

An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
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ABP-	
26 JAN 2024	
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22 Monastery Crescent
Clondalkin
Dublin 22

26-January 2024

Dear Sir / Madam

I wish to appeal a recent Section 5 planning decision by South Dublin County Council (SDCC), their reference ED230051.

Appendices 1a-d contain the application in full (which includes clarifications associated with prior submission ED230026) and SDCCs acknowledgement of receipt. SDCCs subsequent decisions are in appendices 2a-d.

The decision is being appealed on the grounds that it:

- runs contra to prior findings made by An Bord Pleanála (ABP) as set out in appendices 3a/b/c,
- is inconsistent with the SDCC's own policies regarding the subject site,
- sets striking precedents relating the ability to change the use of land without recourse to development and the definition of curtilage as set out in the letter from my solicitor in appendix 4.

In summary, the decisions under appeal mirror very closely an earlier decision by the SDCC when the owner of the adjacent dwelling made a previous attempt to enclose the subject site with a dwarf wall. The SDCC said in their decision at the time that the dwarf wall in question was an exempted development, but ABP in their decision on the matter took the view that the area was public Open Space and the attempt to enclose it for the sole use of the owners of the adjacent dwelling was not exempted development. The decision in question by ABP was in a Section 5 Declaration RF1052, Decision Order signed on December 3rd, 2002, stating that:

"The proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10 (1) (xii)"

A subsequent application for the dwarf wall, under application SD04A/0046, was also refused by ABP for similar reasons, under the findings set out in PLO6S.207045, signed on July 20th, 2004, concluding that:

"The proposed development would seriously injure the visual and residential amenities of the area and it would, therefore, be contrary to the proper planning and sustainable development of the area."

In the period since those findings and dating back to the foundation of the estate in 1964, the subject site has been open to, and used by, the public. Indeed, in published minutes of a 2006 local area committee meeting, as contained in appendix 6, this issue was raised again, and an action taken by the council to make the current occupant aware of the status of the land and prior APB findings.

In the SDCC Development Plan the land is now zoned as Open Space, which was not the case when RF1052 was being assessed. This change in zoning re-enforces the view that this parcel of land, although in private ownership, is for the use and enjoyment of all the residents of the area and not solely for the use of the residents of the adjoining dwelling at 36 Monastery Crescent.

I believe that these decisions are still available on the ABP website.

In terms of the specifics of the submissions, the Section 5 covered under ED230051 posed five questions regarding activity on the subject site adjacent to 36 Monastery Crescent, Clondalkin, Dublin 22, which is zoned as public Open Space in the SDCC Development plan:

- The decision under ED230026 found the installation of a gate in the space to be development, but it was not possible to determine its status re: exempt/non-exempt; additional information provided to resolve open question.
- Is materially changing the use from a long-established publicly dedicated Open Space – in uninterrupted public use since the 1960's – to a private enclosed space, thereby removing public access, considered a development or not development?
- If such a material change of use in land is deemed to be development, is it considered exempt or non-exempt development?
- Does consideration of the preceding two items affect findings set out in the decision of prior finding under ED230026?
- Does consideration of the items above also affect findings set out in ED230026 given prior site-specific planning decisions (see appendix 3).

The items being referred to under ED230026 were:

- Is the enclosure of the public Open Space by any means¹ a development or not a development, and if determined to be a development, either an exempt or non-exempt development?
- Is the development of a path within the public Open Space adjacent to the garden of No. 36 an exempt development or not, given site-specific planning decision SD06B/0093 refusal reason three which states:
 - (a) *"the path to the side of the house is contrary to PL06S.113117 and PL06S.207045 and would contravene a previous grant of permission", and*
 - (b) *the PL06S.207045 Inspector's Report declaring that such a path is Undesirable*
- Is the gate in the wall linking the private space to the public Open Space an exempt development or not an exempt development, given previous planning decisions on this property and the similarity to ABP decision RL61.308493 (ABP-308493-20).

Before publishing its decision under ED230026, SDCC requested additional information, including scaled site-drawings that, as a Third-party applicant, I provided to the best of my ability, re-using materials available publicly from previous planning submissions attached to the subject site. SDCC, however, deemed that these provided "insufficient information" and thus withheld a decision on the final of the four questions above re: the installation of a gate). I subsequently provided more detailed drawings under ED230051, which again are deemed to be "insufficient".

With regard to the other questions under ED230026, in summary the SDCC found that:

- The enclosure of the space by any means, including the planting of trees, is not considered by them to be development and therefore there is no further consideration to be govern re: exemption status.

¹ Including by means of walls, fences, railings, trees, hedges, or any combination of such.

- The installation of the path and extension of the driveway over shared sewage services on the subject site are considered development, but are held to be exempt despite explicit reference and exclusion in previous findings.

The SDCC Decision of September 26th, 2023, found that the planting of trees was not development, and this would be consistent with a previous ABP Section 5 Decision RL2060. This decision was to the effect that the planting of trees in a linear pattern did not constitute development under applicable planning legislation at the time.

However, the current circumstance does not relate to a linear pattern, but a pattern that deliberately encloses the space. On the 19th of December 2023, this enclosure was reinforced by the installation of wired fencing between newly planted thorned hedging to further restrict access to the space. Enclosure of public open space is development. Where it involves land that has been used as public open space for upwards of 10 years, it cannot be exempt development under any circumstances.

Further, the 1963 Planning Act was the relevant piece of planning legislation in the early 2000's when RL2060 was decided. I am given to believe that this has been superseded by the 2000 Planning and Development Act and as such the earlier decision should be re-assessed.

Indeed, findings which post-date the 2000 Planning and Development Act, and appear to deal with similar themes such as ABP cases RL2482, RL3357 and RL3133, lend weight to a different treatment of public Open Space following the finding relied on by SDCC in its current decision (e.g.: enclosure of similar space by means of earth works / embankments are now deemed to be development).

If, on review, the planting of trees has the effect of enclosing a parcel of public Open Space under the current County Development Plan, as is the case in this instance, then I believe that the works involved would indeed be development which would not be exempted under the current Planning Code.

In their decision, the SDCC also noted that:

Zoning and Council Policies

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': *'To preserve and provide for open space and recreational amenities'* under the CDP 2022-2028.

The submitted site plan shows a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands. The existing dwelling at No. 36 Monastery Crescent is located on the 'RES' zoned lands. The zoning objective for 'RES' is *'To protect and / or improve residential amenity'*.

Given that the SDCC acknowledge the zoning status and intended use of the subject site is "To preserve and provide for open space [...]", and that there is a long-recognised history of the site being used by the community for "recreational amenities", their decision would appear to be incompatible with their own policies, being that this land, while it may be in private ownership, is "to preserve and provide for open space and recreational amenities under the County Development Plan 2022 -2028". Therefore, acknowledging a change in the use of the land for the benefit of a private owner by means of enclosure cannot be logically supported under this argument.

Further, SDCC's decision as set out would infer that the stated objectives of land zoned as a public amenity under its own guidelines can be over-ruled, without recourse, by the zoning of a privately owned adjacent plot. This matter is covered in more detail in the letter in appendix 4 from my solicitor, setting out the prevailing legal understanding and some implications of differing from such.

I would also like to note some general administrative inconsistencies in the findings that undermine confidence in the quality of the outcome as presented, such as:

- My address is incorrectly stated as "36 Monastery Crescent" instead of "22 Monastery Crescent",
- The address adjacent to the subject site is incorrectly referenced in the body of the findings as "Monastery Gardens" instead of "Monastery Crescent",
- There is a statement that the council do not maintain the subject site, which is zoned as Open Space. However, council documents dating back to the 1980's show that the site was in their care for general maintenance and upkeep (see appendix 7). At a point in the early 2000's the council relinquished upkeep to the then-owner of the adjacent property, which coincides with the period during which several planning permissions were sought on the subject site.

Given the above I am keen for this appeal to assess the observations below.

Observation 1

It appears that a local Planning Authority (the SDCC in this case) has set aside prior ABP findings relating to a specific site regarding the installation of a path on ground zoned as public Open Space, the widening of a driveway over shared sewage services for residents of the area, and the installation of a gateway from a private back-garden onto public Open Space (e.g.: RF1052 and PL06S.207045). It also sets aside prior Planning Authority decisions (e.g.: SDCC SD06B-0093 as per appendix 3d).

Observation 2

It appears that processes employed by Planning Authorities allow for the change of use/enclosure of public Open Space for private use by an individual, even where site-specific findings refusing such permissions are in place (e.g.: 06S.113117, RF1052 and PL06S.207045).

Observation 3

It appears that such a change of use/enclosure can occur without any activity that may be considered as development by the Planning Authority.

Observation 4

It is apparent that the intent and consequence of planting fast-growing non-native trees in a pattern that encloses the space has the exact same material effect as enclosure by a dwarf wall. As such, the conditions and rationale relied on in prior ABP decisions persist and should continue to be applied (e.g.: RF1052 and PL06S.207045).

Observation 5

The planning authority appears wrongly to equate curtilage with registered title. The curtilage is the position on the ground, which exists as a matter of fact. It is not equivalent to the extent of the registered title.

The planning authority has also wrongly equated the common position whereby the adjoining registered owner is registered as owner of areas outside their curtilage and boundaries, which have been dedicated for the benefit of the public, such as public open space, footpaths roadways et cetera,

with the registered ownership of the area within their boundaries. There is a fundamental difference. I am advised that public rights affect registered titles without having to be registered. Once an area has been dedicated to the public, the public rights are pre-eminent, and they are irrevocable. See my solicitor's letter.

Observation 6

It appears that the stated objectives of a Planning Authorities development plan are mutable, as shown in this case where the published objectives of a public Open Space can be over-ruled without recourse by the zoning status of an adjacent plot that is zoned as residential. This is despite the unanimous direction of local councillors to consciously apply the objective of public Open Space to an area that has been in habitual public use since the 1960s.

Finally, I attach two Statutory Declarations in appendices 8a/b to support the observations and assertions made in this appeal.

I trust the above and attached are in order, but should you require any additional information please contact me as per below.

Many thanks,



Paul Campbell

e-Mail: [REDACTED]

Mobile: [REDACTED]

(See appendices 1 – 8 overleaf)

Appendices

Appendix 1 Section 5 submitted by Paul Campbell

- Appendix 1a Section 5 – Current submission (incl SDCC initial submission acknowledgement)
- Appendix 1b Section 5 – Prior submission (incl SDCC initial submission acknowledgement)
- Appendix 1c Section 5 – Prior submission, additional Info submitted
- Appendix 1d Section 5 – Prior submission, SDCC e-Mail finding confirmations and acknowledgements

Appendix 2 Section 5 decision from SDCC

- Appendix 2a Section 5 – Current SDCC decision (ED230051 – Notification)
- Appendix 2b Section 5 – Current SDCC decision (ED230051 – Order)
- Appendix 2c Section 5 – Prior SDCC decision (ED230026 – Notification)
- Appendix 2d Section 5 – Prior SDCC decision (ED230026 – Order)

Appendix 3 Prior ABP decisions on the site, along with prior SDCC Inspectors report and decision

- Appendix 3a (1) ABP Decision (06S.RF.1052 - Board Direction)
 (2) ABP Decision (06S.RF.1052 - page 1)
 (3) ABP Decision (06S.RF.1052 - page 2)
- Appendix 3b (1) ABP Decision (06S.207045)
 (2) ABP Decision (06S.207045 - Inspector's Report)
- Appendix 3c (1) ABP Decision (06S.113117 - page 1)
 (2) ABP Decision (06S.113117 - page 2)
- Appendix 3d (1) SDCC SD06B-0093 (Insp Report and Decision - page 4)

Appendix 4 Letter to ABP & Mr. Paul Campbell from Paul McMahon Solicitor

Appendix 5 Updated scale drawing of Open Space

Appendix 6 Area Committee meeting - 22.11.2006

Appendix 7 "R. Doris" letter 3.3.1987, establishing council involvement with space

Appendix 8 Statutory declarations

Appendix 8a Statutory Declaration – Paul Campbell

Appendix 8b Statutory Declaration – Patrick McElwee

South Dublin County Council
County Hall Tallaght
Dublin 24
D24 A3XC

05-Dec-2023

Dear Sir / Madam

Considering the recent decision communicated by South Dublin County under reference ED230026 (enclosed for convenience in Appendix 1), I am submitting a new request under Section 5 of the Planning and Development Act 2000 (or as amended) to address specific points arising regarding the public Open Space next to 36 Monastery Crescent.

Given the community's ongoing valued use of this space over almost 60 years, and its zoning as an Open Space in the County Development Plan, this new request seeks to clarify 5 points, which will be used to consider the legal context and shared understanding of the space. To that end, I would be grateful if you could provide a response to the following questions:

- 1) The decision under ED230026 found the installation of a gate in the space to be development, but it was not possible to determine its status re: exempt/non-exempt. Given the additional information provided (see Appendix 2), can a determination now be made as to whether this gate is exempt or non-exempt development?
- 2) As the material change of use of this land is of a substantial nature which has an impact or potential impact on neighbours, is this material change of use considered a development or not a development i.e., changing the use from a long-established publicly dedicated Open Space that has been in uninterrupted public use since the 1960's to a private enclosed space and removing public access?
- 3) If such a material change of use in land is deemed to be development, is it considered exempt or non-exempt development?
- 4) Does the consideration of items 2 and 3 above affect findings set out in the decision of ED230026?
i.e.:
 - a. Does the enclosure of the public Open Space beside 36 Monastery Crescent constitute a change of use of the land, and therefore is it a development or not a development?
 - b. Is the enclosure of the public Open Space beside 36 Monastery Crescent constituting a change of use of the land an exempt development or not an exempt development?
- 5) Does the consideration of items 2, 3 and 4 above affect findings set out in the decision of ED230026, also considering prior site-specific planning decisions (see Appendix 3), such as
 - a. Refusal reason 3 of D06B/0093, which states: "The path to the side of the house is contrary to PL06s.113117 and PL06S.207045 and would contravene a previous grant of permission", and
 - b. The inspector's Report under PL06S.207045 finding that such a path is undesirable.

It is my intention to establish that any activity in this space is in harmony with its continued use as a community asset (which ABP stated would be "[...] a serious loss of amenity to the area" under finding PL065 207045), as well as with the County Development Plan and historical planning applications, appeals and resulting decisions.

I appreciate your attention to this matter and await your response to each of the questions above within the time limits as prescribed.

Many thanks



Paul Campbell
22 Monastery Crescent
Clondalkin
Dublin 22
D22 VP02

(Appendices below)

Appendix 1 – SDCC decision ED230026 [pp.03-11]

Appendix 2 – additional material re: gate [pp.12 – 15]

Appendix 2a: site-specific location map [p.12]

Appendix 2b: site-specific scaled drawings – plan [p.12]

Appendix 2c: site-specific scaled drawings – elevation [p.12]

Appendix 2d: site-specific prior finding from ABP re: public space [p.13]

Appendix 2e: ABP finding re: gate opening from private to public space [p.15]

Appendix 3 – site specific findings re: enclosure of space [pp.18 – 21]

Appendix 3a. site specific ABP findings re: enclosure of area habitually open to the public [p.18]

Appendix 3b - site specific ABP findings re: enclosure of area contrary to proper planning / sustainable development [p.19]

Appendix 3c. site-specific SDCC Inspectors report (SD06B-0093, page 4, cf. points 3 and 4) [p.20]

Appendix 3d. site-specific ABP Inspectors report (PL065 207045, page 4) re: loss of local amenity [p.21]

APPENDICES

Appendix 1 – SDCC decision ED230026

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Register Reference:	ED23:0026
Correspondence Name & Address:	Mr. Paul Campbell 36, Monastery Crescent, Clondalkin, Dublin, D22F206
Development:	Enclosure of public open space, Installation of the gate from private garden to public open space and addition of path / widening of drive into open space
Location:	36, Monastery Crescent, Clondalkin, Dublin, D22F206
Applicant:	Paul Campbell

(COS)

Description of Site and Surroundings

The subject site is located on a corner site on Monastery Crescent within an existing housing estate in Yellowmeadows.

Proposal

This is an application requesting a Section 5 Declaration on whether the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*' at No. 36 Monastery Crescent, Clondalkin is or is not exempted development.

The Section 5 Declaration application includes:

- A completed application form
- Extract of the SDCC County Development Plan 2022-2028 online maps with the site outlined
- Site plan and elevational drawings
- Annotated Google map image and photograph

Recent Relevant Planning History

Subject site

SD06B/0752

Conversion of garage to habitable space, construction of ground floor extension and 2no. dormer windows at first floor to front, construction of first floor extension to side and rear, modifications to front and rear elevations, internal modifications and associated works.

Permission granted.

Relevant conditions:

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

5. a) Existing trees in the open space area to the side of house shall be retained and shall be protected from damage during construction of proposed extension.
b) No building materials, rubble or other debris shall be heaped or stored in the open space area to the east of the house

REASON: In the interest of visual amenity

SD06B:0093

Conversion of existing garage to playroom with revisions at ground floor and three bedroom dormer extension.

Permission refused by SDCC for the following reasons:

1. *The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.*
2. *The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2004 - 2010) . A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.*
3. *The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S.113117 and PL06S.207045, which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.*
4. *The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.*

SD04B:0046 & ABP Ref. PL 06S.207045

For a 600mm high dwarf wall to boundary of existing house.

Permission granted by SDCC. Following appeal permission refused by An Bord Pleanála for the following reason:

The proposed development, which provides for the enclosure of the entire open area of ground (including the mature trees) alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP Ref. PL 06S RF 1052

Whether the building of a wall enclosing open space at Monastery Crescent, Clondalkin, Dublin is or is not exempted development.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Declared not exempt by the Board.

S99B/0260 & ABP Ref. PL 06S.113117

Permission sought for extension to side of house with new gates and garden walls to side and rear.

Permission granted by SDCC. Following appeal permission granted by An Bord Pleanála.

Relevant conditions:

1. The proposed development shall contain the hall, utility room, extended bathroom and bedroom only. The proposed development including part of the extension to the west of the existing building line, the proposed 1.8 metre high wall enclosing the garden and the gates to the front shall be omitted.

Reason: To clarify the extent of the development permitted and in the interest of the residential amenity of the area.

Recent Relevant Enforcement History

Enforcement Ref. S2075

Boundary wall, householder trying to enclose side garden with a wall new complaint scrapped car.

Closed 1st January 1980.

Enforcement Ref. S4965

Unauthorised use of open space. 4/4 07 - Building works carried out have allegedly resulted in damage to walls & roof of No. 37.

Closed 20th April 2007. Regularised after s152.

Enforcement Ref. S8745

1. Construction of a pathway to the side of the house without planning permission.
2. Demolition of established trees (while constructing pathway).
3. Enclosing of open space contrary to planning permission.
4. Planting trees around main shore.

Closed 22nd June 2023. No unauthorised development taking place.

Zoning and Council Policies

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': *'To preserve and provide for open space and recreational amenities'* under the CDP 2022-2028.

The submitted site plan shows a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands. The existing dwelling at No. 36 Monastery Crescent is located on the 'RES' zoned lands. The zoning objective for 'RES' is *'To protect and / or improve residential amenity'*.

Assessment

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Part 2 of the Planning and Development Regulations 2001 (as amended).

Is the proposal development?

Planning and Development Act 2000 as amended (emphasis added):

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

Section 2(1) in this Act, except where otherwise requires –

'**works**' includes any act or operation of **construction**, excavation, demolition, extension, alteration, repair or renewal.

The description of the development is stated as the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*'. The information submitted shows a gate, footpath and widening of the driveway. This is considered to constitute '**works**' and therefore '**development**'.

Is the proposal exempted development?

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following:

Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

4. (1) The following shall be exempted developments 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;
 - (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

Article 6(1) 'Exempted Development' of the Regulations states that '*Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1*'. Schedule 2 Part 1 Exempted Development – General of the Planning & Development Regulations 2001 (as amended) includes development within the curtilage of a house.

The development is described in the application as the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*'. Insufficient information and drawings have

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

been submitted in relation to the development including dimensions. No Site Location Map or dimensioned drawings have been submitted with the application.

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': *'To preserve and provide for open space and recreational amenities'* under the CDP 2022-2028. Whereas the submitted site plan outlines a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands.

It appears that the development is existing onsite. It is not clear when the development was constructed. This information is required in relation to the assessment of the development.

Conclusion

The applicant should be requested to submit the following drawings and information:

- (a) A site location map with the site clearly outlined in red,
- (b) A site layout plan including all existing structures on site (this is required as the conditions and limitations of exempted development include location of development and distances from site boundaries),
- (c) Dimensioned plans and elevations (dimensions are required as the conditions and limitations of exempted development include height and extent of structures), and
- (d) Detail on when the development took place (including date(s)).

Recommendation

Request Additional Information.

Additional Information

Additional Information was requested on the 24th of July 2023.

Additional Information was received on the 5th of September 2023.

Assessment

Item 1 Requested

The development is described in the application as the 'enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space'. Insufficient information and drawings have been submitted in relation to the development including dimensions. No Site Location Map or dimensioned drawings have been submitted with the application.

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': 'To preserve and provide for open space and recreational amenities' under the CDP 2022-2028. Whereas the submitted site plan outlines a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands.

It appears that the development is existing onsite. It is not clear when the development was constructed. This information is required in relation to the assessment of the development.

The applicant is requested to submit the following drawings and information:

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

- (a) A site location map with the site clearly outlined in red.
- (b) A site layout plan including all existing structures on site (this is required as the conditions and limitations of exempted development include location of development and distances from site boundaries).
- (c) Dimensioned plans and elevations (dimensions are required as the conditions and limitations of exempted development include height and extent of structures), and
- (d) Detail on when the development took place (including date(s)).

Applicant's Response:

The applicant has submitted a cover letter and images of drawings.

In relation to the enclosure of public open space, the submitted cover letter states that 'the current enclosure method is to use fast growing coniferous trees around the perimeter of the Public Open Space'. The applicant has submitted a non-scaled images of a site layout and elevational drawings showing the location(s) of the trees.

The submitted cover letter provides the following table

#	Development	Date	Width	Height (or length)
01	Gate installed in existing continuous wall bordering Public Open Space	Between 2008 & 2009	2m	2.4m
	Wooden gate replaced by metal version	Aug-2023	2m	2.4m
02	Grey cobble-lock footpath installed, drive widened, and shore covered	May-2021	1.5m	19m
03	50+ fast growing invasive saplings planted	May 2023	Various - ~ 5m	Various, currently ~1m

Assessment:

Planting of trees around perimeter of lands and addition of path/widening of drive Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

- 4. (1) The following shall be exempted developments 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;
- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

It is noted that exempted development provided for under Section 4(1) of the Act is not subject to the restrictions set out to Article 9 of the Planning and Development Regulations (2001) which only restricts exempted development to Article 6 of same. Exemptions development pursuant to Section 4(1) of the Act are only subject to restrictions within primary legislation.

Although the lands in question are referred to as public open space in this third-party section 5 application, the Planning Authority is aware that these lands are privately owned by the householder of number 36 Monastery Gardens and are not maintained by the Council as public open space, though it notes the lands are currently zoned for open space.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

The planting of trees to a garden is not considered to constitute works or development having regard to the definitions of same to the Planning and Development Act 2000 (as amended)

The widening of the path and its use are considered to fall within the provisions of Section 4(1)(h) and 4(1)(j) of the Planning and Development Act 2000 (as amended)

It is therefore considered that the planting of trees does not constitute works or development. And the path/widening of drive within the curtilage of the house is exempted development.

Installation of a gate

Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

4. (1) The following shall be exempted developments 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;

Article 6, Schedule 2 Part 1 Exempted Development – General of the Planning and Development Regulations 2001 (as amended) includes the following 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.*

The information submitted states that the gate is 2.4m in height, however, no scaled drawings have been submitted to accurately determine the height of the gate. The information submitted are images of drawings, which cannot be scaled and measured, and do not accurately reflect the development. The gate is shown on the images as the same height as the garden wall, which does not appear to accurately reflect what is onsite.

Insufficient information has been provided to determine whether the gate is or is not exempted development.

Article 9 restrictions

The installation of the gate is not restricted by any of the restrictions in Article 9 of the Planning and Development Regulations 2001 (as amended).

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Conclusion

1. The planting of trees within the curtilage of a house does not constitute works or development.
2. The addition of path/widening of drive within the curtilage of the house is development and is exempted development
3. The installation of a gate is development and due to the information submitted a determination could not be made whether it is or is not exempted development.

Recommendation

The applicant should be informed of the following:

1. The planting of trees within the curtilage of a house does not constitute works or development.
2. The addition of path/widening of drive within the curtilage of the house is development and is exempted development.
3. The installation of a gate is development, but due to deficiencies in the information submitted a determination cannot be made on whether it is or is not exempted development.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Reg. Ref. ED23/0026



**Caitlin O'Shea,
Executive Planner**

ORDER: That the applicant be informed that the proposed development of:

The **planting of trees** within the curtilage of the house is not works and **is not development**. The addition of path/widening of drive within the curtilage of the house **is development** and is **exempted development**.

The installation of a gate is development and due to the information submitted a determination **could not be made whether it is or is not exempted development**, at 36, Monastery Crescent, Clondalkin, Dublin, D22F206

The **planting of trees** does not constitute works or development and addition of path/widening of drive within the curtilage of the house is development and is considered exempted development under the Planning and Development Act 2000 (as amended) and therefore does not require planning permission

The installation of a gate is development and due to the information submitted a determination **could not be made whether it is or is not exempted development** under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) or if planning permission is required.

Date: 29/09/23



Gormla O'Corrain, Senior Planner

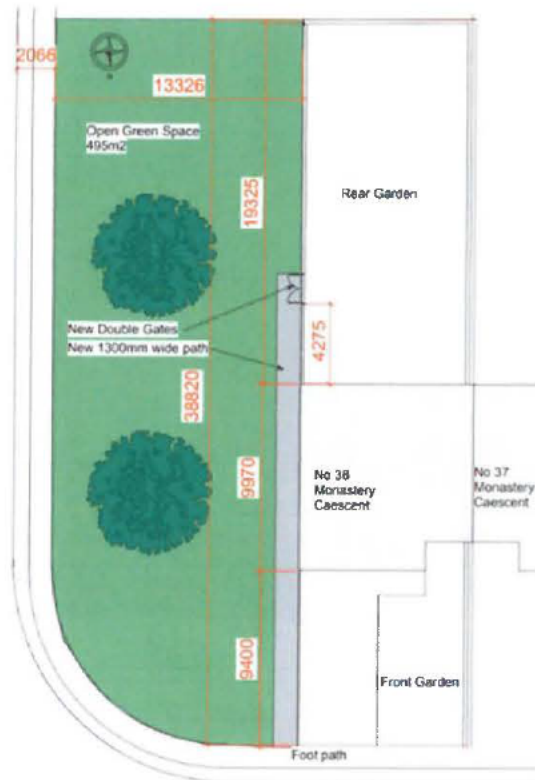
To whom the appropriate powers have been delegated by the order number DELG (13423) of the Chief Executive of South Dublin County Council*

Appendix 2 – additional material re: gate

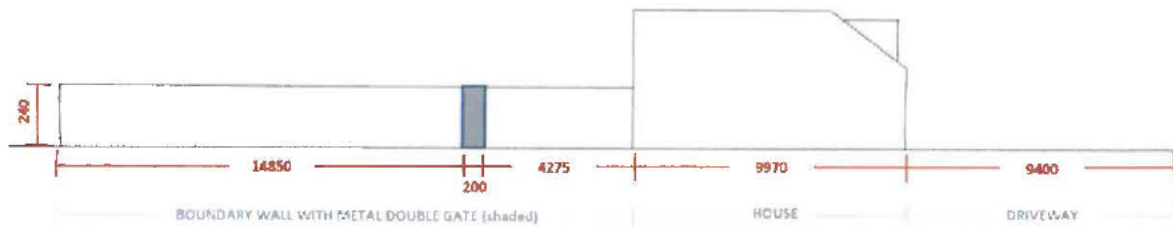
Appendix 2a: site-specific location map



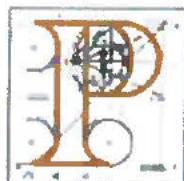
Appendix 2b: site-specific scaled drawings – plan



Appendix 2c: site-specific scaled drawings – elevation



An Bord Pleanála



LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

WHEREAS a question has arisen as to whether the building of a wall enclosing open space at Monastery Crescent, Clonalkin, Dublin is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Thomas J. Maher and others care of 11 Monastery Crescent, Clonalkin, Dublin on the 18th day of September, 2001:

AND WHEREAS An Bord Pleanála, in considering this reference, had regard particularly to -

- (a) sections 2, 3 and 4 of the Local Government (Planning and Development) Act, 1963,
- (b) articles 9 and 10 of the Local Government (Planning and Development) Regulations, 1994, as amended, with particular reference to class 5 of Part 1 of the Second Schedule to these Regulations, and
- (c) the existing layout of the land:

AND WHEREAS An Bord Pleanála has concluded that the proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10(1)(xii) of the said 1994 Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 1963 Act, hereby decides that the building of the said wall enclosing open space is not exempted development.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2002.



An
Bord
Pleanála

Board Order
91.RL.3586

Planning and Development Acts 2000 to 2017

Planning Authority: Limerick City and County Council

Planning Register Reference Number: DC-420-15

WHEREAS a question has arisen as to whether the opening of an ope in the side wall of a rear garden to provide a pedestrian entrance from the public road/green area, and to provide a 1.98 metre high pedestrian timber gate opening onto the rear garden at number 36 Vartry Avenue, Raheen, Limerick, is or is not development or is or is not exempted development:

AND WHEREAS this question was referred to An Bord Pleanála by Limerick City and County Council of Dooradoyle, Limerick on the 25th day of May, 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the site, and

- (e) the Roads Act 1993;

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the opening of the ope in the existing wall, and the construction of the pedestrian gate in this wall involves the carrying out of works, which comes within the meaning of development in Section 3(1) of the Planning and Development Act 2000, as amended, and is, therefore, development,
- (b) this development would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, but
- (c) the development comes within the scope of Article 9(1)(a)(ii) of the Planning and Development Regulations 2001, as amended, because Vartry Avenue is a public road within the meaning of the Roads Act 1993, and its surfaced carriageway exceeds four metres in width, and the development constitutes a means of access to this public road, and therefore is not exempted development

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the opening of an ope in the side wall of a rear garden to provide a pedestrian entrance from the public road/green area, and to provide a 1.98 metre high pedestrian timber gate opening onto the rear garden at number 36 Vartry Avenue, Raheen, Limerick is development and is not exempted development.

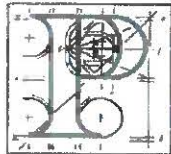
In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Dated this day of 2018

Appendix 3 – site specific findings

Appendix 3a. site specific ABP findings re: enclosure of area habitually open to the public

An Bord Pleanála



Board Direction

Ref: 06S RF 1052

The submissions on this file and the Inspector's report were considered at a Board meeting held on the 29th November 2002.

The Board decided that -

In considering this reference the Board had regard to -

- (a) 2, 3 and 4 of the 1963 Act,
- (b) Articles 9 and 10 of the 1994 Regulations
- (c) The existing layout of the land

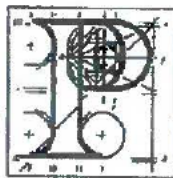
It was considered that -

The proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10 (1) (xii).

In arriving at its decision, which differs from the Inspector's recommendation, the Board considered that on the balance of probability the land had been regarded as being habitually open to the public for recreational purposes, e.g. informal children's playing, residents walking etc.

Board Member _____ Date 2nd December 2002
Rosalind Nixon

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS, 2000 TO 2002

South Dublin County

Planning Register Reference Number: SD04B/0046

An Bord Pleanála Reference Number: PL 06S.207045

APPEAL by Monastery Estate Residents' Association care of Andy Conway of 72 Monastery Drive, Dublin against the decision made on the 6th day of April, 2004 by South Dublin County Council to grant subject to conditions a permission to Shay Conway care of Paul Stafford of 46 Monastery Walk, Clondalkin, Dublin.

PROPOSED DEVELOPMENT: The erection of a 600 millimetres' high dwarf wall to the boundary of existing house at 36 Monastery Crescent, Clondalkin, Dublin.

DECISION

REFUSE permission for the above proposed development based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The proposed development, which provides for the enclosure of the entire open area of ground (including the mature trees) alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 31st day of August 2004.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

1. The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.
2. The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2004 - 2010). A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.
3. The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S.113117 and PL06S.207045, which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.
4. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

PL 06S. 108041- PP refused for dwarf wall at no.42 Monastery Crescent in the interests of protecting the visual amenities of the area and the open plan character of the estate.

2.0 DEVELOPMENT PLAN

Zoning objective: The site is located within an area zoned with the objective "A" which seeks "To protect and/or improve residential amenity." in the 1998 South County Dublin Development Plan.

3.0 APPEAL

3.1 Summary

There is one appeal in relation to this application, which is a Third Party appeal against the decision of the County Council to grant planning permission. The appeal has been lodged by the Monastery Estate Residents Association.

- The enclosure of a large area of open space/play area would result in a serious loss of amenity to the area.
- The proposed wall would be built along the edge of the footpath.
- Creation of a precedent, which would endanger the open plan nature of the estate, which is its distinctive characteristic.

3.2 County Council Response submissions

The County Council Planning Department, in a letter received by An Bord Pleanála on 27/05/04 had no additional comments to make with respect to the proposed development.

3.3 First Party response submissions.


The First Party, in a letter received by An Bord Pleanála on 19/05/04 stated the following in relation to the Third Party appeal.

- The site is not used as a children's play area.
- The proposed wall would be dwarf and the green area would remain visible.
- Several other corner sites within the estate have already being enclosed and the proposal would not set a precedent.
- PP has been granted for the erection of dwelling in the corner garden of no.41.

3.4 Observers.

Several letters of observation have being received from the following residents of Monastery Crescent; Monica Mc Gill & others; Ann & Gerard Davis; Robert & Maura Millist; Councillor Robert Dowds and Patrick & Deirdre McElwec, all of whom object to the proposed wall for reasons related to:-

SDCC acknowledgement / receipt of Section 5 submission

ED23/0051 - 36 Monastery Crescent  [Inbox](#) x



Rachel Murray

To me

Thu, 7 Dec 2023, 11:59



To whom it concerns,

Please find attached acknowledgement of receipt of your planning application ED23.0051, Declaration of development and exempted development (section 5)

Regards,

Rachel Murray

South Dublin County Council County Hall Tallaght Dublin 24 D24 YNN5

www.sdcc.ie



South Dubl
County Hal
Dublin 24
D24 A3XC



28-Jun-2023:

Payments Office
South Dublin County Council
County Hall Tallaght, Dublin 24
Phone 4149121
Monday to Thursday 9 00am to 4 00pm
Friday 9 00am to 3 30pm
28/06/2023 15 29 01

Dear Sir / M

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Section 5
36 Monastery Crescent
Clondalkin

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Issued By: Laure Doutey
From: Tallaght Lodgement Area 4
Val reg No: IE8508808P

and adopted in the current County Development Plan and other official documents (attached).

PLANNING COUNTER

28 JUN 2023

RECEIVED

Act 2000 (or as amended) for decisions on 4
escent, Clondalkin, Dublin 22 ("No. 36").

irs to change the status of this Public Open
d)acent dwelling house, but these attempts

a dwarf wall, which would normally be an
not an exempt development for reason that
is been habitually open to the public for a

ning permission was refused by An Bord
tively incorporated this Public Open Space
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rden of No. 36 Monastery Crescent involves
Space. The trees in question are of a fast-
ntal effect on the land and will alter its
amenities of the area. It is also suspected
deny public access by completely enclosing
ace, contrary to the Motion recommended
County Council meeting on 17th June 2021,

However as determined by An Bord Pleanála Inspectors Report [PL 06S 207045] to the aforementioned 2004



South Dublin County Council
County Hall Tallaght
Dublin 24
D24 A3XC

28-Jun-2023

Dear Sir / Madam

This is a request under Section 5 of the Planning and Development Act 2000 (or as amended) for decisions on 4 questions regarding the Public Open Space beside 36 Monastery Crescent, Clondalkin, Dublin 22 ("No. 36").

The previous owner of No. 36 made several attempts over the years to change the status of this Public Open Space to a private space for the sole use of the occupiers of the adjacent dwelling house, but these attempts were all unsuccessful.

In 2002 An Bord Pleanála decided via Section 5 [06S.RF.1052] that a dwarf wall, which would normally be an exempt development under the aforementioned planning act, was not an exempt development for reason that the dwarf wall "would consist of the enclosure of the land that has been habitually open to the public for a period of at least 10 years for recreational purposes".

Furthermore, under SD04B/0406 [ABP ref. PL 06S 207045] planning permission was refused by An Bord Pleanála on July 20th 2004 for a dwarf wall which would have effectively incorporated this Public Open Space into the garden of No. 36. A copy of the ABP Decision Order is attached.

The current attempt to incorporate the Public Open Space into the garden of No. 36 Monastery Crescent involves the planting of a hedgerow around the perimeter of the Public Open Space. The trees in question are of a fast-growing, non-native coniferous variety which will have a detrimental effect on the land and will alter its character, quite apart from seriously injuring the visual and residential amenities of the area. It is also suspected that the tree fence will be augmented by a further fence or railing to deny public access by completely enclosing the land in question thereby changing its use from public to private space, contrary to the Motion recommended by the County Council Management, unanimously accepted at the full County Council meeting on 17th June 2021, and adopted in the current County Development Plan and other official documents (attached).

However as determined by An Bord Pleanála Inspectors Report [PL 06S 207045] to the aforementioned 2004 Planning Application for the dwarf wall, the provisions of Article 34 (13) of the Planning and Development Act 2000 mean that such regularisation is not permissible in this case due to the fact that the lands in question are Public Open Space.

With the above in mind, the 4 questions that I am seeking your response on are:

Question 1. Is the enclosure of the Public Open Space by any means* a development or not a development?

- * Including by means of walls, fences, railings, trees, hedges or any combination of such given:*
- (a) site-specific An Bord Pleanála documents under 06S.RF.1052 and PL 06S 207045, that state the "enclosure of the open space would seriously injure the visual and residential amenities of the area" and,*
 - (b) the clear fact that enclosing the space by any means (including trees, hedge(s), fence(s), railings, or any combination(s) of these elements, etc) would have the same material result as the dwarf wall in previous decisions.*

Question 2. Is the enclosure of the Public Open Space by any means* an exempt development or not an exempt development?

** Including by means and rationale raised under (a) and (b) above.*

Question 3. Given site-specific planning decision SD06B/0093 refusal reason 3 which states:

(a) "the path to the side of the house is contrary to PL06S.113117 and PL06S.207045 and would contravene a previous grant of permission", and

(b) the PL06S.207045 Inspector's Report declaring that such a path is undesirable,

is the development of a path within the Public Open Space adjacent to the garden of No. 36 an exempt development or not an exempt development?

Question 4. Given previous planning decisions on this property and the similarity to An Bord Pleanála decision RL61.308493 (ABP-308493-20), is the gate in the wall linking the private space to the Public Open Space an exempt development or not an exempt development?

The land is recognised and designated as Public Open Space in the current County Development Plan, 2022-2028 (see attached map from the Plan and copy of the relevant Motion, approved at a general Council meeting on 17th June 2021 "to copper-fasten its protection for public use"). The County Development Plan operating in 1998 also gave the land the same status. Members of the public have enjoyed continuous free access to this land for many more than the minimum 10 years required, regardless of ownership.

I believe that attempts are now being made to establish control-over-time by rendering the area inaccessible to the public which will affect a material change of use of the land from Public Open Space to a private residential garden, without regard to prior decisions and/or due-process.

Your acknowledgement of receipt of this letter would be appreciated, and I look forward to your reply in-full within official time limits as applied.

Regards

Paul Campbell
22 Monastery Crescent
Clondalkin
Dublin 22
D22 VP02

Enclosed documents:

1. Completed Section 5 form (5pgs), incl.
 - 1a. Aerial view of Public Open Space (1pg)
 - 1b. Map from SDCC Count Dev Plan noting area of open space (1pg)
 - 1c. ABP 065 RF 1052 (decision that proposed enclosure not exempted development) (3pgs)
 - 1d. Pictures highlighting path and gate (1pg)
2. PL 06S 207045 (decision that proposed enclosure not exempted development) (2pgs)
3. SD06B/0093 (planning decision) (5pgs)
4. PL06S.113117 (planning decision) (2pgs)
5. ABP-308493-20 (board order) (3pgs)
6. Motion, Map and Minutes from general Council Meeting 17-Jun-2021 (3pgs)
7. S8745 Enforcement response examples:
 - 7(i) – e-Mail from P. Davis to Paul Campbell (1pg)
 - 7(ii) – Response Conor Tiernan to Francis Timmons (1pg)



South Dublin County Development Plan 2022-2028

Section 10: Review of 2015/2017 SPCE and Local



100m

X



100m

100m

100m

526.96 m²

102.97 m

102.97 m

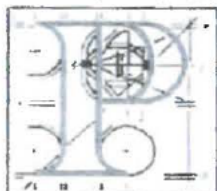
For information only



526.96 m²

100m

An Bord Pleanála



Board Direction

Ref: 06S RF 1052

The submissions on this file and the Inspector's report were considered at a Board meeting held on the 29th November 2002.

The Board decided that -

In considering this reference the Board had regard to -

- (a) 2, 3 and 4 of the 1963 Act,
- (b) Articles 9 and 10 of the 1994 Regulations
- (c) The existing layout of the land

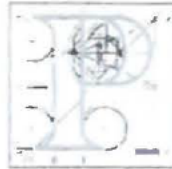
It was considered that -

The proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10 (1) (xii).

In arriving at its decision, which differs from the Inspector's recommendation, the Board considered that on the balance of probability the land had been regarded as being habitually open to the public for recreational purposes, e.g. informal children's playing, residents walking etc.

Board Member _____ Date 2nd December 2002
Rosalind Nixon

An Bord Pleanála



LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

WHEREAS a question has arisen as to whether the building of a wall enclosing open space at Monastery Crescent, Clondalkin, Dublin is or is not exempted development:

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- (a) sections 2, 3 and 4 of the Local Government (Planning and Development) Act, 1963,
- (b) articles 9 and 10 of the Local Government (Planning and Development) Regulations, 1994, as amended, with particular reference to class 5 of Part 1 of the Second Schedule to these Regulations, and
- (c) the existing layout of the land:

AND WHEREAS An Bord Pleanála has concluded that the proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10(1)(xxii) of the said 1994 Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 1963 Act, hereby decides that the building of the said wall enclosing open space is not exempted development.

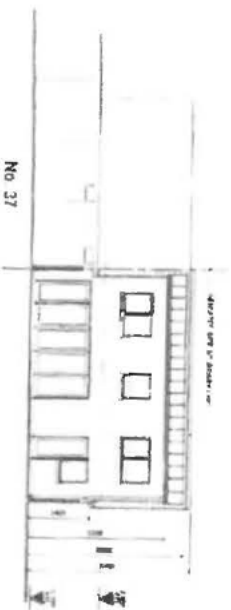
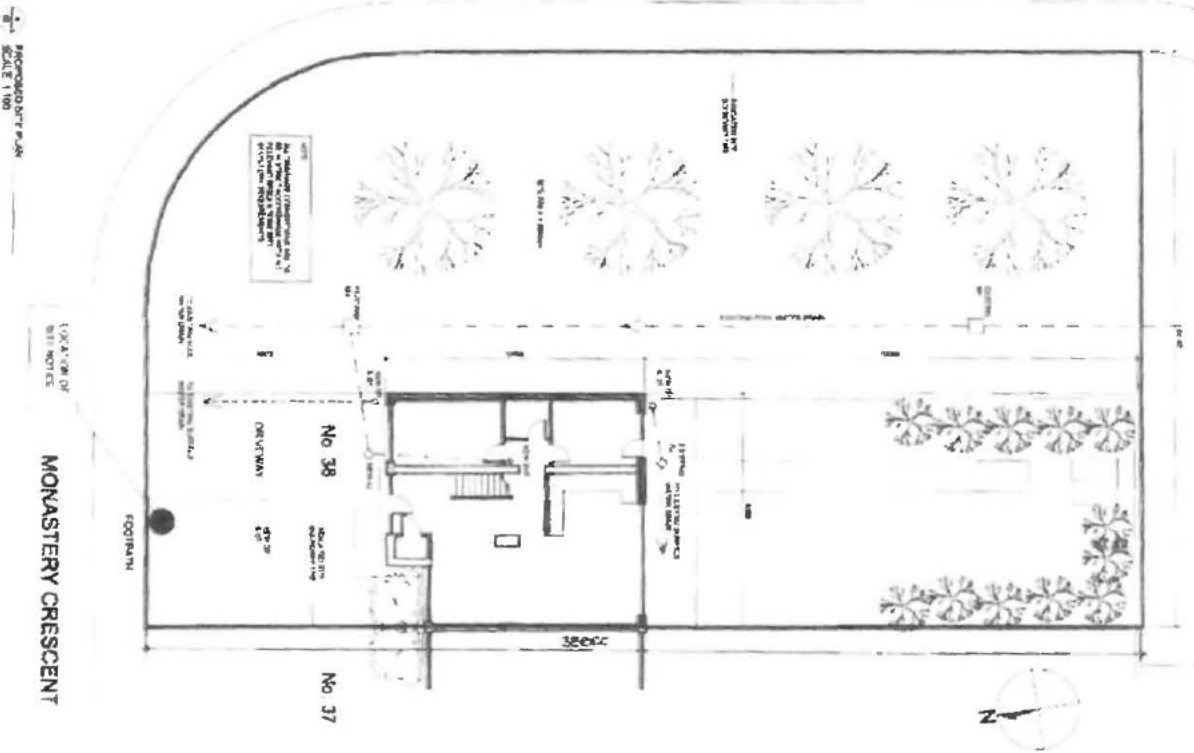
**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2002.

■ Sect 5 - 1d.1) Roadside view of widened drive, path and gate

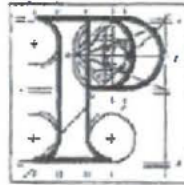


Sect 5 - 1d (ii) - Layout block plans from SD06R1/52 showing no side gate



PLANNING

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS, 2000 TO 2002

South Dublin County

Planning Register Reference Number: SD04B/0046

An Bord Pleanála Reference Number: PL 06S.207045

APPEAL by Monastery Estate Residents' Association care of Andy Conway of 72 Monastery Drive, Dublin against the decision made on the 6th day of April, 2004 by South Dublin County Council to grant subject to conditions a permission to Shay Conway care of Paul Stafford of 46 Monastery Walk, Clondalkin, Dublin.

PROPOSED DEVELOPMENT: The erection of a 600 millimetres' high dwarf wall to the boundary of existing house at 36 Monastery Crescent, Clondalkin, Dublin

DECISION

REFUSE permission for the above proposed development based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The proposed development, which provides for the enclosure of the entire open area of ground (including the mature trees) alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Bernard Cant

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 31st day of August 2004.

From:
 ABP Inspector's Report -- PL 06S 207045: Page 4

PL 06S. 108041- PP refused for dwarf wall at no.42 Monastery Crescent in the interests of protecting the visual amenities of the area and the open plan character of the estate.

2.0 DEVELOPMENT PLAN

Zoning objective: The site is located within an area zoned with the objective "A" which seeks "To protect and/or improve residential amenity." in the 1998 South County Dublin Development Plan.

3.0 APPEAL

3.1 Summary

There is one appeal in relation to this application, which is a Third Party appeal against the decision of the County Council to grant planning permission. The appeal has been lodged by the Monastery Estate Residents Association.

- The enclosure of a large area of open space/play area would result in a serious loss of amenity to the area.
- The proposed wall would be built along the edge of the footpath.
- Creation of a precedent, which would endanger the open plan nature of the estate, which is its distinctive characteristic.

3.2 County Council Response submissions

The County Council Planning Department, in a letter received by An Bord Pleanála on 27/05/04 had no additional comments to make with respect to the proposed development.

3.3 First Party response submissions.

The First Party, in a letter received by An Bord Pleanála on 19/05/04 stated the following in relation to the Third Party appeal.

- The site is not used as a children's play area.
- The proposed wall would be dwarf and the green area would remain visible.
- Several other corner sites within the estate have already being enclosed and the proposal would not set a precedent.
- PP has been granted for the erection of dwelling in the corner garden of no.41.

3.4 Observers.

Several letters of observation have being received from the following residents of Monastery Crescent; Monica Mc Gill & others; Ann & Gerard Davis; Robert & Maura Millist; Councillor Robert Dowds and Patrick & Deirdre McElwec, all of whom object to the proposed wall for reasons related to:-

pa 0681106

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Reg. Reference: SD06B/0093 **Application Date:** 21-Feb-2006
Submission Type: New Application **Registration Date:** 21-Feb-2006

Correspondence Name and Address: Watson Fitzpatrick & Associates 98, Woodlawn Park Grove, Firhouse, Dublin 24

Proposed Development: Conversion of existing garage to playroom with revisions at ground floor and three bedroom dormer extension.

Location: 36, Monastery Crescent, Clondalkin, Dublin 22.

Applicant Name: Mr. Keith Howell

Application Type: Permission

POB

Site Inspection was carried out on 3/04/2006.

Description of Site and Surroundings:

Site Area:
0.1 hectares

Site Description

The subject site contains a semi-detached dormer house located on a corner site. There is a large area of open space to the side of the house, with a number of mature trees.

Zoning:

The site is subject to zoning objective A "to protect and/or improve Residential Amenity".

Proposal:

- Extension to the front, side and rear of this house at first floor level over an existing garage.
- New path to the side and rear of the extended house on the existing open space area.

Consultations

Environmental Services Department.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Foul Sewer System - No objection to this development.
Public Watermain - No objection to this development.
Surface water drainage system - Further information is requested

Submissions/Observations/Representations

A number of letters of objection to this development have been received and are noted in the preparation of this planning report. The main issue of concern relates to the development of a path on the open space area to the side of the house.

John Curran T.D., Paul Gogarty T.D., Mayor Theresa Ridge, Councillors Robert Dowds, Trevor Gilligan and Fintan McCarthy have also objected to this development.

Relevant Planning History

S99B/0260 refers to a grant of permission for an extension to side of house with new gates and garden walls to side and rear. On appeal, An Bord Pleanála conditioned that the wall forming the site boundary be omitted and that extension be reduced in size.

SD04B/0046 refers to a grant of permission for a 600mm high dwarf boundary wall. This decision was appealed and An Bord Pleanála overturned the decision of the Planning Authority.

Relevant Enforcement History

None

Pre-Planning Consultation

None

Relevant Policy in South Dublin County Council Development Plan (2004-2010)

Section 12.4.2 of the Development Plan refers to Extensions to Dwellings and contains general design principles in relation to extensions as follows:

- Have regard to light and privacy of adjoining buildings
- Respect form and design of existing dwellings
- Integrate with existing building (detailing and proportions)
- Harmonisation of external finishes
- Pitched roof generally required (except where flat roof is the norm in estate or area)
- House and Extension to be used as a single dwelling unit
- Single storey rear extensions are generally acceptable
- In all cases a minimum rear garden must be provided

Assessment

The main issues for considerations are compliance with Council policy, visual and residential amenity.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

Council policy

It is considered that the proposed development is not in accordance with the South Dublin County Development Plan 2004 – 2010 and in particular is contrary to Section 12.4.2. The proposed extension of this house would be out of character with existing houses in the area and would in particular dominate the neighbouring property with a potential devaluation of that house. The style of house in this part of Monastery is unique to Clondalkin. The proposed design does not respect the form and design of existing dwellings and does not integrate with the neighbouring property.

Visual amenity

The proposed extension is out of character in terms of visual appearance and would set an undesirable precedent for similar developments if granted permission. The proposed extension would unbalance the existing semi-detached pair of houses to an unacceptable degree. The revision to the dormer windows in particular, would significantly change the appearance of the house.

Residential Amenity

Aside from the visual appearance of the extension, there is a separate issue of concern in relation to the laying of a path to the side and rear of the house on land that is currently open space. A condition was attached by An Bord Pleanála to their decision to grant permission for S99B-0260, that no development shall take place west of the existing building line and that the proposed wall to enclose the garden shall be omitted. The subsequent application under SD04A/0046 for a dwarf wall was appealed and An Bord Pleanála refused this wall. Development on this open space area shall not therefore be permitted and the laying of a path here is not desirable.

Conclusion

It is considered that the proposed development would be injurious to the visual amenity of the area, would depreciate the value of neighbouring properties, would be contrary to previous decisions of An Bord Pleanála and would set an undesirable precedent for similar developments in the area.

I recommend that a decision to Refuse Permission be made under the Planning & Development Acts, 2000-2004 for the reasons set out in the Schedule hereto:-

SCHEDULE

Reasons

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

1. The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.
2. The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2004 - 2010). A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.
3. The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S.113117 and PL06S.207045, which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.
4. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

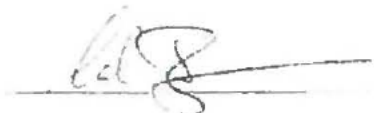
REG. REF. SD06B/0093

LOCATION: 36, Monastery Crescent, Clondalkin, Dublin 22.


Maire O'Connor
Senior Executive Planner

ORDER: A decision pursuant to Section 34(1) of the Planning & Development Act 2000 to Refuse Permission for the above proposal for the reasons set out above is hereby made.

Dated:


11/6/06

Colin Ryan, Senior Planner

AN BORD PLEANÁLA

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

Planning Register Reference Number: S99B/0260

APPEAL by Robert Dowds and others of 43 Castle Park, Clondalkin, Dublin and by Maura Millist and others care of Becker Tansey and Company of Jubilee House, New Road, Clondalkin, Dublin and by Valerie and Tommy Maher of 11 Monastery Crescent, Clondalkin, Dublin against the decision made on the 31st day of August, 1999 by the Council of the County of South Dublin to grant subject to conditions a permission to Shay Conway of 36 Monastery Crescent, Clondalkin, Dublin for development comprising the erection of an extension to side of house with new gates and garden walls to side and rear of 36 Monastery Crescent, Clondalkin, Dublin in accordance with plans and particulars lodged with the said Council.

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1999, it is hereby decided, for the reason set out in the First Schedule hereto, to grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions.

FIRST SCHEDULE

Having regard to the established pattern and form of development in the vicinity of the site, it is considered that, subject to compliance with the conditions set out in the Second Schedule, the proposed development would not seriously injure the amenities of property in the vicinity and would be in accordance with the proper planning and development of the area.

SECOND SCHEDULE

1. The proposed development shall contain the hall, utility room, extended bathroom and bedroom only. The proposed development including part of the extension to the west of the existing building line, the proposed 1.8 metre high wall enclosing the garden and the gates to the front shall be omitted.

Reason: To clarify the extent of the development permitted and in the interest of the residential amenity of the area.

2. The external finishes shall harmonise in colour and texture with the existing finishes on the house.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority.

Reason: In the interest of public health and to ensure a proper standard of development.

4. The proposed additional hall door shall be omitted and replaced with a window to match existing window opens.

Reason: In the interest of the proper planning and development of the area.

5. The use of the proposed extension shall be ancillary to the use of the main house. The extension shall not be sold or let as an independent living unit.

Reason: In the interest of residential amenity.



Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 22nd day of January 2000.



An
Bord
Pleanála

Board Direction ABP-308493-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/02/2021.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether 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 or is not development and is or is not exempted development

AND WHEREAS Tom Barry of 31 The Maples, Doctor Mannix Road, Salthill, Galway City requested a declaration on the question from Galway City council, and the Council issued a declaration on the 24th day of September 2020 stating that the matter was development and was not exempted development.

AND WHEREAS Tom Barry referred this declaration for review to An Bord Pleanála on the 20th day of October 2020:

AND WHEREAS An Bord Pleanála, has reformulated the question as follows-

Whether 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 number 31 The Maples, Doctor Mannix Road, Salthill, Galway City is or is not development or is or is not exempted development.

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

- Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- The planning history of the site, including all the conditions of PL61 094183 where no such condition restricts the carrying out of exempted development in accordance with the provisions of the Act and Regulations
- The Roads Act, 1993,
- The Board's declaration under ABP-302804-18, and
- The Planning Inspectors Report

AND WHEREAS An Bord Pleanála has concluded that the opening of a pedestrian gateway in a boundary wall between the rear private amenity space of a house into an area of public open space

- (a) Would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000
- (b) Would come within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
- (c) Would be exempted development as there are no restrictions to exemptions under Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 that are applicable

NOW THEREFORE An Bord Pleanála in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that 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.

Board Member:

Date: 26/02/2021

Maria FitzGerald

Re: An area beside No. 36 Monastery Crescent (known around as The Little Green) – please refer to DPM2/D621 Item ID 70759 on page 3.

[The following is an excerpt of Minutes of full County Council meeting on 17 June 2021 regarding Motions considered for the County Development Plan 2022-2028. These minutes were presented at the full County Council meeting on 13 September 2021. These minutes were copied and pasted without change from: <http://www.sdublincoco.ie/Meetings/Agenda/2022?p=2&t=1> and were accessed on 27.6.2023.]

Copied and pasted material starts:

COMHAIRLE CONTAE ÁTHA CLIATH THEAS

SOUTH DUBLIN COUNTY COUNCIL

Minutes of South Dublin County Council Development Plan Meeting held on Thursday 17th June 2021, remotely via Microsoft Teams

PRESENT

<u>Councillors</u>	<u>Councillors</u>
Bailey, C.	McCrave, L.
Carey, W.	McEaney, S.
Cassidy, V.	McMahon R.
Collins, Y.	McManus, D.
Costello, T.	Moynihan, S.
Donaghy, L.	Murphy, E.
Duff, M.	O Brádaigh, D.
Dunne, L.	O'Brien, E.
Edge, A.	O' Broin, E.
Egan, K.	O'Connell, G.
Gilligan, T.	O'Connor, C.
Gogarty, P.	O'Donovan, D.
Hayes, A.	O'Hara, S.
Holohan, P.	O'Toole, L.
Johansson, M.	Pereppadan, B.
Kavanagh, P.	Richardson, D.
Kearns, P.	Sinclair, L.
King, C.	Timmons, F.
Lawlor, B.	Tuffy, J.
Mahon, K.	Whelan, L.

OFFICIALS PRESENT

Chief Executive	D. McLoughlin
Directors / Heads of Function	M. Mulhern
Senior Executive Officer	M. Maguire
Senior Parks Superintendent	S. Furlong
Senior Planner	H. Craigie
Senior Executive Planners	S. Willoughby, S. Duff, A. Hyland
Executive Planners	S. O'Toole, S. Geoghegan, L. Clarke
Assistant Planners	J. Carty, C. Bleytoun

Administrative Officer	C. Shanahan
Senior Staff Officer	E. Colgan
Staff Officer	A. McGee
Assistant Staff Officer	M. Dunne
Clerical Officer	G. Mc Donnell

The Mayor E. O'Brien presided and outlined the proceedings for the Meeting.

DPM1/0621 Item ID:70444

Proposed by Planning

Chief Executive's Draft Plan.

HI 1 - Chief Executive's Draft South Dublin County Development Plan 2022 - 2028

Pursuant to the requirements of Section 11 (4)(d) of the Planning and Development Act (as amended) South Dublin County Council considered the (Chief Executive's) Draft Plan Consultation, regarding the preparation of the Draft County Development Plan, specifically in respect of Members' motions in that regard, received on or before 28th May 2021 as follows:

Introduction, Strategic Vision Climate Action

DPM1/0621 Item ID:70784

Proposed by Councillor C. King, Seconded by Councillor D. Ó Brádaigh

Chapter 1 - 1.0 Introduction. Second Paragraph: at the end of this paragraph insert "and integration with each other"

REPORT:

The motion seeks to add additional wording to the 2nd Paragraph of Chapter 1 Introduction as follows:

From: The plan includes a vision for the County's growing communities, places, housing, jobs, sustainable transport and the delivery of services in a manner which promotes climate action and efficient patterns of land use, paying particular attention to the physical, cultural, environmental and social identities that define areas within the County and support their ongoing evolution.

To: The plan includes a vision for the County's growing communities, places, housing, jobs, sustainable transport and the delivery of services in a manner which promotes climate action and efficient patterns of land use, paying particular attention to the physical, cultural, environmental and social identities that define areas within the County and support their ongoing evolution **and integration with each other.**

Recommendation: It is considered that the proposed additional wording is acceptable.

The Motion was **AGREED**

Core Strategy Settlement Strategy

DPM2/0621 Item ID:70759

Proposed by Councillor F. Timmons, Seconded by Councillor E. O'Brien

That an area beside No. 36 Monastery Crescent (known around as The Little Green) is zoned as residential I am asking to rezone as a public amenity and public green space in the new Development Plan, to copper-fasten its protection for public use

REPORT:

The motion seeks to re-zone the identified lands from Residential (RES) to Objective OS – *To preserve and provide for open space and recreational amenities.*

The rationale for this proposal is to protect the area as a public amenity and public green space. Having regard to the nature and use of the space, this motion is considered reasonable.

Recommendation:

It is recommended that this motion is adopted.

[Link to Map](#)

The Motion was **AGREED**

[Copied and pasted written material ends. The [Link to Map](#) results in the map shown below as it appears in the County Development Plan.]



S8745 Lands at 36 Monastery Crescent, Clondalkin, Dublin 22



Planning - Enforcement <Planenforcement@sdublincoco.ie>

To: [REDACTED]

Date: 23rd June 2022

Our Ref: S8745

Re: Lands at 36 Monastery Crescent, Clondalkin, Dublin 22

Dear Mr Campbell,

I refer to previous correspondence regarding the above lands.

Following an investigation carried out by the Planning Authority it was found that the lands are not in Council ownership and that the footpath to the side of the house and the planting of saplings are both exempted development and do not require planning permission.

Accordingly I am to advise that there is no further action warranted in the matter and the file has now been closed.

Yours faithfully,

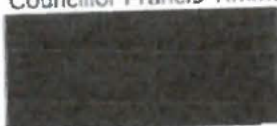
P. Davis

For Senior Planner



Connecting you to Land Use, Planning and Transportation

Councillor Francis Timmons



23/06/2023

Your Ref: Your Reference:
Members Reps ID: 1796382

Dear Councillor Timmons,

I refer to representation received on 20/06/2023 in relation to General (Land Use Planning & Transportation)

Planning Enforcement Reference S8745 was opened on the 15th June, 2021

Following an investigation carried out by the Planning Authority it was found that:

1. The footpath is exempt under Section 4 - 1 (h)(1) for maintenance and improvement of the dwelling
2. From investigation the only removal of trees were prior to May 2014
3. The planting of saplings in the open space to the side of the dwelling would not be out of character with the open nature of the area and would be exempt under Section 4 - 1 (j)(1) development consisting of the use of any structure or other land within the curtilage of the house for purposes incidental to the enjoyment of the house
4. The owner of 36 Monastery Crescent is the legal owner of the lands to the side of the house and maintains them.

Accordingly I am to advise that there is no further action warranted in the matter and the file has now been closed

Yours Sincerely

Conor Tiernan
Senior Staff Officer

Tel: 01-274 6100
SMS: 087 234 6100
Email: info@southdublin.ie

Mail from SDCC requesting additional information for Section 5

From: [LUPT - Planning Decisions](#)

Sent: Tuesday 25 July 2023 09:59

To: [REDACTED]

Subject: ED23/0026

Please find attached notification regarding planning application, Register Reference ED23/0026.

I would be obliged if you would acknowledge receipt of this email.

Kind Regards,

Pamela

*Pamela Hughes/Staff Officer
Administration Unit,
Registry,
Land Use, Planning and Transportation
South Dublin County Council,
County Hall,
Tallaght,
Dublin 24.*

Tel: +353 1 4149000 Ext: 3310 | e-mail: phughes@sdublincoco.ie | web: www.sdcc.ie

Please consider the environment before printing this email.

Cuimhnigh ar an timpeallacht, le do thoil, sula gcuireann tú an ríomhphost seo i gcló.

Mai from SDCC with Section 5 decision.

From: [LUPT - Planning Decisions](#)

Sent: Friday 29 September 2023 16:36

Subject: ED23/0026 Notification & Planners report

Please find attached notification regarding above application, Register Reference ED23/0026.

I would be obliged if you would acknowledge receipt of this email.

Kind Regards

Janice

Janice O'Toole|Senior Staff Officer |Development Management/Planning Registry|

South Dublin County Council|County Hall|Tallaght|Dublin 24|D24 YNN5

Email: jotoole@sdublincoco.ie

Tel: 414 9000 Ext. 4871



Pamela Hughes

Administration Unit, Registry, Land Use, Planning and Transportation
South Dublin County Council
County Hall
Tallaght
Dublin 24

05-Sep-2023

Dear Ms Hughes

All of the developments included in this Section 5 application are currently in place, as noted in the Request for Additional Information. Previous owners of No. 36 Monastery Crescent have made attempts to ringfence the Public Open Space for their sole use. This matter was dealt with comprehensively by An Bord Pleanála in a previous Section 5 Declaration, RF1052 [enclosed as Appendix 4 below].

At that time the owner of No. 36 was attempting to enclose the lands with a wall. The current enclosure method is to use fast growing coniferous trees around the perimeter of the Public Open Space and the clear intention of the adjacent dwelling owner is to annexe the Public Open Space for his sole use and prevent the other residents accessing and enjoying the public open space as they have always done. The adopted SDCC Development Plan does not permit such enclosure of areas designated as Public Open Space in the Plan.

Regarding the four items requested in your last correspondence, the following additional information is being provided:

(a) A site location map with the site clearly outlined in red.

See Appendix-01 for four maps:

Map 01: Ordinance Survey

Map 02: South Dublin County Council Development Plan

Map 03: South Dublin Planning Department Registry

Map 04: Land Registry Map

- (b) A site layout plan including all existing structures on site (this is required as the conditions and limitations of exempted development include location of development and distances from site boundaries),

See Appendix-02 for two site-layout plans:

Site-layout 01: Position of developments under consideration of Section 5 (path, widened driveway, gateway, and planted fast-growing non-native invasive saplings)

Site-layout 02: Overhead street-view of current structures on site

- (c) Dimensioned plans and elevations (dimensions are required as the conditions and limitations of exempted development include height and extent of structures), and

See Appendix-03 for two items:

Plan 01 – showing dimension of planted saplings in the area with respect to elevations submitted to SDCC in prior planning matters

Plan 02 – showing the location and size of the gate installed in the side wall, giving direct access from a private back-garden to a Public Open Space.

Note that the location and dimensions of the path and widened driveway can be seen in the site lay-out maps provided under Appendix 2.

- (d) Detail on when the development took place (including date(s)).

#	Development	Date	Width	Height (or length)
01	Gate installed in existing continuous wall bordering Public Open Space.	Between 2008 & 2009	2m	2.4m
	Wooden gate replaced by metal version.	Aug-2023	2m	2.4m
02	Grey cobble-lock footpath installed, drive widened, and shore covered.	May-2021	1.5m	19m
03	50+ fast growing invasive saplings planted	May-2023	Various - ~.5m	Various, currently ~1m

In addition to the above, I would like to bring your attention to An Bord Pleanála Order 91.RL.3586 (Appendix 5), where elements of the current Section 5 have been considered.

Finally, can you please confirm the date by which I can expect your final response.

Best regards

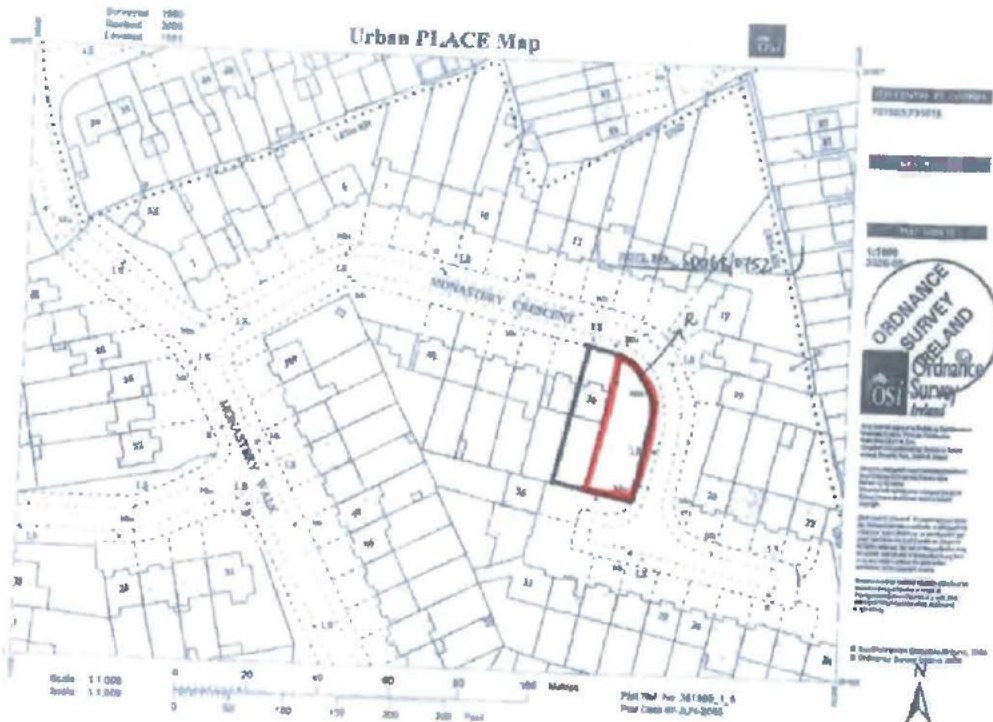


Paul Campbell

Appendices

Appendix 01

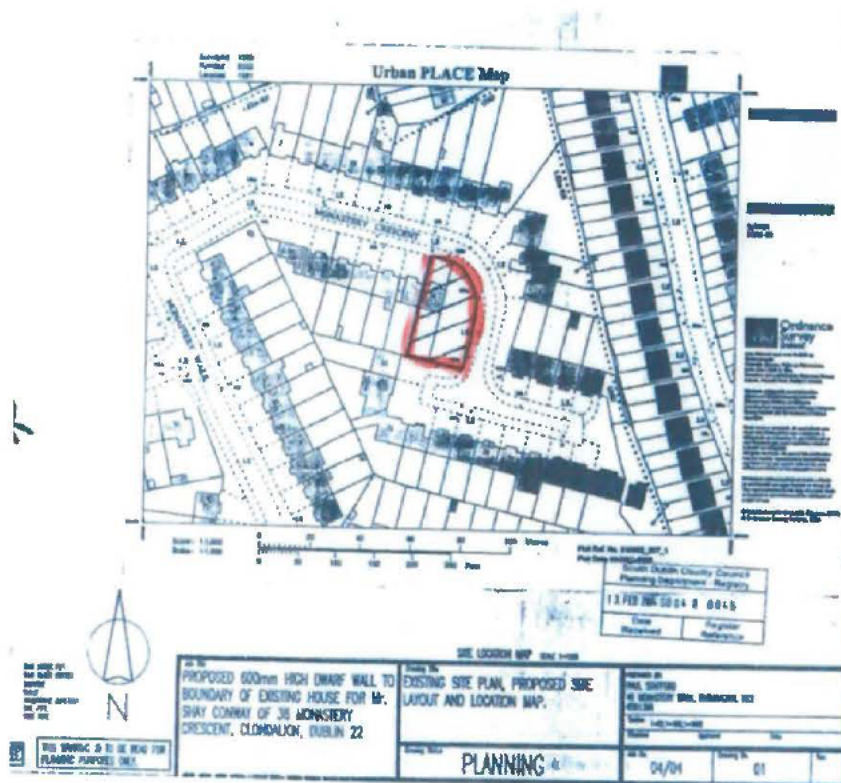
Map 01 – OS Map of area



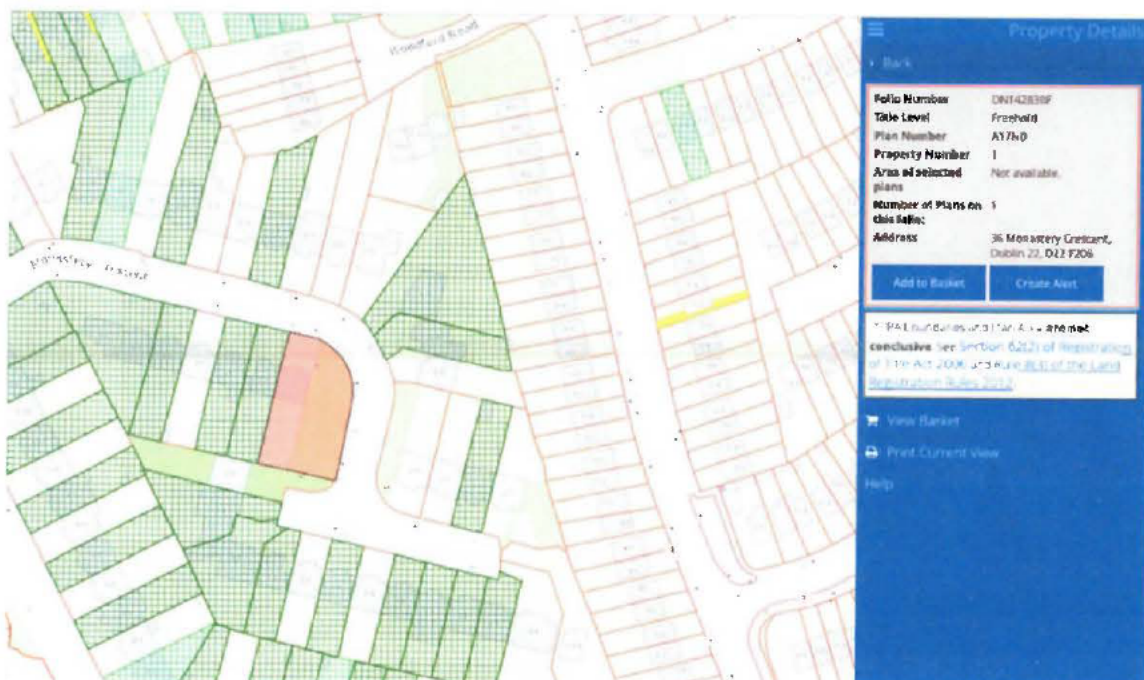
Map 02 - Extract from the South Dublin Development Plan [2022 – 2028] showing area of Public Open Space adjacent to No. 36 Monastery Crescent, coloured green. Section 5 Declaration of An Bord Pleanála [RF1052, attached in Appendix 01] held that this area was to remain open as it had been open to and used by the public for a period in excess of 10 years.



Map 03 – Map of site used in prior planning decisions



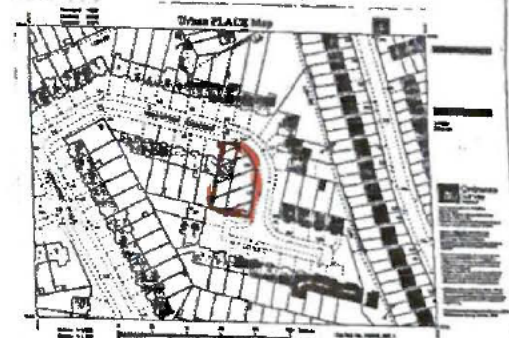
Map 04 – Land Registry Map showing lands in the ownership of 36 Monastery Crescent.



The pink area represents the dwelling and the front and rear garden. The brown area is the Public Open Space. The area which is the subject of this section 5 application.

Site layout-01 – showing position of development in green, where:

- [illegible]

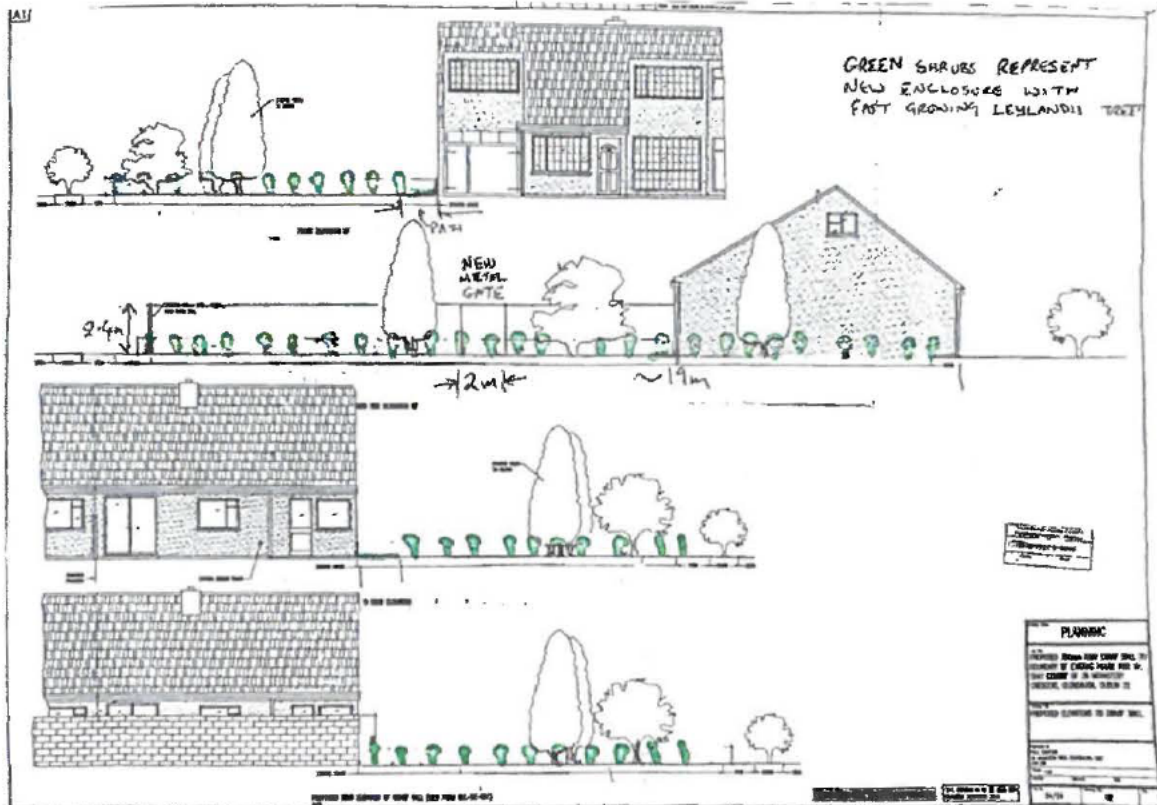


Site layout-02: Overhead street-view of current structures on site.



Appendix-03

Plan-01 - showing saplings



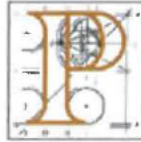
Plan-02 - showing gate



Pedestrian gateway from rear garden of No. 36 Monastery Crescent to adjacent Public Open Space area:

- Pedestrian Gate Height = 2.4m
- Pedestrian Gate Width = 2m

An Bord Pleanála



LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

WHEREAS a question has arisen as to whether the building of a wall enclosing open space at Monastery Crescent, Clonalkin, Dublin is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Thomas J. Maher and others care of 11 Monastery Crescent, Clonalkin, Dublin on the 18th day of September, 2001:

AND WHEREAS An Bord Pleanála, in considering this reference, had regard particularly to -

- (a) sections 2, 3 and 4 of the Local Government (Planning and Development) Act, 1963,
- (b) articles 9 and 10 of the Local Government (Planning and Development) Regulations, 1994, as amended, with particular reference to class 5 of Part 1 of the Second Schedule to these Regulations, and
- (c) the existing layout of the land:

AND WHEREAS An Bord Pleanála has concluded that the proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10(1)(xii) of the said 1994 Regulations;

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 1963 Act, hereby decides that the building of the said wall enclosing open space is not exempted development.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2002.

Appendix 5 – ABP Board Order 91.RL.3586



Board Order
91.RL.3586

Planning and Development Acts 2000 to 2017

Planning Authority: Limerick City and County Council

Planning Register Reference Number: DC-420-15

WHEREAS a question has arisen as to whether the opening of an ope in the side wall of a rear garden to provide a pedestrian entrance from the public road/green area, and to provide a 1.98 metre high pedestrian timber gate opening onto the rear garden at number 36 Vartry Avenue, Raheen, Limerick, is or is not development or is or is not exempted development:

AND WHEREAS this question was referred to An Bord Pleanála by Limerick City and County Council of Dooradoyle, Limerick on the 25th day of May, 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended,
- (d) the planning history of the site, and

- (e) the Roads Act 1993:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the opening of the ope in the existing wall, and the construction of the pedestrian gate in this wall involves the carrying out of works, which comes within the meaning of development in Section 3(1) of the Planning and Development Act 2000, as amended, and is, therefore, development,
- (b) this development would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, but
- (c) the development comes **within** the scope of Article 9(1)(a)(ii) of the Planning and Development Regulations 2001, as amended, because Vartry Avenue is a public road within the meaning of the Roads Act 1993, and its surfaced carriageway exceeds four metres in width, and the development constitutes a means of access to this public road, and therefore is not exempted development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the opening of an ope in the side wall of a rear garden to provide a pedestrian entrance from the public road/green area, and to provide a 1.98 metre high pedestrian timber gate opening onto the rear garden at number 36 Vartry Avenue, Raheen, Limerick is development and is not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2018

Telephone: 01 4149000

Fax: 01 4149104

Email: planningdept@sdublincoco.ie

Paul Campbell
22 Monastery Crescent,
Clondalkin,
Dublin 22.

**PLANNING AND DEVELOPMENT ACT 2000 (as amended) and PLANNING
REGULATIONS THEREUNDER**

Decision Order No.	0031	Date of Decision	11-Jan-2024
Register Reference	ED23/0051	Registration Date	06-Dec-2023

Applicant: Paul Campbell
Development: 1) Erection of gate from private to public space 2) change of use from publicly accessible open space to private use.
Location: 36 MONASTERY CRESCENT, CLONDALKIN, DUBLIN 22

Dear Sir/Madam,

I wish to inform you that the Planning Authority **CANNOT DETERMINE** whether the proposed development of:

1. The erection of a gate within the curtilage of number 36 Monastery Crescent, Clondalkin, Dublin, D22F206 is development, however, 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 pursuant to the Planning and Development Act 2000 (as amended) and/or the Planning and Development Regulations 2001 (as amended).
2. The submission has not demonstrated a **material change in the use** of any land in private ownership located to the side of number 36 Monastery Crescent and is therefore considered not to constitute works or development having regard to the definitions of same under the Planning and Development Act 2000 (as amended); thus, **planning permission is not required**.

I enclose a copy of Order No. PR/0031 for your information.

Yours faithfully,

Pamela Hughes
For Senior Planner

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

Register Reference:	ED23 0051
Correspondence Name & Address:	Paul Campbell
Development:	1) Erection of gate from private to public space 2) change of use from publicly accessible open space to private use.
Location:	36 MONASTERY CRESCENT, CLONDALKIN, DUBLIN 22
Applicant:	Paul Campbell

(BC)

Description of Site and Surroundings

The subject site is located on a corner site within the Monastery Crescent residential housing estate.

Proposal

This is an application requesting a Section 5 Declaration on whether the '1. Erection of a gate from private to public space and 2. Change of use from publicly accessible open space to private use' at No. 36 Monastery Crescent, Clondalkin is or is not exempted development.

The Section 5 Declaration application includes:

- A completed application form.
- Cover letter.
- Documents entitled: Appendix 1 (SDCC Decision ED23 0026) Appendix 2 (Additional Material re gate), Appendix 2d (Site Specific prior finding from ABP Re: Public Open Space) and Appendix 3 (Site Specific Findings) for cover letter.

Recent Relevant Planning History

Subject site

ED23 0026 - Enclosure of public open space, Installation of the gate from private garden to public open space and addition of path - widening of drive into open space
Declared Exempt and Declared Not Exempt.

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

SD06B 0752

Conversion of garage to habitable space, construction of ground floor extension and two dormer windows at first floor to front, construction of first floor extension to side and rear, modifications to front and rear elevations, internal modifications, and associated works.

Permission granted.

Relevant conditions:

- 5. as Existing trees in the open space area to the side of house shall be retained and shall be protected from damage during construction of proposed extension.*
 - 6. No building materials, rubble or other debris shall be heaped or stored in the open space area to the east of the house*
- REASON:** *In the interest of visual amenity*

SD06B 0093

Conversion of existing garage to playroom with revisions at ground floor and three bedroom dormer extension.

Permission refused by SDCC for the following reasons:

- 1. The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.*
- 2. The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2002 - 2010). A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.*
- 3. The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S 113117 and PL06S 207045 which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.*
- 4. The proposed development would set an undesirable precedent for other similar developments which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.*

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

SD04B 0046 & ABP Ref: PL 06S 207045

For a 600mm high dwarf wall to boundary of existing house

Permission granted by SDC C. Following appeal permission refused by An Bord Pleanála for the following reason:

The proposed development, which provides for the enclosure of the entire open area of ground including the mature trees alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

ABP Ref: PL 06S RF 1052

Whether the building of a wall enclosing open space at Monastery Crescent, Clondalkin, Dublin is or is not exempted development

Declared not exempt by the Board.

S99B 0260 & ABP Ref: PL 06S 113117

Permission sought for extension to side of house with new gates and garden walls to side and rear

Permission granted by SDC C. Following appeal permission granted by An Bord Pleanála.

Relevant conditions:

*1. The proposed development shall contain the hall, utility room, extended bathroom, and bedroom only. The proposed development including part of the extension to the west of the existing building line, the proposed 1.8 metre high wall enclosing the garden and the gates to the front shall be omitted.
Reason: To clarify the extent of the development permitted and in the interest of the residential amenity of the area.*

Recent Relevant Enforcement History

Enforcement Ref: S2074

Boundary wall, householder trying to enclose side garden with a wall new complaint scrapped case

Closed 1st January 1980.

Enforcement Ref: S4965

Unauthorised use of open space, 4.4.07 - Building works carried out have allegedly resulted in damage to walls & roof of No. 37

Closed 20th April 2007. Regularised after s152.

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

Enforcement Ref: SS745

1. Construction of a pathway to the side of the house without planning permission.
2. Demolition of established trees (while constructing pathway).
3. Enclosing of open space contrary to planning permission.
4. Planting trees around main house.

Closed 22nd June 2023. No unauthorised development taking place.

Zoning and Council Policies

The site-specific location map as submitted in Appendix 2, outlines an area zoned 'OS'. 'To preserve and provide for open space and recreational amenities' under the UDP 2022-2028 to the side of the main dwelling No. 36 Monastery Crescent.

The site boundary of the submitted map does not include the main dwelling or side gate. The main dwelling is located on 'RES' zoned lands with the zoning objective 'To protect and/or improve residential amenity'.

Assessment

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Part 2 of the Planning and Development Regulations 2001 (as amended).

Is the proposal development?

Planning and Development Act 2000 as amended (emphasis added).

Section 3(1) defines 'development' as 'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures on other land'.

Section 2(1) in this Act, except where otherwise requires –

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair, or renewal.

The development is described in the application form as the '1. Erection of a gate from private to public space. 2. Change of use from publicly accessible open space to private use'. The information submitted shows a gate and image of site layout plan of an area of open space to the side of No. 36.

The erection of a gate is considered to constitute 'works' and therefore 'development'.

The issue of the material change of use of lands is discussed below in this report.

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

Is the proposal exempted development?

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following:

Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

4—(1) The following shall be exempted developments for the purposes of this Act:
(a) 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,
(b) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such,

Article 6(1) 'Exempted Development' of the Regulations states that 'Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'. Schedule 2 Part 1 Exempted Development – General of the Planning & Development Regulations 2001 (as amended) includes development within the curtilage of a house.

Erection of a gate from private to public space

Article 6, Schedule 2 Part 1 Exempted Development – General of the Planning and Development Regulations 2001 (as amended) includes the following 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.*

The information submitted for this Section 5 application states that the gate is 2.4m in height, however, no scaled drawings have been submitted to accurately determine the height of the gate. The information submitted are images of drawings, which cannot be scaled and measured, and do not accurately reflect the development. The gate is shown on the images as the same height as the garden wall, which does not appear to accurately reflect what is onsite.

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

In the absence of scaled drawings, insufficient information has been provided to determine whether the gate is or is not exempted development.

With regard to the reference in this application relating to the provision of a gate "from private to public space", it is noted that the conditions and limitations pertaining to Class 5 do not refer to the public or private nature of land onto which any such gate would open. This issue is also discussed further below in this report.

Article 9 restrictions

The installation of the gate is not constrained by any of the restrictions in Article 9 of the Planning and Development Regulations 2001 (as amended) in this instance.

Change of use from publicly accessible open space to private use

Although the lands in question are referred to as public open space in this third-party section 5 application, the Planning Authority is aware 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.

The Planning Authority notes the lands are currently zoned for open space (rezoned from residential as part of the 2022-2028 County Development Plan), though the definition of open space in the CDP's Appendix 6 affirms that privately-owned lands may be zoned open space and there are examples in the County of privately-owned lands with no public access that are zoned open space.

Section 3(1) defines (emphasis added) *development* as *'the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land'*.

The submission refers to the use of the subject lands and its zoning as open space under the County Development Plan.

As noted, the subject lands are not owned by or maintained by the Council and are owned by the owner of number 36 Monastery Crescent. No evidence of a material change of use has been provided in this Section 5 application. Having regard to the above, it is the opinion of the Planning Authority that a material change of use of the subject lands has not taken place.

Conclusion

1. The installation of a gate is development, however, due to insufficient information submitted a determination could not be made whether it is or is not exempted development.
2. The submission has not demonstrated a material change in the use of any land in private ownership located to the side of number 36 Monastery Crescent and is therefore considered not to constitute works or development having regard

Comhairle Chontae Atha Cliath Theas

PR/0031/24

Record of Executive Business and Chief Executive's Order

to the definitions of same under the Planning and Development Act 2000 (as amended).

Recommendation

The applicant should be informed of the following:

1. The erection of a gate within the curtilage of number 36 Monastery Crescent, Clonsilla, Dublin, D22F206 is development, however, 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 pursuant to the Planning and Development Act 2000 (as amended) and/or the Planning and Development Regulations 2001 (as amended).
2. The submission has not demonstrated a **material change in the use** of any land in private ownership located to the side of number 36 Monastery Crescent and is therefore considered not to constitute works or development having regard to the definitions of same under the Planning and Development Act 2000 (as amended); thus, **planning permission is not required**.

Telephone: 01 4149000 Fax: 01 4149104 Email:
planningdept@sdbublincoco.ie

Mr. Paul Campbell
36, Monastery Crescent
Clondalkin
Dublin
D22F206

29-Sep-2023

Dear Sir/ Madam,

Our Ref: ED23/0026
Re: 36, Monastery Crescent, Clondalkin, Dublin, D22F206

I wish to inform you that the proposed development of Enclosure of public open space, Installation of the gate from private garden to public open space and addition of path / widening of drive into open space at the above address is, by Chief Executive's Order PR/1148/23 dated 26-Sep-2023, The planting of trees within the curtilage of the house is not works and is not development. The addition of path/widening of drive within the curtilage of the house is development and is exempted development. The above **WILL NOT require planning permission**. The installation of a gate is development and due to the information submitted a **DETERMINATION COULD NOT BE MADE** whether it is or is not exempted development and whether planning permission is or is not required at 36, Monastery Crescent, Clondalkin, Dublin, D22F206

A copy of the Planner's report is enclosed for your information.

Yours faithfully,


for Senior Planner

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Register Reference:	ED23/0026
Correspondence Name & Address:	Mr. Paul Campbell 36, Monastery Crescent, Clondalkin, Dublin, D22F206
Development:	Enclosure of public open space, Installation of the gate from private garden to public open space and addition of path / widening of drive into open space
Location:	36, Monastery Crescent, Clondalkin, Dublin, D22F206
Applicant:	Paul Campbell

(COS)

Description of Site and Surroundings

The subject site is located on a corner site on Monastery Crescent within an existing housing estate in Yellowmeadows.

Proposal

This is an application requesting a Section 5 Declaration on whether the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*' at No. 36 Monastery Crescent, Clondalkin is or is not exempted development.

The Section 5 Declaration application includes:

- A completed application form
- Extract of the SDCC County Development Plan 2022-2028 online maps with the site outlined
- Site plan and elevational drawings
- Annotated Google map image and photograph

Recent Relevant Planning History

Subject site

SD06B/0752

Conversion of garage to habitable space, construction of ground floor extension and 2no. dormer windows at first floor to front, construction of first floor extension to side and rear, modifications to front and rear elevations, internal modifications and associated works.

Permission granted.

Relevant conditions:

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

5. a) *Existing trees in the open space area to the side of house shall be retained and shall be protected from damage during construction of proposed extension.*
b) *No building materials, rubble or other debris shall be heaped or stored in the open space area to the east of the house*

REASON: In the interest of visual amenity

SD06B/0093

Conversion of existing garage to playroom with revisions at ground floor and three bedroom dormer extension.

Permission refused by SDCC for the following reasons:

- 1. The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.*
- 2. The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2004 - 2010) . A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.*
- 3. The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S.113117 and PL06S.207045, which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.*
- 4. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.*

SD04B/0046 & ABP Ref. PL 06S.207045

For a 600mm high dwarf wall to boundary of existing house.

Permission granted by SDCC. Following appeal permission refused by An Bord Pleanála for the following reason:

The proposed development, which provides for the enclosure of the entire open area of ground (including the mature trees) alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

ABP Ref. PL 06S RF 1052

Whether the building of a wall enclosing open space at Monastery Crescent, Clondalkin, Dublin is or is not exempted development.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Declared not exempt by the Board.

S99B/0260 & ABP Ref. PL 06S.113117

Permission sought for extension to side of house with new gates and garden walls to side and rear.

Permission granted by SDCC. Following appeal permission granted by An Bord Pleanála.

Relevant conditions:

1. The proposed development shall contain the hall, utility room, extended bathroom and bedroom only. The proposed development including part of the extension to the west of the existing building line, the proposed 1.8 metre high wall enclosing the garden and the gates to the front shall be omitted.

Reason: To clarify the extent of the development permitted and in the interest of the residential amenity of the area.

Recent Relevant Enforcement History

Enforcement Ref. S2075

Boundary wall, householder trying to enclose side garden with a wall new complaint scrapped car.

Closed 1st January 1980.

Enforcement Ref. S4965

Unauthorised use of open space. 4/4/07 - Building works carried out have allegedly resulted in damage to walls & roof of No. 37.

Closed 20th April 2007. Regularised after s152.

Enforcement Ref. S8745

1. Construction of a pathway to the side of the house without planning permission.

2. Demolition of established trees (while constructing pathway).

3. Enclosing of open space contrary to planning permission.

4. Planting trees around main shore.

Closed 22nd June 2023. No unauthorised development taking place.

Zoning and Council Policies

The outline of the site boundary differs in the documentation and drawings submitted.

The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': *'To preserve and provide for open space and recreational amenities'* under the CDP 2022-2028.

The submitted site plan shows a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands. The existing dwelling at No. 36 Monastery Crescent is located on the 'RES' zoned lands. The zoning objective for 'RES' is *'To protect and / or improve residential amenity'*.

Assessment

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Consideration as to whether a development constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Part 2 of the Planning and Development Regulations 2001 (as amended).

Is the proposal development?

Planning and Development Act 2000 as amended (emphasis added):

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

Section 2(1) in this Act, except where otherwise requires –

'**works**' includes any act or operation of **construction**, excavation, demolition, extension, alteration, repair or renewal.

The description of the development is stated as the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*'. The information submitted shows a gate, footpath and widening of the driveway. This is considered to constitute '**works**' and therefore '**development**'.

Is the proposal exempted development?

In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following:

Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

- 4.—(1) *The following shall be exempted developments 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;*
(j) *development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;*

Article 6(1) 'Exempted Development' of the Regulations states that '*Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1*'. Schedule 2 Part 1 Exempted Development – General of the Planning & Development Regulations 2001 (as amended) includes development within the curtilage of a house.

The development is described in the application as the '*enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space*'. Insufficient information and drawings have

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

been submitted in relation to the development including dimensions. No Site Location Map or dimensioned drawings have been submitted with the application.

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': *'To preserve and provide for open space and recreational amenities'* under the CDP 2022-2028. Whereas the submitted site plan outlines a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands.

It appears that the development is existing onsite. It is not clear when the development was constructed. This information is required in relation to the assessment of the development.

Conclusion

The applicant should be requested to submit the following drawings and information:

- (a) A site location map with the site clearly outlined in red,
- (b) A site layout plan including all existing structures on site (this is required as the conditions and limitations of exempted development include location of development and distances from site boundaries),
- (c) Dimensioned plans and elevations (dimensions are required as the conditions and limitations of exempted development include height and extent of structures), and
- (d) Detail on when the development took place (including date(s)).

Recommendation

Request Additional Information.

Additional Information

Additional Information was requested on the 24th of July 2023.

Additional Information was received on the 5th of September 2023.

Assessment

Item 1 Requested

The development is described in the application as the 'enclosure of public open space, installation of gate from private garden to public open space and addition of path/widening of drive into open space'. Insufficient information and drawings have been submitted in relation to the development including dimensions. No Site Location Map or dimensioned drawings have been submitted with the application.

The outline of the site boundary differs in the documentation and drawings submitted. The extract of the South Dublin County Development Plan (CDP) 2022-2028 maps outlines the area zoned 'OS': 'To preserve and provide for open space and recreational amenities' under the CDP 2022-2028. Whereas the submitted site plan outlines a site boundary that encompasses 'OS' zoned lands and 'RES' zoned lands.

It appears that the development is existing onsite. It is not clear when the development was constructed. This information is required in relation to the assessment of the development.

The applicant is requested to submit the following drawings and information:

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

- (a) A site location map with the site clearly outlined in red,
- (b) A site layout plan including all existing structures on site (this is required as the conditions and limitations of exempted development include location of development and distances from site boundaries),
- (c) Dimensioned plans and elevations (dimensions are required as the conditions and limitations of exempted development include height and extent of structures), and
- (d) Detail on when the development took place (including date(s)).

Applicant's Response:

The applicant has submitted a cover letter and images of drawings.

In relation to the enclosure of public open space, the submitted cover letter states that 'the current enclosure method is to use fast growing coniferous trees around the perimeter of the Public Open Space'. The applicant has submitted a non-scaled images of a site layout and elevational drawings showing the location(s) of the trees.

The submitted cover letter provides the following table

#	Development	Date	Width	Height (or length)
01	Gate installed in existing continuous wall bordering Public Open Space.	Between 2008 & 2009	2m	2.4m
	Wooden gate replaced by metal version.	Aug-2023	2m	2.4m
02	Grey cobble-lock footpath installed, drive widened, and shore covered.	May-2021	1.5m	19m
03	50+ fast growing invasive saplings planted	May-2023	Various - ~.5m	Various, currently ~1m

Assessment:

Planting of trees around perimeter of lands and addition of path/widening of drive Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

- 4.—(1) The following shall be exempted developments 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;
- (j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

It is noted that exempted development provided for under Section 4(1) of the Act is not subject to the restrictions set out to Article 9 of the Planning and Development Regulations (2001) which only restricts exempted development to Article 6 of same. Exemptions development pursuant to Section 4(1) of the Act are only subject to restrictions within primary legislation,

Although the lands in question are referred to as public open space in this third-party section 5 application, the Planning Authority is aware that these lands are privately owned by the householder of number 36 Monastery Gardens and are not maintained by the Council as public open space, though it notes the lands are currently zoned for open space.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

The planting of trees to a garden is not considered to constitute works or development having regard to the definitions of same to the Planning and Development Act 2000 (as amended)

The widening of the path and its use are considered to fall within the provisions of Section 4(1)(h) and 4(1)(j) of the Planning and Development Act 2000 (as amended)

It is therefore considered that the planting of trees does not constitute works or development. And the path/widening of drive within the curtilage of the house is exempted development.

Installation of a gate

Section 4(1) Exempted Development of the Planning and Development Act 2000 (as amended) states that the following is exempted development:

4.—(1) The following shall be exempted developments 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;

Article 6, Schedule 2 Part 1 Exempted Development – General of the Planning and Development Regulations 2001 (as amended) includes the following 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.*

The information submitted states that the gate is 2.4m in height, however, no scaled drawings have been submitted to accurately determine the height of the gate. The information submitted are images of drawings, which cannot be scaled and measured, and do not accurately reflect the development. The gate is shown on the images as the same height as the garden wall, which does not appear to accurately reflect what is onsite.

Insufficient information has been provided to determine whether the gate is or is not exempted development.

Article 9 restrictions

The installation of the gate is not restricted by any of the restrictions in Article 9 of the Planning and Development Regulations 2001 (as amended).

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Conclusion

1. The planting of trees within the curtilage of a house does not constitute works or development.
2. The addition of path/widening of drive within the curtilage of the house is development and is exempted development
3. The installation of a gate is development and due to the information submitted a determination could not be made whether it is or is not exempted development.

Recommendation

The applicant should be informed of the following:

1. The planting of trees within the curtilage of a house does not constitute works or development.
2. The addition of path/widening of drive within the curtilage of the house is development and is exempted development.
3. The installation of a gate is development, but due to deficiencies in the information submitted a determination cannot be made on whether it is or is not exempted development.

Comhairle Chontae Atha Cliath Theas

PR/1148/23

Record of Executive Business and Chief Executive's Order

Reg. Ref. ED23/0026



Caitlin O'Shea,
Executive Planner

ORDER: That the applicant be informed that the proposed development of:

The planting of trees within the curtilage of the house is not works and **is not development**. The addition of path/widening of drive within the curtilage of the house is development and is **exempted development**.

The installation of a gate is development and due to the information submitted a determination **could not be made whether it is or is not exempted development**. at 36, Monastery Crescent, Clondalkin, Dublin, D22F206

The planting of trees does not constitute works or development and addition of path/widening of drive within the curtilage of the house is development and is considered exempted development under the Planning and Development Act 2000 (as amended) and therefore does not require planning permission

The installation of a gate is development and due to the information submitted a determination **could not be made whether it is or is not exempted development** under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) or if planning permission is required.

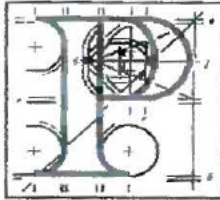
Date: 29/09/23



Gormla O'Corrain, Senior Planner

To whom the appropriate powers have been delegated by the order number DELG (13423) of the Chief Executive of South Dublin County Council*

An Bord Pleanála



Board Direction

Ref: 06S RF 1052

The submissions on this file and the Inspector's report were considered at a Board meeting held on the 29th November 2002.

The Board decided that -

In considering this reference the Board had regard to -

- (a) 2, 3 and 4 of the 1963 Act,
- (b) Articles 9 and 10 of the 1994 Regulations
- (c) The existing layout of the land

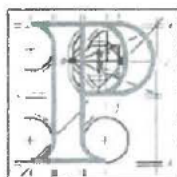
It was considered that -

The proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10 (1) (xii).

In arriving at its decision, which differs from the Inspector's recommendation, the Board considered that on the balance of probability the land had been regarded as being habitually open to the public for recreational purposes, e.g. informal children's playing, residents walking etc.

Board Member _____ Date 2nd December 2002
Rosalind Nixon

An Bord Pleanála



LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

WHEREAS a question has arisen as to whether the building of a wall enclosing open space at Monastery Crescent, Clonalkin, Dublin is or is not exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála by Thomas J. Maher and others care of 11 Monastery Crescent, Clonalkin, Dublin on the 18th day of September, 2001:

AND WHEREAS An Bord Pleanála, in considering this reference, had regard particularly to -

- (a) sections 2, 3 and 4 of the Local Government (Planning and Development) Act, 1963,
- (b) articles 9 and 10 of the Local Government (Planning and Development) Regulations, 1994, as amended, with particular reference to class 5 of Part 1 of the Second Schedule to these Regulations, and
- (c) the existing layout of the land:

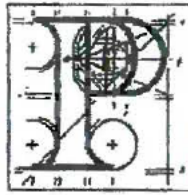
AND WHEREAS An Bord Pleanála has concluded that the proposed development would consist of the enclosure of land that has been habitually open to the public for a period of at least 10 years for recreational purposes within the meaning of article 10(1)(xii) of the said 1994 Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 1963 Act, hereby decides that the building of the said wall enclosing open space is not exempted development.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2002.

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS, 2000 TO 2002

South Dublin County

Planning Register Reference Number: SD04B/0046

An Bord Pleanála Reference Number: PL 06S.207045

APPEAL by Monastery Estate Residents' Association care of Andy Conway of 72 Monastery Drive, Dublin against the decision made on the 6th day of April, 2004 by South Dublin County Council to grant subject to conditions a permission to Shay Conway care of Paul Stafford of 46 Monastery Walk, Clondalkin, Dublin.

PROPOSED DEVELOPMENT: The erection of a 600 millimetres' high dwarf wall to the boundary of existing house at 36 Monastery Crescent, Clondalkin, Dublin.

DECISION

REFUSE permission for the above proposed development based on the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The proposed development, which provides for the enclosure of the entire open area of ground (including the mature trees) alongside number 36 Monastery Crescent, would be out of character with the prevailing open plan layout of the Monastery estate and would seriously injure the visual and residential amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Bernie Scott

Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 31st day of August 2004.

From:
ABP Inspector's Report - PL 06S 207045: Page 4

PL 06S. 108041 - PP refused for dwarf wall at no.42 Monastery Crescent in the interests of protecting the visual amenities of the area and the open plan character of the estate.

2.0 DEVELOPMENT PLAN

Zoning objective: The site is located within an area zoned with the objective "A" which seeks "To protect and/or improve residential amenity." in the 1998 South County Dublin Development Plan.

3.0 APPEAL

3.1 Summary

There is one appeal in relation to this application, which is a Third Party appeal against the decision of the County Council to grant planning permission. The appeal has been lodged by the Monastery Estate Residents Association.

- The enclosure of a large area of open space/play area would result in a serious loss of amenity to the area.
- The proposed wall would be built along the edge of the footpath.
- Creation of a precedent, which would endanger the open plan nature of the estate, which is its distinctive characteristic.

3.2 County Council Response submissions

The County Council Planning Department, in a letter received by An Bord Pleanála on 27/05/04 had no additional comments to make with respect to the proposed development.

3.3 First Party response submissions.

The First Party, in a letter received by An Bord Pleanála on 19/05/04 stated the following in relation to the Third Party appeal.

- The site is not used as a children's play area.
- The proposed wall would be dwarf and the green area would remain visible.
- Several other corner sites within the estate have already being enclosed and the proposal would not set a precedent.
- PP has been granted for the erection of dwelling in the corner garden of no.41.

3.4 Observers.

Several letters of observation have being received from the following residents of Monastery Crescent; Monica Mc Gill & others; Ann & Gerard Davis; Robert & Maura Millist; Councillor Robert Dowds and Patrick & Deirdre McElwee, all of whom object to the proposed wall for reasons related to:-

AN BORD PLEANÁLA

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1999

County South Dublin

Planning Register Reference Number: S99B/0260

APPEAL by Robert Dowds and others of 43 Castle Park, Clondalkin, Dublin and by Maura Millist and others care of Becker Tansey and Company of Jubilee House, New Road, Clondalkin, Dublin and by Valerie and Tommy Maher of 11 Monastery Crescent, Clondalkin, Dublin against the decision made on the 31st day of August, 1999 by the Council of the County of South Dublin to grant subject to conditions a permission to Shay Conway of 36 Monastery Crescent, Clondalkin, Dublin for development comprising the erection of an extension to side of house with new gates and garden walls to side and rear of 36 Monastery Crescent, Clondalkin, Dublin in accordance with plans and particulars lodged with the said Council:

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1999, it is hereby decided, for the reason set out in the First Schedule hereto, to grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions.

FIRST SCHEDULE

Having regard to the established pattern and form of development in the vicinity of the site, it is considered that, subject to compliance with the conditions set out in the Second Schedule, the proposed development would not seriously injure the amenities of property in the vicinity and would be in accordance with the proper planning and development of the area.

SECOND SCHEDULE

1. The proposed development shall contain the hall, utility room, extended bathroom and bedroom only. The proposed development including part of the extension to the west of the existing building line, the proposed 1.8 metre high wall enclosing the garden and the gates to the front shall be omitted.

Reason: To clarify the extent of the development permitted and in the interest of the residential amenity of the area.

2. The external finishes shall harmonise in colour and texture with the existing finishes on the house.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority.

Reason: In the interest of public health and to ensure a proper standard of development.

4. The proposed additional hall door shall be omitted and replaced with a window to match existing window openings.

Reason: In the interest of the proper planning and development of the area.

5. The use of the proposed extension shall be ancillary to the use of the main house. The extension shall not be sold or let as an independent living unit.

Reason: In the interest of residential amenity.



Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 26th day of January 2000.

Comhairle Chontae Atha Cliath Theas

Record of Executive Business and Manager's Order

1. The design of proposed development does not respect the form and design of existing dwellings and does not integrate with the neighbouring property. Having regard to the pattern of development in the area, the semi-detached nature of the house and the prominent location of the site, it is considered that the proposed first floor extension and proposed dormers would be seriously out of character with development in the area and would be visually obtrusive when viewed on the streetscape. The proposed development would therefore seriously injure the amenities and depreciate the value of property in the vicinity.
2. The proposed development is contrary to Council policies in relation to residential extensions contained in Section 12.4.2 of the South Dublin County Development Plan (2004 - 2010) . A grant of permission for this development would be contrary to the proper planning and sustainable development of the area.
3. The proposed development of a pathway to the side and rear of the existing house is contrary to previous decisions from An Bord Pleanála under PL06S.113117 and PL06S.207045, which did not permit development on the open space area to the side and rear of the house. The proposed development would materially contravene a condition attached to a previous grant of permission on this site.
4. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.



M^cMAHON LEGAL
Solicitors and Legal Consultants

57, Clontarf Road, Clontarf,
Dublin 3, Ireland,
D03 A7PO
275005 Raheny
e. info@mcmahonlegal.ie
t. +353 (0)1 8537323

Your Ref:

Our Ref:

PMM:1241

Mr. Paul Campbell
22 Monastery Crescent
Clondalkin
Dublin 22

and

An Bord Pleanála
64 Marlborough Street
Dublin 1

25th October 2023

Public Open Space at Monastery Crescent, Dublin 22

Dear Sirs,

The open space (the Open Space) described in Mr Campbell's application is not part of the curtilage of 36 Monastery Crescent, Clondalkin, Dublin 22. The planning authority in its Section 5 Declaration has equated the curtilage with the area included in the householder's registered title. This is not and cannot be, correct. The effect of this Declaration would be that any registered owner in the country could undertake "exempt" works including enclosure works or works that might lead ultimately to enclosure, over public areas outside the boundaries of his or her property, in respect of which he or she might be registered as owner. This would have the most extraordinary results.

It is very common for title to registered land also to extend to and include land outside the curtilage. This includes typically the land to the front of the property adjoining a road, including the footpath and the road to the middle of the highway/public roadway. The effect of the Declaration would be that works on land which is patently dedicated to the public for use by the public, could be undertaken by the householder as exempt works. This would lead to extraordinary dislocation and nuisance.

The "curtilage" of the property is a legal concept. It exists as a matter of fact "on the ground" reflecting the layout and nature of the property. The curtilage is something that is part and parcel of the property, in a physical sense. It is used as private space for the benefit of the property's occupants. In the context of a private dwelling house, it is the garden as defined by its walls. In the case of 36 Monastery Crescent, it includes the dwelling house and garden but does not include the adjoining public Open Space.

The most widely recognised authoritative case on the concept of "curtilage" is *Methuen-Campbell v Walters* [1979] QB 525. In that case Lord Justice Buckley in the Court of Appeal wrote

In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway, a garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole.

The decision of South Dublin County Council as set out in Record of Executive Business and Chief Executive Order PR/1148/23, is patently incorrect. It assumes that the adjoining Open Space is part of the curtilage of 36 Monastery Crescent because the registered title includes the land concerned. However, the land concerned has long since been dedicated to the public, so that the registered ownership is subjected entirely to that fact. It is no different to the footpath outside of a house which is technically registered to the adjoining owner but has in the same way, been irrevocably dedicated for public use.

It is no different to the roadways, common parts and infrastructure in an estate which are commonly registered to the original developer. To illustrate the point, the roadways and most of the common parts of Monastery Crescent, are still registered to John Sisk and Co. Limited dating back to the development of the estate, in the early 1960s. They have been dedicated to the public. The registered title is of little or no significance.

Although the registered title in respect of 36 Monastery Crescent incorporates registered title to the Open Space beside it, that Open Space was dedicated to the public as part of the amenities of the estate, when the estate was developed in the 1960s. Mr Campbell has confirmed and is giving a declaration confirming that the area concerned has been laid out and continuously used as public open space during the full period of his knowledge and acquaintance with it. It is evident that this has been so since Monastery Crescent was developed. We are instructed that original residents of the estate who have lived there since it was built, confirm and are also willing to declare, that the Open Space was laid out as such and has been used as such since the estate was first built.

The Open Space concerned was dedicated to the public as public open space many years before the present registered owners of 36 Monastery Crescent purchased that property. They purchased the property and its registered title, already subject to the rights in favour of the public which had existed for up to 40 years prior to their purchase. It was self-evident when they purchased that the land concerned was already dedicated as open space. The status of the land as such had been confirmed and reasserted by the Council in planning decisions up to 20 years earlier in 1980.

The status of the Open Space concerned, as land dedicated as public open space is reinforced by its formal zoning under the development plans, as highlighted by Mr Campbell in his submission. It is also reinforced and corroborated by the fact that there is a history of attempted development and planning applications, dating back to 1980, attempting to incorporate this land into 36 Monastery Crescent, which have been rejected by the planning authority and An Bord Pleanála.

The question of whether the Council currently maintains the area concerned or not, is irrelevant to its status as public open space, dedicated as such. It is also irrelevant whether or not the area is in charge. Dedication to the public is entirely separate from the question of whether the Council does or does not maintain it and whether or not it is in charge. We note the correspondence from the Council to the solicitor for a previous owner dated 3 March 1987, confirming that the Council did in fact maintain the property.

The Registration of Title Act 1964, Section 72 (1) (f), provides that the rights of the public or any class of the public, affects registered land without registration. The effect in this context, is that the ownership of the land which is subject to public rights is subordinated to those public rights. Therefore, the ownership is entirely subject to and diluted by the pre-existing dedication of the area concerned to be public. This is no different to the position that applies with registered title in respect of footpaths and roadways up and down the country. It does not carry the benefits of private ownership because the public rights which are irrevocable, limit and override that title.

The planning authority's reasoning in its Section 5 Declaration is patently incorrect. It focuses on section 4 (1) (h) and (j) of the Planning and Development Acts. In particular, it characterises the development in this case as consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such. It indicates that:

"the Planning Authority is aware that these lands are privately owned by the householder of number 36 Monastery Gardens (Crescent) and are not maintained by the Council of public open space though it notes the lands are currently zoned for open space."

This statement equates registered title with "private ownership". It ignores the fact that the lands concerned have been subject to public rights which override and subordinate the registered ownership since the estate was laid out over 60 years ago. Therefore, the planning authority's reasoning, based on private ownership where no public rights apply, is inapplicable. In this case, the registered ownership is subject to the public rights.

Furthermore, the planning authority reasoning appears to equate curtilage with registered ownership. Curtilage does not equate to ownership, whether or not subject to public rights. The curtilage must be part and parcel of the dwelling house, an integral part of it, laid out and used with it. It is a matter of fact. It is something that can be seen looking at the land. It is a question of functionality. In this case, the Open Space concerned is not in fact and never has been part of the curtilage of 36 Monastery Crescent. Therefore, the exemptions in Section 4 of the Planning and Development Act and in Article 6 and the schedules to the Planning and Development Regulations, do not apply.

The planning authority continues

"The planting of trees to a garden is not considered to constitute works or development having regard to the definitions of the same."

Whether or not the planting of trees constitute development depends on the circumstances. It is a matter that can only be considered in its context. In this case, the planting of trees changes a public open space into a private enclosed space. This is a change of use. The enclosure of land is unquestionably "development" because it is a change of use. The planting of trees in conjunction with the opening of the gate is the enclosure of public land and its annexation to an adjoining garden.

We are instructed that this physical change has been accompanied by a change in the registered owners' behaviour since erecting the trees/hedge and that they are asserting private ownership over the area concerned. We are instructed that residents in the estate have been told they are trespassing, and that the Gardai have been called on a number of occasions. This further illustrates the purported change of use from public open space subject to public rights to private property, not subject to public rights.

Development encompasses works or a change of use. Works include any act or operation of construction excavation demolition extension alteration repair or renewal. Planting includes excavation and the planting of fast-growing saplings enclosing a public open space comprises a change of use. Over time they will grow. They prevent the use of the public Open Space as such, by the residents of Monastery Crescent to whom it is dedicated.

The very presence of saplings restricts, for example, the use of the area concerned by children playing football or other sports. It purports to change the character of the land from public space to a private space. There could not be a clearer example of a change of use. This is recognised by the Planning and Development Regulations Article 9 (1)(a)(x) which provides that notwithstanding the exemptions under Article 6, development consisting of the fencing or enclosure of any land habitually open to use by the public during the 10 years preceding such fencing or enclosure for recreational purposes' is not exempt. Development which would otherwise be exempt shall not be exempted if this is the case.

Although Section 4 of the Planning and Development Act is not conditioned by this particular provision, Section 4 does not permit the enclosure of a public open space. The development, in this case is taking place outside the curtilage of the dwelling house for the very purpose of incorporating public open space into the garden of the dwellinghouse.

The implications of the planning authority's Declaration is remarkable. By its terms and reasoning, the owners any of the hundreds of thousands of properties up and down the country, where the title is registered to the adjoining owner, but clearly laid out as a footpath, roadway or other amenity, can plant trees and do works to enclose the public footpath roadway or other immunity annexing it to the property adjoining.

The Planning Authority's conclusion is that:

The planting of trees within the curtilage of a house does not constitute works or development.

Comment- The planting of trees in this case is not taking place within the curtilage of a house but on public open space outside of its curtilage.

The addition of path/widening of drive within the curtilage of the house is development and is exempted development.

Comment- The widening of the path is not taking place within the curtilage of the house but in long-established public open space.

It is noted that the installation of the gate is accepted as development. It is development not only because it is works, but also because it is part of a change of use of the adjoining open space.

Yours sincerely



Paul McMahon
McMahon Legal



COMHAIRLE CHONTAE ATHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL



MEETING OF LUCAN/CLONDALKIN AREA COMMITTEE (1)

WEDNESDAY 22nd NOVEMBER 2006

FILE DISCUSSED: SD06AB/0752

LOCATION: 36 Monastery Crescent, Clondalkin, Dublin 22

COMMENTS: Councillors T. Gilligan and R. Dowds expressed concern that the open space to the side of this house be retained. Councillor R. Dowds requested that the new residents of this property be sent a copy of the An Bord Pleanala decision which refers to this open space.

c.c. ✓ Mr. J. McDermott, Senior Engineer, Road Maintenance
✓ Mr. D. O'Neill, Administrative Officer, Parks.

Michael E. Hanahoe & Co.,
Solicitors,
Sunlight Chambers,
21 Parliament Street,
Dublin 2.

RTIC/1/51
1/MH
3rd March, 1987.

RE: 36 Monastery Crescent, Clondalkin, Dublin 22.

Dear Sirs,

I wish to refer to your letter of the 4th February, 1987 and our subsequent telephone conversation.

While the grass margin and footpath around the corner of 36 Monastery Crescent are in charge of the Council the open space area at the back of the footpath is not and it appears from the copy of the land registry map you submitted that it is part of your client's property.

It should be noted, however, that trees were planted on this area by the local residents and that it was maintained by them for a number of years. The Council's Parks Department took over the grass cutting at the request of the residents about two years ago. This did not give the Council any rights over the land but the residents may have established some rights since, it is understood, they have had the undisputed enjoyment of it since first occupation of the dwellings in the estate. You will note there is a well worn path through it and this would suggest that it is extensively used and possibly some form of right-of-way established.

Yours faithfully,


R. Doris,
Administrative Officer.

Statutory Declaration

I, Paul Campbell, of 22 Monastery Crescent, Clondalkin, Dublin 22, aged 18 years and upwards do solemnly and sincerely declare as follows:

1. I have been resident in Monastery Crescent, Clondalkin, Dublin 22 ("the Estate") since 2006 and I have been continuously familiar with the public Open Space adjoining 36 Monastery Crescent, the subject of South Dublin County Council Register Reference ED23/0026, PR/1148/23 described in the map lodged by me in that application ("the Open Space") during the whole of this time.
2. When I first moved to Monastery Crescent in the year 2006, the Open Space was laid out and used as public open space. The Open Space has never been part of, nor has it been incorporated into the curtilage of 36 Monastery Crescent which comprises a dwelling house and garden with defined boundary walls, which was wholly separate from the public Open Space (until the development set out in the Section 5 application the subject of this appeal.
3. The Open Space has been used by the residents of Monastery Crescent as part of the amenities of the estate since I moved to Monastery Crescent. There are still several of the original purchasers in the estate, who have lived in it since it was first built, and they have confirmed to me that the Open Space was laid out as open space when the estate was built and has been used as such at all times since then (see additional Statutory Declaration from Pat McElwee).
4. The original developer of Monastery Crescent John Sisks & Son Limited laid out and dedicated the Open Space as public open space when it developed the houses in the 1960s, as part of the amenities of the Estate. In the same way it laid out and dedicated the roadways, footpaths the large green and other amenities within the estate as such.
5. The uses of the Open Space include as a permanent safe space where children have always played, for public access to and from residents' homes, the planting of trees by residents on the ground to improve the area, community Easter Egg hunts and other community events such as a barbeque to celebrate the 50th anniversary of the estate. From my recollection this was attended, but not organised by, the current occupants of number 36 Monastery Crescent.
6. I make this solemn declaration conscientiously believing the same to be true, for the satisfaction of An Bord Pleanála and by virtue of the Statutory Declarations Act 1938.

DECLARED before me by the said Paul Campbell

at 5th. Brigid's Road, Clondalkin

in the County of Dublin

before me a Commissioner for Oaths/ Practising Solicitor

and I know the Declarant.



COMMISSIONER FOR OATHS/
PRACTISING SOLICITOR

Patrick J. Ryan
Solicitor
8, St. Brigid's Road
Clondalkin
Dublin 22

*is identified to me by passport
No P01968160 issued
7 May 2019*

Statutory Declaration of Patrick McElwee

I Patrick McElwee of 30 Monastery Crescent, Clondalkin D22 E9N9 have lived at this address since 1964 when this section of Monastery Estate was completed.

During my 59 years of living here the area (called the little green locally) alongside No 36 Monastery Crescent has always been enjoyed as an open public area and play area for our children (my own four children included).

This little green area was maintained by the County Council and the residents up until approximately 2002.

Since the day I took up residence here , this little green area has never been regarded as anything other than open public space and no occupant of No 36 ever objected to such use until the present occupier.

Furthermore, the land in question was rezoned by unanimous vote of all Councillors as a public amenity and public green space at a meeting of South Dublin County Council on the 17th June 2021

Declared before me by Patrick McElwee

At 5 St. Brigid's Road, Clondalkin

In the County of Dublin

Before me a Commissioner of Oaths and I know the Declarant *is identified to me*

Patrick J. Ryan
Commissioner for Oaths.

By Deputy Justice Mc 2003HP 3610 issued 31/3/22

1-1