



An
Coimisiún
Pleanála

Inspector's Report

PL-501228-DR-26

Development	Retention of a 2.02m high, metal fence with posts (15.275m) erected along the southern boundary.
Location	2a, Proby Square, Blackrock, Dublin, A94NY19
Planning Authority	Dun Laoghaire-Rathdown County Council
Planning Authority Reg. Ref.	D26B/0113/WEB
Applicant(s)	Susan Kirby & Joe Redmond
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party v Grant of Retention Permission
Appellant	Ultan O'Broin
Observer	David Wheelahan.

Date of Site Inspection

9th July 2026

Inspector

Paul Christy

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Appendix A – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The subject site is located in a residential area of Blackrock, Dublin. The precise area may be described as somewhat backland in that two houses, Nos. 2a (the Applicants' property) and 3a Proby Square are located to the rear of, and are facing the rear of, two substantial apartment properties (Nos. 2 and 3 Proby Square). All of the referenced properties are accessed off Proby Square. After entering the area off Proby Square, there are communal parking spaces on either side of the access road, and then a pair of relatively small green areas to the west and east, respectively, of the final section of access road serving Nos. 2a and 3a. The subject fence is located on the western green area.

2.0 Proposed Development

- 2.1. The proposed development is for the retention of a metal fence with posts measuring 2.02m high x 15.27m long.
- 2.2. The application to the Local Authority was accompanied by a cover letter from agents, 'Armstrong Planning (Design and Development Consultants)'. The Agent's letter briefly references matters addressed in much greater details in the submission made to the Appeal by the Agents for the Applicants. These include: the planning history of the site; and support for the development from a Director of the Proby Square Management Company (refer Section 8.1 of this report). The letter refers to, and attaches, an email from a Director of the Proby Square Apartments Management Company, which email '*confirmed*' the Management Company's support for the erection of the fence.

3.0 Planning Authority Decision

3.1 Decision: Grant Retention Permission

- 3.1.1. The grant of Retention Permission was subject to one standard condition requiring that the development was to be retained in its entirety in accordance with the plans, particulars and specifications lodged.

3.2. Planning Authority Reports

- 3.2.1. [Planning Report]: One report on file signed by a Senior Executive Planner, endorsed by a Senior Executive Officer, and signed by an 'Approved Officer' on 21st April, 2026. The report includes, inter alia, the following points:

- Given the site's zoning, Residential Zoning Objective A, site boundaries may be permitted where the Authority is satisfied that the development would be

compatible with the overall objective for the zoning, and would otherwise be consistent with the proper planning and sustainable development of the area.

- Issues pertaining to the validity of the application with respect to land ownership *'are nullified as the applicant has stated that they are in ownership of these lands and are therefore eligible to make the application. The Planning Authority previously accepted that the applicant was in ownership of the site under reg. ref. D25B/0461'*.
- Nonetheless, the Authority will rely on the contents of Section 34(13) of the Act in the event of a dispute regarding ownership and considers that this matter is a civil matter, outside of the remit of Planning legislation.
- The Authority have had due regard to the appearance and scale of the fence to be retained and consider that same does not negatively impact the visual appearance of the dwelling of the general area, nor does it constitute overdevelopment of the site.
- No concerns arise in respect of overshadowing or overbearing development.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. The Local Authority received two submissions, one from the Appellant, and another signed by four owner/occupiers of apartments in Nos. 2 and 3 Proby Square. The issues raised are generally as per those raised in the Appeal. Please refer to Section 8.1.

4.0 Planning History

4.1. Subject dwelling

~ **P.A. Ref. PR494/91** Two new mews houses at rear of 2/3 Proby Square: 1991 Grant, subject to standard conditions.

~ **P.A. Ref. PR258/93** Retention of alterations to car-parking layout and driveway with parking area to serve two mews houses: 1993 Grant, subject to two conditions, including Condition 2:

'That existing main car park, communal open space, driveway and two new car spaces shall be retained in private ownership and maintained by a properly constituted management company...'

~ **P.A. Ref. D00B/0653** Two-storey side/rear extension: 2000 Grant, subject to standard conditions.

~ **P.A. Ref. D04B/0128** Single-storey domestic extension to the front: 2004 Grant, subject to standard conditions.

~ **P.A. Ref. D25B/0461, ACP Ref. PL-500723-DR-26** Single-storey family flat extension: 2026 refusal for one reason, the full text of which is reproduced below, having regard to the complexity of the rationale and associated history:

'Having regard to the appeal and submissions on file, the provisions of the Dun Laoghaire-Rathdown County Development Plan 2022-2028, including the Land Use Zoning 'Objective A' of the subject site and adjacent properties, which seeks to protect and/or improve residential amenity, and having regard to the planning history of the subject site and the adjacent lands, including the conditions attaching to planning permission reference 4794/74 (modified under 12127/82), planning permission reference 12457/82, planning permission reference 494/91 (modified under 258/93), and the reasons for refusal of permission under planning reference D98A/1097, it is considered that the subject site forms part of an area identified as open space to serve existing permitted residential units, and that the site was conditioned to be open space associated with the previously permitted development. The Commission therefore considered that to permit the proposed development, would materially contravene a previous planning permission on the lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to grant permission, the Commission had regard to the planning history of the subject site and of the adjacent lands. The Commission noted that on 17 February 1999, a proposal under planning reference D98A/1097, for two townhouses, additional carparking and revised layout at rear of and between number 2 and number 3 Proby Square, was refused by the planning authority, for reasons including that the proposed development sought to erect two dwellings on areas of land designated as private open space in the planning permissions for existing apartments within the site, which would materially contravene condition no. 1 of planning permissions PR 494/ 91 and PR 258/93, would represent overdevelopment of the site, and would seriously injure the amenities of adjoining residences within the overall site.

The Commission did not consider itself to be fettered by the conditions attaching to previous planning permissions, but having considered the totality of the information on file including conditions of planning permissions PR 494/ 91 and PR 258/93, the Commission did not share the opinion of the inspector that the open space area purchased by the applicant in 2021, was not used for the residential amenity of the Proby Square apartments. The Commission was satisfied, having regard to the

planning history of the subject site and of the adjacent lands, that the subject site incorporated an area of land previously designated as open space to serve existing permitted residential units. The Commission also noted that the existing Proby Square development (with which the open space previously conditioned was associated) is zoned “Objective A” with the objective “To protect and/or improve residential amenity” and the Commission considered that the proposed development, if permitted, would give rise to serious injury to the existing residential amenities of the area, and that permission for the proposed development should therefore be refused.’

4.2. 2 Proby Square

~ **P.A. Ref. 4794/74** Conversion of 2 Proby Square to six flats. 1974 Grant.

~ **P.A. Ref. 12,127/82** 3-Storey extension and internal alterations at rear: 1982 Grant.

4.3. Green Area on Which Subject Fence Is Proposed

~ **P.A. Ref. D98/1097** Two townhouses, additional car-parking spaces and revised layout at rear of and between Nos. 2 & 3 Proby Square. 1999 refusal for the following reason:

‘The proposed development seeks to erect 2 dwellings on areas of land designated as private open space in the planning permissions for existing apartments within the site consequently, the proposed development would materially contravene Condition No. 1 of planning permissions PR 494/91 and PR 258/93. It would also represent an overdevelopment of the site and in removing the open space, the development would not (sic) in keeping with the pattern and density of development in the area, would seriously injure the amenities of adjoining residences within the overall site and would be contrary to the proper planning and development of the area.’

[Nb. An appeal was submitted, but subsequently declared invalid (ACP Ref. PL06D.110623.)]

5.0 Policy Context

5.1. Development Management Guidelines for Planning Authorities, 2007 (Dept. of the Environment, Heritage and Local Government)

- 5.1.1. Section 5.13 ‘Issues Relating to Title To Land’: *‘The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it*

should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development...

Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.'

5.2. Dun Laoghaire-Rathdown County Development Plan, 2022-2028

- 5.2.1. Zoning: The subject site is covered by Land Use Zoning Objective A. The relevant objective is: *'To provide residential development and improve residential amenity while protecting the existing residential amenities.'*
- 5.2.2. Boundaries: Section 12.8.7.2 'Boundaries' *'Boundaries located to the front of dwellings should generally consist of softer, more open boundary treatments, such as low-level walls/railings and/or hedging/planted treatments'*.

5.3. Natural Heritage Designations

- 5.3.1. The site is located c.1.07km to the south-west of: the South Dublin Bay and River Tolka Estuary Special Protection Area; the South Dublin Bay Special Area of Conservation; and the South Dublin Bay Proposed Natural Heritage Area.

6.0 EIA Screening

- 6.1. 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). 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.

7.0 Water Framework Directive Screening

- 7.1. The subject site is located: c.110m to the south of the Brewery Stream river waterbody (IE_EA_09B130400); and c.1km to the south-east of the Dublin Bay coastal waterbody (IE_EA_090_0000) at its nearest point. The site is also located over the Kilcullen ground waterbody (IE_EA_G_003).
- 7.2. The proposed development comprises the erection of a relatively small fence measuring c.2.02m x c.15m.
- 7.3. No water deterioration concerns were raised in the planning appeal.
- 7.4. I have assessed the proposed erection of a fence 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.
- 7.5. The reasons for this conclusion are as follows:
- Whilst there is a potential hydrogeological pathway between the site and the Kilcullen ground waterbody as a result of soil exposure during groundworks, given the small-scale of the proposed development and the assimilative capacity of the waterbody, which would have diluted any potential effects, it can be concluded that there was, and is, no conceivable risk to this waterbody either qualitatively or quantitatively.
 - The nearest surface waterbody, the Brewery Stream river waterbody, is located c150m to the north of the subject site, and there is no known hydrological connection between the two. The minor and nature of the works suggests that there is no realistic prospect of any negative impacts on the said waterbody.
- 7.6. Conclusion: I conclude that on the basis of objective information, that the proposed development 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
- 7.7. WFD objectives and consequently can be excluded from further assessment.

8.0 The Appeal

8.1. Grounds of Appeal; and Applicants' Response

- 8.1.1. One no. appeal was received from Mr. Ultan Ó Broin, a neighbour of the subject site. A response was submitted on 20th May, 2026 on behalf of the Applicants by 'Armstrong Planning Ltd., a Design and Development company. The response is divided into three sections: 1. 'Introduction'; 2. 'Response to the Grounds of Appeal'; and 3. 'Conclusion'. The core content in response to the Appeal is contained in Section 2. The Grounds of Appeal, and the content of Section 2 of the Applicants' response to the Appeal, are structured in exactly the same manner, with the Applicant responding 'one-by-one' to each of the grounds of Appeal. For this reason, and for ease of reference, I address both the Appeal and the corresponding Applicants' response in the table below.

Grounds of Appeal	Applicants' Response
Questions the probity of supporting statements submitted with the application made to the Local Authority and states that 'certain persons' were not, at the time of such submission, resident at Proby Square, or indeed within the immediate environs.	Refers to the (only) supporting statement submitted with the application, that of Ms. Gillian Barron. Deduces from the statement that Ms. Barron, inter alia, (ii) held the office of Director of the Owners' Management Company at the time the fence was erected; (iii) remained in that office for a further three years; (iv) during her tenure received no objection from any resident; and (v) in her capacity as Director, supported the erection of the fence.
Refers to a dispute over the legal ownership, title and entitlement to the 'land and open space' upon which the subject fence has been erected. There is no conclusive evidence that the land is under the exclusive ownership and/or control of the Applicants. On the contrary, the said land belongs to and falls within the shared amenity and property rights of the residents and owners of Nos. 2 and 3 Proby Square. These matters are the subject of ongoing legal proceedings.	The Applicants are in ownership of the relevant land. The submission then refers to five items of 'factual record' before the Commission including: ~ details of the Applicants' acquisition of the parcel of land enclosed by the fence, supported by a letter from the Applicants' solicitor (attached as Appendix A to the submission); ~ The acquisition was contemporaneously acknowledged by the Owner's Management Company in the form of an email from the aforementioned Ms. Barron; ~ The fence reflects, and does no more than

	reflect, the post-acquisition boundary; ~ The Planning Authority has previously accepted the Applicants' ownership. The submission quotes from the Local Authority Planner's report on the subject application: <i>'The Planning Authority previously accepted that the applicant was in ownership of the site under reg. ref. D25B/0461'</i>. ~ No documentary evidence contradicting the Applicants' eligibility to make the application has been submitted. The response then refers to title not being a planning matter and references the same para. of the Development Management Guidelines for Planning Authorities as contained at para. 5.1.1 above, and repeats the Planner's comment as contained in the last bullet of the preceding paragraph.
The decision to grant Retention Permission is contrary to policies and objectives of the Development Plan as they relate to the protection and preservation of communal open space, the prevention of over-development, and the safeguarding of established residential amenity. An earlier proposal to develop the same green area was refused permission in 1999 'on the basis that it would have materially contravened the established planning framework and constituted over-development'.	<u>Consistency With Development Plan:</u> The Local Authority Planner's report correctly identified that the proposed development is squarely consistent with the Zoning Objective, and that the development was 'compatible with the overall policies and objectives for the area'. No specific policy of the Development Plan is identified by the Appellant as being contravened, beyond the general assertion of inconsistency. <u>Fence Does Not Eliminate Communal Open Space:</u> Contends that 'the factual basis for this contention is not made out, for three reasons: ~ The land was already in private ownership before the fence was erected. ~ The open space serving the adjacent apartments comfortably exceeds Development Plan and National Requirements. ~ The Planning Authority has previously considered the matters being 're-agitated' on appeal, the circumstances of the (land) acquisition and the loss of open space, on two occasions - (under Ref. D25B/0461, family flat extension; and again in the context of the subject application) and found in

	favour of the Applicants. <u>The 1999 Refusal is not material:</u> Appellant does not specify case ref. no. Assumed that it is a ref. to D98/1097. This refusal of two houses on a green area in 1999 'is plainly not comparable' to the subject application. <u>Biodiversity and Permeable Ground Cover:</u> The fence does not occupy a footprint of any meaningful scale, does not remove permeable ground cover, and does not require AA. <u>Residential Amenity, Visual Impact and Overdevelopment:</u> Quotes positive comments in the Local Authority Planner's report re the appearance and scale of the fence. Also states, inter alia, that: it is of a design entirely typical of suburban garden boundaries; and the apartments at No.2 Proby Square are at a remove from the boundary.
The fence was erected without any prior consultation with residents of Nos. 2 and 3 Proby Square and, in these circumstances, was carried out in an adversarial, unilateral and disrespectful manner.	In summary, all statutory planning consultation procedures were followed. Also, the Applicants did engage with the Proby Square Apartments Management Company prior to the erection of the fence in December, 2021.

8.2. Planning Authority Response

- 8.2.1. In its response of 14th May, 2026, the Authority referred the Commission to the previous Planner's report. The Authority considers that the grounds of appeal do not raise any new matters which, in the opinion of the Authority, would justify a change of attitude to the proposed development.

8.3. Observations

- 8.3.1. One Observation was received from David Wheelahan, an owner-occupier of one of the apartments in 2 Proby Square. The contents of the Observation may be summarised as follows:
- Notes that he is also the appellant in the appeal against the application for an extension to the dwelling of the Applicants' in the subject case (ACP Ref. 500723), and requests that the Commission assesses the two cases concurrently.

- Objections set out in the letter submitted to the Local Authority on his behalf and those of neighbours are reasonably accurately summarised in the Planner's report but not meaningfully addressed in the assessment section of the report.
- Does not dispute that the Applicants 'now appear to own the communal open space they have now fenced off from us and wish to further develop'. This is irrelevant to the planning issue of the land.
- Refers to planning history of the site (L.A. refs. PR 494/91 and PR 258/93) and asserts that the area on which the subject fence is proposed was 'designated' as open space in the planning permission for the existing apartments, and that the proposed development would materially contravene Condition 1 of the aforementioned permissions. Permission to build on the land was refused in 1999 because of the open space designation (L.A. Ref. D98/1097) (a copy of an unreferenced site layout plan, together with copies of the L.A. refs. PR 494/91 and PR 258/93 permissions and the refusal reason for D98/1097 are attached).
- Notes residents' use of the area for a 'multitude of purposes'.
- The remaining strip of land is grossly inadequate as communal open space.
- Refers to the particular circumstances of a young family residing in 2 Proby Square.
- The application should be overturned on the grounds that it seeks to overturn a long-standing planning condition designed to protect the residential amenity of 2 Proby Square. Planning permission is a burden on the land that binds all subsequent owners. Retaining the fence would effectively formalise an unauthorised change of use from communal open space to private enclosed land.

9.0 Assessment

9.1. Overview

- 9.1.1. Having examined the application details, and all other documentation on file including 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 policies and guidance, I consider that the substantive issues in this appeal to be assessed are as follows:

- The legal status of the subject land;

- The planning status of the subject land; and
- Visual Amenities of the area.

9.2. Legal Status of the Subject Land

- 9.2.1. Having regard to the level of detail contained both in the Appeal and in the Applicants' response to the Appeal in relation to matters of legal status of the subject lands, there is clearly a difference of opinion over such matters. I note the comment contained in the Appeal that they are the subject of '*ongoing legal proceedings and processes before the relevant legal authorities*' (last para., Section 2) whereas, in contrast, the Applicants' Agents state in their response to the Appeal that: '*there are no active legal disputes in relation to ownership of the application site*' (second bullet, p.8). Section 5.13 of the Development Management Guidelines for Planning Authorities, 2007 (Dept. of the Environment, Heritage and Local Government) is clear on this matter wherein it is advised that: '*Only where it is clear ... that the applicant does not have sufficient legal interest should permission be refused on that basis*'. In my opinion, it is not clear in the subject case that the Applicants do not have sufficient legal interest. Rather, I am satisfied that the Applicants have provided sufficient evidence of their legal entitlement to make an application. Any further legal dispute is considered a civil matter and outside the scope of this planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of S.34(13) of the Planning and Development Act, 2000 (as amended).

9.3. Planning Status of the Subject Land

- 9.3.1. I have reviewed the planning history of the area as it relates to the planning status of the subject site.
- 9.3.2. Firstly with regard to 2 Proby Square, the Local Authority granted permission for the conversion of 2 Proby Square to six apartments in 1974 (Ref. 4794/74), and subsequently granted permission for a three-storey extension and internal alterations in 1982 (Ref. 12,127/82). Unfortunately, the documentation available to the Commission at this time does not include layout plans for these permissions.
- 9.3.3. Nos.2A and 3A, the two mews houses, were originally granted planning permission by the Local Authority under Ref. PR494/91. Whilst the layout submitted with the application is not available at this time, a submission by the Applicants' agent dated 27/01/93 in relation to compliance with a watermain condition does include a layout. The layout shows a generally rectangular-shaped area between No.2A and No.2 with the notation 'Open Space (grass)'. This area is generally similar to the grassed area either side of the subject fence in the present day. Condition 1 of this permission requires: '*Subject to the conditions of this permission, that the*

development be carried out and completed in accordance with the plans and particulars lodged with the application'. A subsequent application, L.A. Ref. 258/93 is of further assistance. This application, granted by the Local Authority, was for 'Retention of alterations to car-parking layout and driveway with parking area' to serve the two mews houses. The layout submitted with that application also shows an open space area in the same location as that submitted in the Agent's correspondence on the PR494/91 application, albeit slightly different in shape. Importantly, the notation on that plan refers to 'Open Space for flats of No.2'. Condition 1 of this permission requires that: Development shall be in accordance with the plans and particulars lodged with the application. Condition 2 of this permission refers to 'communal (my emphasis) *open space*'.

- 9.3.4. The 1998 application to the Local Authority, L.A. ref. D98A/1097, is also of assistance in understanding the planning status of the subject lands. That application was for two townhouses, additional car-parking and revised layout generally in the area of the grassed area on which the subject fence is located, and a similar area between No.3 Proby Square and No.3A. The application was refused by the Local Authority on the grounds, inter alia, that the proposed dwellings would be '*on areas of land designated as private open space in the planning permissions for existing apartments within the site, consequently the proposed development would materially contravene Condition No.1 of planning permissions PR494/91 and PR258/93*'.
- 9.3.5. In my opinion, the balance of the planning history available to the Commission as set out above constitutes reasonably strong evidence that: the lands on which the subject fence is located were identified in the relevant planning applications for the apartments at 2 Proby Square (L.A. Refs. 4794/74 and 12,127/82) as providing an area of open space for the apartments; and that this was confirmed in the Local Authority decisions (Condition 1 in each case) on the subsequent applications for the two mews dwellings (L.A. Refs. PR494/91 and 258/93). I would therefore agree with the Commission's conclusions in its decision on ACP Ref. PL-500723-DR-26 that: '*it is considered that the subject site forms part of an area identified as open space to serve existing permitted residential units, ... that the site was conditioned to be open space associated with the previously permitted development, ... (and) therefore that to permit the proposed development would materially contravene a previous planning permission on the lands*'.
- 9.3.6. I have considered the case made by the Applicants' Agents in their submission on the appeal that the totality of open space serving the apartments in Nos. 2 and 3 Proby Square would still exceed both Development Plan and national standards even after the area to the north of the fence is discounted. The Agents refer to the Further Information Response to L.A. Ref. D25B/0461, ACP Ref. PL-500723-DR-26. I have reviewed this document, inclusive of both the metrics presented and 'Fig.1: Residential amenity space serving the adjacent apartment development' contained

therein. In my opinion, this Figure illustrates that the greatest majority of the identified open space, being located on the eastern side of the access road, is more associated with No. 3 Proby Square. It also demonstrates the importance of the space on which the subject development is located as the remainder of the open space to the west of the access road is either: of limited dimensions and, therefore, not very functional (ie. the area to the south of the subject development); not functional at all (ie. the area identified to the east of the No.2 Proby Square building, this area being comprised of narrow planting beds); or of little or no benefit to occupants of the northern half of the building, being located directly in front of ground floor windows serving apartments at its southern end (ie. the area located immediately to the south of No.2). For these reasons, the rationale presented in the referenced previous case in terms of the quantum of remaining open space does not overcome the issues arising from the planning history of the subject site and immediate areas as set out at paras. 9.3.1-9.3.5, in my opinion.

- 9.3.7. Having regard to my conclusions as set out at paras. 9.3.1-9.3.6, I would further conclude that to permit the proposed development would result in the loss of important open space for the residents of 2 Proby Square. I would, therefore, also agree also with the conclusion of the Commission in its decision on ACP Ref. PL-500723-DR-26 that to permit the proposed development would be contrary to the site's Zoning Objective A in the Development Plan, which Objective is: *'To protect and/or improve residential amenity'*.

9.4. Visual Amenities of the Area

- 9.4.1. Section 12.8.7.2 'Boundaries' of the Development Plan requires that: *'Boundaries located to the front of dwellings should generally consist of softer, more open boundary treatments, such as low-level walls/railings and/or hedging/planted treatments'*. Whilst the proposed fence does not come within the referenced preferred treatments, I note that the policy includes some flexibility in that such boundaries to the front of dwellings should *'generally consist of'*. Having regard to the enclosed location of the site generally hidden from public view, and the relatively modest dimensions of the fence, I would agree with the Local Authority Planner that the fence *'does not negatively impact the visual appearance of the dwelling or the general area'* (refer second para., p.4, section headed 'Residential Amenity & Visual Impact'). I am therefore satisfied that the proposed development is not contrary to the referenced Section 12.8.7.2 of the Development Plan.

9.5. Other Issues

- 9.5.1. Consultation: Section 4 of the Appeal refers to the lack of consultation with residents of Nos.2 and 3 Proby Square. Statutory planning application consultations are a

matter for the Local Authority in deciding whether or not to validate an application. Non-statutory consultations are outwith the planning process.

- 9.5.2. Probity of Submission Made In Support of the Application: Section 1 of the Appeal refers to the email statement of Ms. G. Barron dated 25 February, 2026 submitted with the application to the Local Authority. In particular, it questions the '*evidential value*' of the statement on the basis that '*certain persons* (presumed to be Ms. Barron) *were not at the time of such submission, resident at Proby Square, or indeed within the immediate environs of the development*' and calls upon the Commission to '*require the applicants to demonstrate, by verified and independently corroborated means, the factual basis underpinning each and every representation made in support of the application, and to disregard any and all information that cannot be so demonstrated to be backed by fact*'. In their submission on the Appeal, Agents for the Applicants state, inter alia, that Ms. Barron's statement is '*grounded in her direct, contemporaneous, and uncontradicted knowledge of the events to which it speaks*' ,and '*We note further that the Third Party Appellant has not identified any specific factual assertion in Ms. Barron's email which he contends is incorrect*'.
- 9.5.3. This disagreement is similar, in some respects, to the difference of opinion of the Applicants and the Appellant over the legal (ownership) status of the site on which the fence is located. Applying the principles of dealing with such disputes as contained in the Development Management Guidelines for Planning Authorities (and as set out at para. 5.1.1), there is nothing by way of evidence in the Appeal to cast doubt on the bona fides of the contents of Ms. Barron's email. On this basis, the Commission and is not required to inquire further into this matter, in my opinion.

10.0 AA Screening

- 10.1. I have considered the proposed Retention of a 2.02m high x 15.25m long metal fence with posts at, 2a, Proby Square, Blackrock, Dublin in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located c.1.07km to the south-west of: the South Dublin Bay and River Tolka Estuary Special Protection Area; and the South Dublin Bay Special Area of Conservation. No nature conservation concerns were raised in the planning appeal.
- 10.2. 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 European Site. The reasons for this conclusion are as follows:
- the nature of the works: small scale fence; and
 - the distance of the site from the nearest European site and the absence of any connections between the two.

I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

11.0 Recommendation

- 11.1. I recommend that permission for the development be refused for the reasons and considerations as set out below.

12.0 Reasons and Considerations

Having regard to the appeal and submissions on file, the provisions of the Dun Laoghaire-Rathdown County Development Plan 2022-2028, including the Land Use Zoning 'Objective A' of the subject site and adjacent properties, which seeks to protect and/or improve residential amenity, and having regard to the planning history of the subject site and the adjacent lands, including planning permission reference 4794/74 (modified under 12127/82), the conditions attaching to planning permission reference PR494/91 (modified under planning permission reference 258/93) and the reasons for refusal of permission under planning reference D98A/1097, it is considered that the subject development is located within an area identified as open space to serve the existing apartments in 2 Proby Square, and that the site was conditioned to be open space associated with the said permitted apartments development. It is further considered that the consequences of permitting the proposed development would include not only the loss of the area to the north of the fence as communal open space, but also the devaluation of the amenity benefits of the remaining communal open space area to the south of the fence. The Commission therefore considers that to permit the proposed development, would materially contravene a previous planning permission on the lands, and would be contrary to the Land Use Zoning 'Objective A' of the subject site and adjacent properties. The proposed development would, therefore, be contrary to 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 me, directly or indirectly, following my professional

assessment and recommendation set out in my report in an improper or inappropriate way.

P. Christy

Paul Christy
Planning Inspector

14th August 2026

Appendix A: Form 1 EIA Pre-Screening

Case Reference	PL-501228-DR-26
Proposed Development Summary	Retention of a residential fence with posts, measuring 2.02m high x 15.27m long.
Development Address	2a, Proby Square, Blackrock, Dublin
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?	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ 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 a CLASS specified in <u>Part 1</u>, 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.	State the Class here
☒ No, it is not a Class specified in Part 1. Proceed to Q3	

3. Is the proposed development of a CLASS specified in <u>Part 2</u>, 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 of the Roads Regulations, 1994. No Screening required.	
☐ 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
☐ 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
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)?	
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: P. Christy

Date: 14th August, 2026