



An
Bord
Pleanála

Inspector's Report

ABP-321777-25

Development

PROTECTED STRUCTURE:

Construction of new vehicular access and retention for works to front garden, together with all associated site works.

Location

36 Leinster Road, Rathmines, Dublin 6.

Planning Authority

Dublin City Council South.

Planning Authority Reg. Ref.

4374/24.

Applicant(s)

John and Margaret Courtney.

Type of Application

Permission and Retention Permission.

Planning Authority Decision

Refuse permission and grant retention permission.

Type of Appeal

First Party v Refusal.

Appellant(s)

John and Margaret Courtney.

Observer(s)

Philip O' Reilly.

Date of Site Inspection

6th March 2025.

Inspector

Ciarán Daly

1.0 Site Location and Description

- 1.1. The subject site consists of a two storey two bay red brick over basement terraced dwelling with front and rear gardens that was extant in 1864. The front garden is paved in brick and the wrought iron front boundary railings are partly painted black and include a pedestrian gate. The streetscape in the vicinity on either side is characterised by dwellings of similar form and appearance to that of the subject dwelling.
- 1.2. To the front of the property there is on-street parking provision after the footpath wherein a modest size tree is located partially in front of the dwelling and the adjoining no. 35.

2.0 Proposed Development

- 2.1. The proposed development, in summary, consists of the following:
 - Permission/retention permission for works to front garden area to facilitate a vehicular space for disabled driver and access ramp to lower ground floor apartment.
 - Permission for new vehicular access to facilitate disabled driver including alterations to wrought iron railings.

3.0 Planning Authority Decision

3.1. Decision

Dublin City Council issued a split decision in relation to the proposed development. Permission was granted for alterations to existing wrought iron railings (repair only), works to front garden area (landscaping works only) and access ramp to lower ground floor apartment.

Notable conditions include: Condition no. 2 specifically excludes the new vehicular access and parking space in the front garden space. Condition no. 3(a) requires a revised landscaping scheme showing the removal of the parking space and an increase in the soft landscaping area, (b) revised design for the access ramp including detailed conservation-led specifications and (c) repaint of railings etc.

Condition no. 4 requires all works to be carried out in accordance with best conservation practice.

Permission was refused for new vehicular access to facilitate disabled driver and removal of railings and works to front garden area to facilitate vehicular space for disabled driver. The three no. reasons for refusal related to the removal of on-street parking contrary to policy, injury to the architectural character of the setting of the protected structure and the historic streetscape and loss of original fabric and character; and negative impact on the adjacent street tree and root zone.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report notes the submission of letters of support in relation to the reason for the parking space including from doctors at the National Rehabilitation Hospital. It noted that the original grass front garden layout was replaced with paving. It noted that the proposal requires the removal of one on-street parking space. The report noted that Transportation Planning Division noted that the applicant can apply for an on-street disabled parking space. It also referred to policy on vehicular entrance widths for the curtilage of a protected structure and in relation to the impact of entrances on street trees.

The report refers to the concerns of the Conservation Officer in relation to significant impact on the architectural character of the setting, loss of historic fabric and an excessively wide vehicular entrance contrary to policy. The P.A. recognised the need for a parking space which could be provided on the street and had significant concerns about the loss of on-street parking for the wider area. The P.A. had no objection to the access ramp subject to conditions. A split decision was recommended.

3.2.2. Other Technical Reports

- Drainage: No objection subject to conditions.
- Transportation: Refusal of permission recommended.
- Conservation: Split decision recommended. Refuse permission for new vehicular access and car parking space. Grant permission for repair of railings and access ramp.

3.3. Prescribed Bodies

The Heritage Council: No response received.

An Chomhairle Ealaíon: No response received.

Fáilte Ireland: No response received.

Uisce Éireann: No response received.

Department of Housing, Local Government and Heritage: No response received.

An Taisce: No response received.

3.4. Third Party Observations

3.4.1. Three no. third party observations were received which can be summarised as follows:

- Letter of support from adjoining property owner.
- Letter from physiotherapist outlining medical constraints such that off-street parking is recommended and that on-street parking is not suitable.
- Letter of support from a Dublin City Councillor.

4.0 Planning History

Subject Site:

D0781/24: Section 57 Declaration issued.

1120/95: Permission granted for extension of existing permission for a single storey extension.

1048/94: Permission refused to replace existing windows with PVC windows.

0814/94 (29S.095263): Permission granted for two storey extension to existing bedsit house.

Sites in the vicinity:

3584/23: Permission refused by the P.A. at 89 Leinster Road, a protected structure for removal of a section of existing front railings, dwarf wall & hedge; widening of the existing pedestrian entrance for vehicular entrance with gates and new hard landscaped car parking surface in the front garden.

5.0 Policy Context

5.1. Dublin City Development Plan 2022 – 2028 (as varied) (the CDP)

Chapter 8 – Sustainable Movement and Transport

- Section 8.5.7 Car Parking
- Policy SMT25

To manage on-street car parking to serve the needs of the city alongside the needs of residents, visitors, businesses, kerbside activity and accessible parking requirements, and to facilitate the re-organisation and loss of spaces to serve sustainable development targets such as in relation to, sustainable transport provision, greening initiatives, sustainable urban drainage, access to new developments, or public realm improvements.

Chapter 11 - Built Heritage and Archaeology

- Section 11.5.1 The Record of Protected Structures

The City Council will manage and control external and internal works that materially affect the architectural character of the structure through the development management process.

- Policy BHA2 Development of Protected Structures

This lists criteria in relation to the standard of works required.

- Policy BHA9 Conservation Areas

To protect the special interest and character of all Dublin's Conservation Areas...

Chapter 15 – Development Standards

- Section 15.6.9 Trees and Hedgerows

...Dublin City Council will seek to protect existing trees and hedgerows when granting planning permission for developments and will seek to ensure maximum retention, preservation and management of important trees, groups of trees, and hedges as set out in Section 10.5.7 of the plan...

- Section 15.15.2.5 Historic Buildings and Access

In assessing planning applications which relate to protected structures, regard shall be had to the protected status of the structure and the need to protect its special character. Detailed advice is provided in the Architectural Heritage Protection Guidelines for Planning Authorities (re-issued by DAHG, 2011) and in Access – Improving the Accessibility of Historic Buildings and Places (Advice Series, DAHG, 2011). There is a need for flexibility in the use of protected structures and in making them accessible to people with disabilities, whilst respecting their architectural integrity.

Appendix 5 – Transport and Mobility: Technical Requirements

- Section 2.1 Layout and Access

All developments, from one-off housing to large scale mixed use development, shall demonstrate safe vehicular access and egress arrangements...All developments shall be constructed in accordance with the design guidance and requirements set out in DMURS.

- Section 4.0 Car Parking Standards

Parking Zone 2

Table 2 Maximum Car Parking Standards for Various Land Uses

Zone 2: 1 space per dwelling

** Car parking above maximum permitted standards may be acceptable in very limited circumstances at the discretion of Dublin City Council.*

- Section 4.1 On Street Parking

There will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car-parking spaces or where there is a demand for public parking serving other uses in the area.

- Section 4.2 Accessible Car Parking

Where car parking is provided, whether for residents, employees, visitors or others, a number of car-parking spaces for people with accessibility requirements shall be provided on a proportional basis. At least 5% of the

total number of spaces shall be designated carparking spaces, with a minimum provision of at least one such space, which ever one is the greatest. In particular circumstances, the planning authority may require a higher accessible parking content depending on the nature of development. All accessible parking shall be allocated and suitably signposted for convenient access.

- Section 4.3 Parking in Front Gardens

Planning Permission is required for the alteration of a front garden in order to provide car parking by creating a new access, or by widening of an existing access. Proposals for offstreet parking in the front gardens of single dwellings in mainly residential areas may not be permitted where residents rely on on-street car parking and there is a strong demand for such parking.

- Section 4.3.2 Impact on Street Trees

In all cases, the proposed vehicular entrance shall not interfere with any street trees. Proposals to provide a new entrance or widen an existing vehicular entrance that would result in the removal of, or damage to, a street tree will not generally be permitted and where permitted in exceptional circumstances, must be mitigated. Where a street tree is located in close proximity to a vehicular entrance, protective measures shall be implemented during construction to safeguard against any damage caused and a financial security required to cover any damage caused (see Chapter 15 for further details).

- Section 4.3.7 Parking in the Curtilage of Protected Structures, Architectural Conservation Areas and Conservation Areas outlined criteria for same.

...proposals for parking within the curtilage and front gardens of such buildings will not normally be acceptable where inappropriate site conditions exist, particularly in the case of smaller gardens where the scale of intervention is more significant, and can lead to the erosion of the character and amenity of the area and where the historic plinths, decorative railings and gates, historic gate piers, and historic ground surfaces are still intact. Where site conditions exist which can accommodate car parking provision without significant loss of visual amenity and/or historic fabric, proposals for limited off-street parking will be considered...

This will be considered subject to the listed criteria in this section.

5.2. Section 28 Ministerial Guidelines

5.2.1. Having considered the nature of the proposal, the receiving environment and the documentation on file, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Architectural Heritage Protection Guidelines, (2011).

5.2.2. Other relevant national guidelines include:

- Design Manual for Urban Roads and Streets (DMURS) (2019).
- Access – Improving the Accessibility of Historic Buildings and Place (Advice Series, 2011) – on the need for flexibility in the use of protected structures and in making them accessible to people with disabilities.

5.3. Natural Heritage Designations

5.3.1. In relation to designated sites, the subject site is located:

- c.0.68km south of Grand Canal Proposed Natural Heritage Area (PNHA) (site code 002104).
- c.3.3km south-west of the Royal Canal PNHA (site code 002103).
- c.4.1km west of South Dublin Bay Special Area of Conservation (SAC) and PNHA (site code 000210).
- c.4.1km west of South Dublin Bay and River Tolka Estuary Special Protection Area (SPA) (site code 004024).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the first party appeal on behalf of John and Margaret Courtney can be summarised as follows:

Refusal Reason No. 1

- The provision of an accessible parking space outside the property of 1.8m width would be inadequate and extremely dangerous for a disabled person and would require parking against the flow of traffic which is hazardous.

- Section 16.38.9 of the previous CDP required disabled parking spaces of 3m width by 4.75m length.
- There are no objections but rather three observations in support.
- CDP policy aims to manage on-street parking but it does not prohibit off-street parking provision where there are justifiable reasons.
- The submitted survey of parking spaces available on Leinster Road shows 3.1 spaces available per residence which is above the maximum standard of 1 space per dwelling.
- The loss of one on-street parking space will have a negligible impact.
- The provision of an accessible on-street space would result in the loss of two spaces given the need for a longer space to allow access to the rear of the vehicle for a wheelchair.
- Given the purposes for which the parking space is sought, it cannot be held to create an *“undesirable precedent for other similar developments in the area”*.
- The applicants’ expert heritage metalwork contractor designed the vehicular entrance gates using the existing railings to prevent impact on the existing historic fabric and keeping the pedestrian gate preserves its original position on the street. The gate is set at 3m wide given the needs of the driver.

Refusal Reason No. 2

- A Grade II Conservation Architect was employed for the design of gates and her opinion is that the railing, access and parking have been sensitively designed in line with CDP policies and the Architectural Heritage Protection Guidelines.
- Reports attached from the Conservation Architect and by Bushy Park Ironworks.

Refusal Reason No. 3

- An Arboricultural Assessment Report and design for the dishing of the footpath has been submitted to demonstrate that this can be catered for without negative impact on the street tree and its roots.

- This will not injure the amenities in the vicinity.

6.2. Observations

One third party observation was received from Philip O' Reilly. This can be summarised as follows:

- There have been hundreds of refusals for similar development across the south city in Z1 and Z2 zones where roadside trees are likely to be impacted.
- There have also been numerous refusals on Leinster Road and roads in the vicinity as well as in Rathgar.
- These reasons for refusal should be upheld as the standards in the area have been set over a number of Development Plans and the appeal should be rejected.
- Attached document of some 15 refusal examples including three which made reference to disability and were still refused including Web1240/13 and 3026/22 upheld on appeal. Also 4349/24 is also relevant.
- I summarise the observer's comments on the planning appeal report prepared by Patrick Joyce and Associates as follows:
 - This will give rise to increased safety hazards.
 - There were third party submissions although this observer's observation was not processed or considered despite being accepted on time.
 - The P.A. has previously disregarded submissions from public representatives.
 - The P.A. has been consistent in its application of policy over the years.
 - The proposal would damage the character and setting of the protected structure as well as that of the surrounding area including amenity.
 - Quoting the number of existing houses with off-street parking is irrelevant.
 - There are numerous differing types of houses on Leinster Road.
 - No.s 47, 48 and 49 and no.s 141-146 were built with off street common area for horse drawn carriages.

- The historical driveways and carriage areas were built at a time of very different planning and environmental strategies.
- Such driveways and entrances are particularly overwhelming in a terrace setting.
- Between 30 and 46 Leinster Road all but two still have the original context in tact and this terrace is one of the most intact and historically correct.
- No further on-street parking can be lost if only 32% are available for residences.
- The demand for on-street parking is at saturation point as is demonstrated at evening time.
- The Development Plan standard of one space per dwelling is a maximum and only where applicable.
- If applied widely there would be no on-street parking spaces for residences or visitors.
- There will be no sightlines available with the tree and parked cars and the road is busy and narrow.
- Engaging a Conservation Grade II architect is of no relevance where there would be a loss of historical content.
- The method statement of the Ironworks does not alter the loss of original historic railing and plinth stone from the front boundary.
- The setting of the original terrace will be seriously degraded.
- Interference with the ground will seriously affect the tree and the dishing of the pavement will seriously compromise the tree.
- I summarise the observer's comments on the conservation report prepared by Catriona O' Connor as follows:
 - There is nothing to be achieved in asserting that the planning requirements are met.
 - Irrelevant policies are quoted.

- The design is totally irrelevant.
- What is relevant is the existing heritage and open space amenity and original condition of the near 200 year old house and terrace.
- Losses of original fabric are not acceptable.
- Catastrophic effects are noted.
- A significant section of the garden would be lost and overwhelmed by the motor car.
- Light will be obstructed.
- There will be no room for landscaping.
- The proposal is not in keeping with the policies and objectives of the Development Plan.
- I summarise the observer's comments on the report prepared by Bushy Park Ironworks as follows:
 - The works outlined are contrary to the principles of proper planning and development.
 - Removal of ironwork is unacceptable.
 - New gates are not warranted.
 - Only a faithful restoration of the railings and plinth should be permitted.
- I summarise the observer's comments on the report prepared by Arborists Associates as follows:
 - The report is limited and relates only to the time of inspection. It has no credibility and should be disregarded.
 - No one can give advice on this tree and it is not possible to remove all risks with root damage a particular risk.
 - Increased safety hazard in terms of infrastructure damage.
 - Hornbeam Cultivar trees have shallow spreading roots and root spread will continue as the tree matures.

- This will endanger the tree and its future growth with works in very close proximity.
- I summarise the response to the Engineering Proposal for Dishing as follows:
 - The removal of the existing concrete will expose the existing tree root structure and a shallower structure on the roots will compromise the integrity of the tree.
 - This will result in an increased safety hazard.
 - New different type of concrete will give rise to anomalies.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- On-street parking.
- Conservation.
- Impacts on Tree.

7.2. **On-street parking**

7.2.1. Refusal reason no. 1 relates to the removal of on-street parking to accommodate a private vehicular entrance which the P.A. considered to be contrary to Policy SMT25, Section 8.5.7 and Appendix 5, Section 4.1 of the CDP. The reduced supply of such parking was a significant issue for the P.A. in this regard and the precedent was an issue. I note the third party observation supports the P.A. decision in this regard, cites precedent and considers that there is no basis for not upholding this refusal reason, including in relation to the number of such existing entrances and driveways on the road.

7.2.2. I note the proposed vehicular space is for a disabled driver. The appellants have stated that the provision of an accessible on-street parking space outside the property would be inadequate and extremely dangerous given the condition of the

person who is the intended user. Based on the documentation submitted, I agree that this is a reasonable contention. They note the dimensions for a disabled space but this is from the previous CDP so has no policy basis and the current CDP notes that *“the basic dimensions to accommodate the footprint of a car within a front garden are 3 metres by 5 metres”* (Appendix 5, Section 4.3.1 Dimensions and Surfacing (Parking in Front Gardens)). The proposed dimensions are 3.6m wide by 7.5m deep and this is to cater for the accessible space.

7.2.3. Policy SMT 25 provides for the management of *“on-street car parking to serve the needs of the city alongside the needs of residents”*. In this context, while it serves to provide for the loss of on-street spaces for sustainable purposes, it also provides for a balancing of the city needs with those of the needs of residents. I also note the appellants contention that an accessible on-street space would effectively result in the loss of two spaces given the need to allow access to the rear of the vehicle for a wheelchair and I consider this to be credible.

7.2.4. In terms of need, I consider the medical needs cited in the appeal to have been proven such that an off-street parking space is required to meet the needs of the user of the disable space in this regard. I concur also that it would be more favourable in terms of balancing the needs of the city to provide the off-street space with removal of one on-street parking space (in effect like for like) rather than to provide the on-street accessible space which would effectively remove two car parking spaces and would be unsafe and extremely burdensome for the particular user as outlined in the appeal documentation. I also note that there is CDP policy support for *independent living* for people with disabilities per Sections 5.5.4 (Social Inclusion), 5.5.5 (Housing for all) and QHSN25 (Housing for People with Disabilities) of the CDP. I am of the opinion that the disabled parking space is not only essential in relation to the needs of its user but also to facilitate independent living as expressed in the application and appeal documentation.

7.2.5. I note the provision of Appendix, Section 4.1 which includes that *“There will be a presumption against the removal of on-street parking spaces to facilitate the provision of vehicular entrances to single dwellings in predominantly residential areas where residents are largely reliant on on-street car-parking spaces or where there is a demand for public parking serving other uses in the area”*.

- 7.2.6. I note the submitted survey of parking spaces, which I have reviewed and noted to be credible. In this context I consider that the removal of one parking space on Leinster Road would have a negligible impact on parking availability on the street which I observed on my site visit on a weekday morning to not be overburdened. I note the third party observer's contention in relation to evening parking. However, I note that, in effect, there would be a likely greater loss of on-street parking from an on-street designated disabled space or at least no significant change on a one for one basis. The appellant's submission in relation to the average availability of 3.1 spaces per dwelling on the road is noted. I note no strong policy requirement for retention of the on-street space that would over-ride the particular requirements of this case where significant need has been established. Policy SMT25 allows for a balancing between needs in this regard.
- 7.2.7. I would also note, in relation to the citing of precedents in the area and the south city by the observer, that I am required to consider this case de novo on its merits. In my view, for the reasons outlined above, this is an exceptional case that would not create a precedent and is allowed for by policy. I also note no concerns in relation to sightlines which would be adequate in both directions from the entrance on this suburban road with a speed limit of 50kph and where DMURS applies. Accordingly, I recommend that refusal reason no. 1 of the Council's decision be overturned.

7.3. Conservation

- 7.3.1. I note refusal reason no. 2 relates to the impact on the setting and character of the protected structure, the historic streetscape and in relation to loss of historic fabric and character. This was considered contrary to Policy BHA2 and BHA9 and Section 13.4.3 and 16.10.18 of the Architectural Heritage Protection Guidelines. To note there is no Section 16.10.18 of these guidelines.
- 7.3.2. The appellant's case is essentially that the design of the gates, railings, access and parking arrangements are sensitively designed in line with CDP policies. The observer wholly rejects these arguments and considers the proposed interventions to be significantly harmful requiring this refusal reason to be upheld.
- 7.3.3. I note the site layout plan provides for a permeable surface to be provided in proximity to the entrance gate with grass/soft landscaping and the ramp to be located between the driveway and the house. There is also provision for soft

landscaping shown on either side of the driveway and entrance footpath. I note the current paving extends over the front curtilage area. I note that the proposed driveway, in the context of the proposed site layout, would take up c. 33% of the front curtilage area (excluding the ramp) or c. 26% if the ramp area is included.

- 7.3.4. In relation to impact on the curtilage and special character of the protected structure, together with the proposed landscaping scheme, I do not consider that a layout of the curtilage area that preserves c. 67% of the area in landscaped garden form can be considered to significantly alter the curtilage or special character of the protected structure. In relation to the report of the Council's Conservation Officer in relation to the landscaping works, it requests that details of the paving be requested via condition and that the parking space be omitted as it would be a large area of hard landscaping significantly altering the appearance of this area in front of the protected structure.
- 7.3.5. As outlined above, I do not consider the area of the parking space to be disproportionately large in the front curtilage context and at c.27sqm I do not consider it to be a large area or significant area in this context. For completeness, similar to the Conservation Officer's report, I note no issue with the ramp provided that a condition is required for the applicant to submit detailed specifications and revised treatment consistent with conservation-led specifications and methodologies.
- 7.3.6. For the above reasons, I also note there would be no significant impacts on the terrace or wider streetscape in the vicinity from the driveway and ramp. Contrary to the third party observer, I do not consider that this layout would overwhelm the house, terrace or streetscape setting, given the modest driveway size. I consider that it would have a modest impact to a significantly lesser extent than the impact that can be observed opposite at no. 139 Leinster Road where the majority of the front curtilage is in driveway form. I am satisfied that the proposal would not negatively impact on the character of the protected structure and its curtilage.
- 7.3.7. I note that it would not be contrary to the requirements of Section 4.3.7 (Appendix 5) of the CDP, other than in relation to the depth of the space, which is justified as a disabled space. I consider it would represent a high standard of design and layout incorporating natural features and would be proportional to its context. Should permission be granted, I recommend a condition requiring paving materials to be

agreed with the P.A. to ensure high quality and suitable paving and/or gravel is used for the driveway.

- 7.3.8. I also note that this layout would not be out of character on the street given the significant number of driveways and vehicular entrances associated with the protected structures on the street. I note no contravention of policy BHA2 or BHA9 in this regard.
- 7.3.9. In relation to the new vehicular gates, CDP policy and guidelines generally seek to retain original boundary features and treatments. I note a 3m wide gate is proposed and that the pedestrian gate would also remain. While the loss of some original fabric is to be regretted including part of the stone plinth, I note the design of the proposed gates and front boundary treatment is consistent with the appearance of the existing and would integrate with same. I note that per the submissions of the appellant's Conservation Architect and Ironworks providers, that every effort will be made to preserve the maximum amount of original form and construction through limited intervention consistent with the need to provide the entrance and gates. It is stated that most of the original railing and over 60% of the granite plinth will be retained in the adapted railing and gates. I also note no undue prospect of obstruction of light to basement rooms.
- 7.3.10. I note the view of the appellant's Conservation Architect per Section 13.4.3 of the Architectural Heritage Guidelines that *"the proposal does not seek to alter the height or spacing of the railing's current layout and design. The new gates will reflect the design of the current railing, incorporating historic elements. No piers will be affected. The existing gate will be retained and restored as part of the works"*.
- 7.3.11. Contrary to the third party observer, I do not consider that CDP policy is so restrictive as to not allow for any loss of original fabric of boundary features of protected structures. Section 4.3.7 (Parking in the curtilage of protected structures) requires efforts be made to retain such features but provides no absolute ban on their alteration or partial removal. I also note that such policies should be balanced with other CDP policies, for example, in relation to the provision of a parking space required to meet a particular need which I consider to be justified for the reasons outlined in Section 7.2 above. Section 15.15.2.5 of the CDP (Historic Buildings and Access) provides for some flexibility in relation to design for access arrangements

such as ramps. I also consider this principle applies in relation to the curtilage of a protected structure.

7.3.12. Contrary to the Conservation Officer, provided that the width of the vehicular entrance and gates is restricted to 2.6m by condition per Section 4.3.7 (Appendix 5) CDP requirements, I do not consider there would be an excessive loss of original fabric or impact on the setting and character of the protected structure. I do not see a rationale for combining the pedestrian gate and the vehicular gates as this would effectively omit the pedestrian gate for no added planning or conservation benefit. I consider that the appeal has demonstrated that the interventions have been sensitively designed and would be carried out in accordance with best conservation practice such that I am satisfied that the front boundary changes accord with CDP policy, architectural conservation guidelines and are acceptable.

7.3.13. I note the significant number of precedents cited by the third party observer. In relation to precedent for the curtilages of protected structures in the south city area, I note that each application must be considered de novo and on its merits and given the exceptional circumstances noted in Section 7.2 above, I do not consider that a significant precedent would be set in this regard. For the above reasons, I recommend that refusal reason no. 2 be overturned, and should permission be granted, that a condition be required for agreement of detailed works and landscaping to be agreed with the P.A. in accordance with best conservation practice.

7.4. Impacts on Tree

7.4.1. In relation to refusal reason no. 3 it was considered that the vehicular entrance and associated ditching would negatively impact on the adjacent public street tree and its root zone and be contrary to Section 15.6.9 and Appendix 5 Section 4.3.2 of the CDP and the Dublin Tree Strategy.

7.4.2. I note the location of a street tree in the edge of the footpath partially in front of the subject dwelling. While I note the proposed development does not provide for the ditching of the pavement to provide the vehicular access, it is nevertheless a necessary requirement for such a vehicular entrance per CDP policy as is tree protection. Section 15.6.9 requires *“that existing trees are considered from the very earliest stages of design and prior to an application for planning permission being*

submitted. Root systems, stems and canopies, with allowance for future movement and growth, need to be taken into account in all projects”.

- 7.4.3. Appendix 5 Section 4.3.2 provides for these types of proposals only in exceptional circumstances. For the reasons outlined above in Section 7.2 I consider the circumstances of the user of the disabled parking space to be exceptional. In these circumstances the policy requirement is that *“protective measures shall be implemented during construction to safeguard against any damage caused and a financial security required to cover any damage caused...The extent of the associated dishing of the footpath and kerb for a vehicular entrance shall not negatively impact on existing street trees and tree root zone. A minimum clearance will be required from the surface of the tree trunk to the proposed edge of the dishing”.*
- 7.4.4. I note that An Arboricultural Assessment Report has been submitted with the appeal in relation to the dishing of the footpath. I also note the submission of a drawing with the appeal showing the proposed footpath dishing plan with section drawing. While I note that this does not accord with Figure 1 of Section 4.3.2 of Appendix 5 in relation to separation distance from the existing tree, that nonetheless the proposal is for a reinforced thin mesh slab to minimise impact on the roots of the tree. An Engineering Report has been submitted which recommends a 100mm depth and new concrete slab rather than the standard 200mm depth of un-reinforced concrete. A specification of works is included to protect the tree and its roots with works required to be undertaken under the direct supervision of a qualified Arborist. The engineer notes that he is satisfied that the works can be carried out satisfactorily without impacting the tree.
- 7.4.5. The Arborist’s report includes mitigation measures including for Arborist supervision of the works and the boxing off of the tree trunk during works. The Arborist states he is of the opinion that the proposed footpath dishing works can be carried out without negatively impacting on the tree and its root structure. Noting the details of the proposed footpath works and professional opinions of the engineer and arborist, I am satisfied that this would be consistent with CDP Section 4.3.2 (Appendix 5) in that protective measures to safeguard during construction will be applied. I am satisfied that the dishing of the footpath and kerb would not unduly negatively impact on the

existing tree and its root zone having regard to the purposes for which this is required and balancing other relevant policies as outlined in Section 7.2 above.

- 7.4.6. I note the concerns of the third party observer in this regard and as outlined above, I do not consider there to be an absolute CDP policy restriction on this type of work where justified and where appropriate measures would be put in place to ensure tree protection to a reasonable standard. As there would be no tree loss, I do not consider that there would be an undue negative impact on amenities in the vicinity. I also note that no safety hazards in relation to same with no any movement of the ground likely to be negligible and similar to standard movements of ground associated with street trees.
- 7.4.7. I note the significant number of precedents cited by the third party observer. I note that each application must be considered de novo and on its merits and given the exceptional circumstances noted in Section 7.2 above, I do not consider that a significant precedent would be set in this regard. For the above reasons, I recommend that refusal reason no. 3 be overturned, and should permission be granted, that a condition be required for agreement of detailed works for the dishing of the footpath and tree protection consistent with documentation submitted by the applicant at appeal stage and this should include security and cost recovery in relation to such works for the Council.

8.0 EIA Screening

- 8.1. See Form 1 appended to this report. The proposed residential development is not a class of development. The proposed development therefore does not require screening for EIA.

9.0 AA Screening

- 9.1. I have considered the proposed development in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. The subject site is located c.4.1km west of South Dublin Bay SAC site code (000210) and c.4.1km west of South Dublin Bay and River Tolka Estuary SPA (site code 004024). The proposed development comprises the construction of a new vehicular access and retention for works to the front garden.

9.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The absence of any external impacts.
- The distance to European sites and the lack of any direct pathway to same.
- Taking into account the screening determination by the P.A..

9.3. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

10.0 Recommendation

10.1. I recommend that planning permission be granted for the reasons and considerations set out below.

11.0 Reasons and Considerations

11.1. Having regard to the location of the subject site within an urban area, the provisions of the Dublin City Development Plan 2022 – 2028 (as amended) and the Architectural Heritage Protection Guidelines, (2011), the nature, scale and form of the proposed development and development for retention in the grounds of a protected structure, and pattern of development in the surrounding area, it is considered that subject to compliance with the conditions set out below, the proposed development and development for retention would be acceptable, would not have a negative impact on the character of the protected structure and its setting, would be justified in relation to loss of on-street parking by exceptional personal circumstance balancing the needs of residents with those of the city, would not result in significant harm or loss of a street tree and would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and would constitute an appropriate use in this urban location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 27th day of January 2025, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Prior to commencement of development, the applicant shall agree the following in writing with the Planning Authority;
 - (a) Details and specifications of the proposed vehicular entrance gate, driveway, landscaping and ramp.
 - (b) A condition statement of the front boundary railings and plinth, including the pedestrian gate, and a method statement for the proposed works.
 - (c) A specification and method statement covering all works to be carried out, to ensure the development is carried out in accordance with good conservation practice.
 - (d) Confirmation that the development will be monitored by a suitably qualified architect with conservation expertise and accreditation.
 - (e) Competent site supervision, project management and crafts personnel will be engaged, suitably qualified and experienced in conservation works.

Reason: In the interest of the protection of architectural heritage.

3. The vehicular entrance gate shall be a maximum width of 2.6 metres and shall not open outwards to the street.

Reason: In the interests of architectural heritage and traffic/pedestrian safety.

4. The car parking space hereby permitted shall not be sold, rented, or otherwise sub-let or leased to parties who are not resident in the residence.

Reason: In the interest of good traffic management.

5. The attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.

Reason: In the interest of public health.

6. Site development and building works shall be carried out between the hours of 07.00 hours to 19.00 hours Mondays to Fridays inclusive, between 08.00 hours to 14.00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

Reason: To safeguard the amenity of property in the vicinity.

7. The footpath in front of the vehicular entrance gate shall be dished up to the public roadway per the drawings submitted to An Bord Pleanála on the 27th day of January 2025. These works shall be carried out to the requirements, measures and specifications outlined in the 'Engineering Proposal for Dishing of Footpath' document and 'An Assessment on One Tree Located Outside No. 36 Leinster Road, Rathmines, Dublin 6' document submitted to An Bord Pleanála on the 27th day of January 2025. Alternatively, the dishing of the footpath and related measures to ensure the protection of the street tree shall be carried out in accordance with the Planning Authority's specifications for such works or amendments to same where prior written agreement has been reached with the Planning Authority for same.

Reason: in the interests of traffic safety and tree protection.

8. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company or such other security as may be accepted in writing by the planning authority, to secure the protection of the street tree in the footpath to the front of the site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of the street tree or the replacement of the tree should it die, is removed or become seriously damaged or diseased within a period of three years from the substantial completion of the development with a tree of similar size and species. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To secure the protection of trees on the site.

9. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads and footpaths which may be damaged by the construction works required for the dishing of the footpath and protection of the tree and/or transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has

influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ciarán Daly

Planning Inspector

30th April 20250

Appendix 1 – Form 1

EIA Pre-Screening

An Bord Pleanála	ABP-321777-25		
Case Reference			
Proposed Development Summary	PROTECTED STRUCTURE: Construction of new vehicular access and retention for works to front garden, together with all associated site works.		
Development Address	36 Leinster Road, Rathmines, Dublin 6.		
1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	X		Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No		Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____