

Project No. 17.01/2024



AN BORD PLEANÁLA

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ABP- _____

23 FEB 2024

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Reference re works and a change of use at 36, Monastery Crescent, Clondalkin, Dublin 22

DATE: February 2024

on behalf of: Keith Howell,
No. 36 Monastery Crescent,
Clondalkin, Dublin 22

1.0 INTRODUCTION

1.1 This statement is a response to the invitation by An Bord Pleanála to make observations or submissions on the letter by Paul Campbell, 22, Monastery Crescent, Clondalkin, Dublin 22 to An Bord Pleanála requesting a review of the decision by South Dublin County Council in relation to alleged development at the property no. 36, Monastery Crescent.

2.0 THE PLANNING AUTHORITY DECISION

2.1 South Dublin County Council as the relevant planning authority made a decision under planning register ref. ED23/0051 in relation to an application requesting a Section 5 Declaration on whether certain works and change of use at no. 36, Monastery Crescent were development and if so whether these are exempted development. The works and change of use were described as follows:

- Erection of a gate from private to public space
- Change of use from publicly accessible open space to private use.

2.2 The planning authority made the following decision. In relation to the *erection of the gate* it stated that due to the insufficient detail of information submitted a determination could not be made whether it is or is not exempted development or whether planning permission is or is not required. In relation to the alleged *change of use* it stated that no material change of use has occurred and that therefore it does not constitute development.

3.0 ERECTION OF THE GATE

3.1 The planning authority made a decision that due to insufficient detail of information a decision could not be made whether the erection of the gate is exempted development. The appellant in the request for review of this declaration, does not provide any arguments to suggest that the gate is not exempted development. It appears therefore that the appellant accepts the fact that he did provide insufficient information to the planning authority and has not addressed this in the current request for review by providing additional information.

3.2 However, the appellant does state that the decision that insufficient information is available runs counter to previous decisions. He quotes the following reference numbers: RF1052,

PL06S.207045 and 06S.113117. However, these decisions are not relevant in relation to the question of the planning status of the gate.

3.3 The decision by An Bord Pleanála under ref. RF1052 was that the erection of a wall was not exempted development. The decision did not relate to the gate. The decision by An Bord Pleanála under ref. PL06S.207045 was a refusal decision for the wall and also did not relate to the gate. The decision by An Bord Pleanála under ref. PL06S.113117 was a decision in relation to a proposed extension to the house and again did not relate to the gate.

3.4 It is the view of our client that the erection of the gate in a wall on his property is exempted development as it comes under Class 5 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended). The Board is therefore invited to declare that the erection of the gate is development and is exempted development which does not require planning permission.

3.5 A previous decision by An Bord Pleanála confirms this fact. The decision was made in 2021 and states the following: *...“the opening of a pedestrian gateway in the boundary wall between the rear private amenity space and an area of public open space, both to the rear of No. 31, The Maples, Dr. Mannix Road, Salthill, Galway City is development and is exempted development.”*¹

4.0 USE OF OPEN SPACE

4.1 In relation to the use of the open space the appellant provides the following arguments why the Board should disagree with the declaration by the planning authority that this use does not constitute a material change of use and is therefore not development that requires planning permission:

- The works of planting of trees and wire are not exempted development.
- The decision is inconsistent with previous decisions.
- The land is prevented to be used by the public.
- The decision conflicts with the zoning objective.

¹ ABP-308493-20.

4.2 The appellant suggests that the area in question does not form part of the curtilage of no. 36, Monastery Crescent. However, that is not the question that is put to the planning authority and now to the Board for review. The question is whether there has been a material change in the use of the piece of land in question. The planning authority is of the opinion that such a change of use has not occurred. The planner states that: *...these lands are privately owned by the householder of number 36 Monastery Crescent (registered landowner) and are not maintained by the Council as public open space.*² The planner further notes that no evidence was provided to demonstrate that a material change of use had occurred. Again, in the current submission to the Board for review, no such evidence has been provided.

4.3 The question to be determined by An Bord relates to the question whether a *material change in the use of the land* has occurred. It does not relate to the planting of trees or the placing of wire. Also, the zoning objective for the land in question has no relevance in relation to determining whether a material change of use has occurred. Clearly the appellant has failed to provide any arguments or evidence to suggest that a material change has occurred in the use of the land in question.

5.0 CONCLUSION

- The erection of the gate from private to public space is development but is exempted development under Class 5, of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended).
- A change of use from publicly accessible open space to private use on the site owned by the owner of no. 36, Monastery Crescent is not development because it does not result in a material change in the use of the land.
- An Bord Pleanála is requested to uphold the decision by the planning authority and to determine that the gate in the wall is development and is exempted development and that the change in the use from publicly accessible open space to private use is not development.

² Planner's report pl. ref. ED23/0051, 11/1/24, p. 6.

Signed,



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