnigh Wood and the Station Road Estate and not two as referenced by the
 planning authority.
 - The provision of one boundary gate was discussed with Fingal County Council at a meeting prior to the submission of the joint application.

- The proposed pedestrian gate will deliver economic, environmental, personal safety and health benefits to everyone of the residents of Drumnigh Wood, as the junction between Drumnigh Road and Station Road has not been upgraded since the estate was built. The footpath on Drumnigh Road is not suitable for wheelchairs and buggies and the lighting is poor. There no bus route passing near the front of the estate and so the DART is the closest public transport.
- The benefits of direct access to the DART station were supported by the recent planning approval, apart form the gate. The original planning application in 2001 was prior to policy changes regarding gated estates. Drumnigh Wood was built as a private development, and the current property management policy was put in place. All residents are legally bound to adhere to the property management policy including all costs associated with the maintenance, insurance, landscaping, lighting, road repairs, CCTV, and current security arrangements.
- The application seeks to change the form of the existing barrier to allow residents of Drumnigh Wood to safely access Station Road and improve permeability. Drumnigh Wood residents have agreed to pay 100% of the costs to install and maintain the gate and pathway. This application is to remove the current barrier and replace it with a gate.
- The proposal would benefit all residents of Drumnigh Wood and especially a number of children and adults with physical disabilities, some of whom need the use of wheelchairs, whose lives would be significantly improved by providing access and give a level of independence.
- Complete removal of the barrier would require residents' legal endorsement, this would not be a simple as a verbal agreement and would require changes to the conveyancing of each house within the estate and would require 100% endorsement which would be highly improbable. This would also take many years and significant expense before any work could be started.
- An Bord Pleanála in appeal against F05A/1827 stated that the installation of a
 gate 'may lead to the gating and restricting access to this residential area and
 that contains an area of zoned public open space. The proposed development
 would be contrary to this zoning and would be detrimental to the residential
 amenities of the adjacent properties by restricting accesses. In this case, the

intent is not to install new barrier but to replace and already fixed permanent barrier with a gate, thus improving access to vital public services, including the DART station via a bridge over the tracks.

- There is no need for pedestrian traffic to go through Drumnigh Wood as there is no public transport connectivity from Drumnigh Road.
- It is highly unlikely that nothing will happen i.e., no access will ever be installed.
 The benefit of open access might be outweighed by the human cost of the
 debate, the potential fallout, and the legal costs they would come with seeking
 access without a gate.

6.4 Further Responses

6.4.1 There are no further responses on file.

7 Assessment

7.1 Thie appeal relates to a first party appeal against condition 2 (a) and (b) only. I consider that there are no other planning issues raised in the application, other than the said condition, and I recommend that the Coimisiún consider the appeal under section 139 of the Planning and Development Acts 2000, as amended, and confine its consideration to the matters raised in the appeal. The condition which is the subject of the appeal is assessed below.

Condition 2(a)

- 7.2 The first party appeal and the third-party observation note that the proposal would improve permeability for residents to safely access Portmarnock Train Station and would reduce the distance Portmarnock Train Station from 1.44km to 447m. It is further noted that the proposed pedestrian gate will deliver economic, environmental, personal safety and health benefits to the residents of Drumnigh Wood. However, there are concerns that a gate with uncontrolled access would be contrary to an existing legal covenant which means that the provision of a fully open connection is not legally possible.
- 7.3 The Planning Authority broadly supports the proposed pedestrian gate which would be hugely beneficial to the area and would enhance pedestrian access, safety and

permeability and would be strongly supported by Development Plan policies and objectives, particularly policy CMP14 and Objectives CMO6, CMO19 and CISO51. However, the proposal would not comply with Objective CMO19 which supports the removal of barriers to active movement.

7.4 While all parties agree with the benefits of the enhanced pedestrian access at this location, the need for a restricted access gate is disputed.

Gated community

7.5 Drumnigh Wood is an established residential development and is already a gated community, which includes a manned security building proximate to the entrance to the development from Drumnigh Road. In my opinion, given the existing gated status of Drumnigh Wood, the provisions of Objective DMSO30 do not apply to the proposed development.

Permeability / Universal Access

- 7.6 The principles of permeability and universal access are set out in the *Fingal County Development Plan 2023-2029*. In this regard, Section 6.5.6.6 states that the development plan seeks to ensure that all development areas are permeable for pedestrians and cyclists and opportunities and to improve permeability for these modes in existing developed areas will be sought. In addition to this, Objective CMO19 requires the improvements to the pedestrian and cycle network and public realm that prioritise the removal of barriers to active movement, to improve connectivity and permeability and optimise accessibility for all users.
- 7.7 In addition to this, design principle 1 of the Design Manual for Urban Roads and Streets (DMURS), 2019 seeks "To support the creation of integrated street networks which promote higher levels of permeability and legibility for all users, and in particular more sustainable forms of transport." Section 3.3.3 (Retrofitting) of DMURS also recognises that sustainable travel can be supported through retrofitting and requires that local authorities prepare plans to retrofit areas in order to create more sustainable neighbourhoods. It is stated that well placed links can lead to substantial benefits for the local community in terms of reducing walking distances to essential services. It also highlights that research has found that increased local movement is also beneficial to security as it can increase levels of passive surveillance.

- 7.8 Further to this the Active Travel Strategy for Fingal states that at neighbourhood level, small alterations to the local environment can make it easier for pedestrians and cyclists to move through an area (making an area more permeable); for example traffic filters which limit street access to different types of vehicle, a gate in a fence or gap in a wall, and a footbridge over a stream. These changes can be made quickly and can often extend walking and cycling networks at low cost.
- 7.9 At present, there is a permanent barrier in the form of a wooden fence between Drumnigh Wood and the Station Walk. This situation is unsatisfactory from a permeability perspective and is an outcome which is not supported by the *Fingal County Development Plan 2023-2029*, DMURS or the Active Travel Strategy for Fingal. In my opinion, the inclusion of a pedestrian access at this location would improve the permeability of the site and improve accessibility to the train station and other commercial developments along Station Road for the residents of Drumnigh Wood.
- 7.10 Notwithstanding this, I note that the application seeks permission for a restricted access pedestrian gate and railings. Access through the gate would be controlled by estate's residents' association or management company of Drumnigh Wood.
- 7.11 I acknowledge that Drumnigh Wood is currently a gated community, and I have considered the comments set out in the first party appeal and the third-party observation with respect to the need for a restricted access gate. However, on balance and having regard to the provisions of the *Fingal County Development Plan 2023-2029*, and the Design Manual for Urban Roads and Streets (DMURS), 2019, I am of the opinion that a restricted pedestrian gate at this location would prevent the free movement of pedestrians and as such would not comply with Objective CMO19 which seeks to improve permeability and prioritise the removal of barriers to active movement. A restricted access gate therefore would not in keeping with the proper planning and sustainable development of Drumnigh Wood or the surrounding area.
- 7.12 Having considered all the forgoing, I am satisfied that Condition 2(a) should be retained as it achieves a reasonable balance between compliance with the *Fingal County Development Plan 2023-2029* with respect to permeability and the proper planning and sustainable development of the area.

Legal Covenant

- 7.13 The first party appeal and the third-party observation both outline concerns that the provision of an open link would contravene the covenant which requires the members of the Management Company for Drumnigh Wood (all of the homeowners) to maintain the security of the estate.
- 7.14 While I acknowledge this, in my opinion, restrictive covenants or other private legal agreements on land are not planning considerations. They are private law matters, which are enforceable between parties, usually in the civil courts. I would also note that the granting of planning permission does not remove the need to comply with other laws.

Condition 2(b)

- 7.15 Condition 2(b) requires that prior to the commencement of development, revised plans be submitted to the planning authority which show boundary details including railings instead of fencing to the Drumnigh Wood / Station Walk boundary and the use of bollards or alternative proposals to allow universal pedestrian / active travel while restricting unauthorised vehicular access.
- 7.16 The first-party appeal states that the applicant is happy for a condition to be applied to a grant of permission that would require the wooden panel fence to be replaced with a metal rail, subject to agreement with the Planning Authority.
- 7.17 I refer the Coimisiún to drawing No. 23-16-PA2-04 'Proposed Detail Site Plan/ Elevations' which details the elevations of the proposed timber / concrete boundary fence. While this is an improvement from the existing wooden fence between Drumnigh Wood and the Station Walk, in my opinion railings as envisaged in Condition 2(b) would be a more suitable option and would provide for enhanced passive surveillance while not impacting on the residential amenity of the area. In my opinion, Condition 2(b) should be retained in the interests of passive surveillance and the residential amenity of the area.

8 AA Screening

8.1 I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The proposed development is

- located within an existing residential development in Portmarnock, Co. Dublin. The proposal comprises of the change of use to public open space, construction of gate and railing with all associated site works.
- 8.2 There are no designated sites in the immediate vicinity of the appeal site. The closest sites are the Baldoyle Bay SAC (Site Code: 000199) and the Baldoyle Bay SPA (Site code: 000199) which are 570m to the east of the site. In addition to this, the appeal site is located c. 480m to the south of the Sluice River Marsh pNHA (Site Code: 001763) and c. 570m to the east of the Baldoyle Bay pNHA (Site Code 000199).
- 8.3 Having considered the nature, scale, and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site.
- 8.4 The reason for this conclusion is as follows:
 - The small scale of the proposal; and
 - The absence of connectivity to any European site.
- 8.5 I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

9 Recommendation

Arising from my assessment above therefore I recommend that the Coimisiún:

- Retain Condition 2 (a)
- Retain Condition 2 (b).

10 Reasons and Considerations

10.1 Having regard to the nature and scale of the proposed development and the pattern of development in the area, it is considered that the change of use to public open space, construction of gate and railing with all associated site works would enhance the permeability and accessibility of the area and would not have a significant impact on the residential or visual amenities of the area and would therefore 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.

Ronan Murphy Planning Inspector

6th October 2025

Form 1 - EIA Pre-Screening

Case Reference	ACP-322948-25
Proposed Development Summary	Change of use to public open space, construction of gate and railing with all associated site works
Development Address	Site circa 0.0235 ha, 1-3 station road and 136-137
·	Drumnigh Wood, Portmarnock, Co. Dublin.
	In all cases check box /or leave blank
1. Does the proposed development come within the	☐ Yes, it is a 'Project.' Proceed to Q2.
definition of a 'project' for the purposes of EIA?	⊠ No, No further action required.
(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)	
2. Is the proposed development of	f a CLASS specified in Part 1, Schedule 5 of the Planning
and Development Regulations 2001 (as amended)?	
Yes, it is a Class specified in	
Part 1.	
EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
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?	
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 o the Roads Regulations, 1994.	f	
No Screening required.		
Yes, the proposed development is of a Class and meets/exceeds the threshold.		
EIA is Mandatory. No Screening Required		
Yes, the proposed development is of a Class but is subthreshold.		
Preliminary examination required. (Form 2)		
OR		
If Schedule 7A information submitted proceed to Q4. (Form 3 Required)		
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 Screening Determination required (Complete Form 3)		
No 🖂 Pre-screening de	Pre-screening determination conclusion remains as above (Q1 to Q3)	
Inspector:	Date:	