

Comhairle Chontae Atha Cliath Theas

PR/1592/21

Record of Executive Business and Chief Executive's Order

Reg. Reference: ED21/0072 **Application Date:** 10-Nov-2021
Application Type: Declaration of **Registration Date:** 10-Nov-2021
Exemption Section 5

Correspondence Name and Address: Seamus Vaughan, Board of Management, St. Dominics NS Mountain Park, Tallaght, Dublin 24.

Proposed Development: A new pedestrian/cycle entrance off St. Dominics Road. As part of Avonbeg Road Cycle Scheme we wish to open a new gate from the grounds to footpath.

Location: Mountain Park, Tallaght, Dublin 24.

Applicant Name: Seamus Vaughan, Board of Management, St. Dominics NS

(AOCM)

Description of Site and Surroundings

The subject site is an existing two-storey national school, St Dominic's, located at Mountain Park, Tallaght. The school is located on a site of approximately 2.2 ha, with the school building, playground area, car parking, sports courts and other associated landscaping. The area is primarily residential in nature and the Avonbeg Road Cycle Scheme is proposed in the area.

Proposal

This is an application requesting a Section 5 Declaration on whether the proposed development is or is not exempted development. The development consists of the provision of a **new pedestrian/cycle gated entrance** from the school's grounds onto St Dominic's Road.

The Section 5 Declaration application includes:

- Application form
- Site location map
- Site layouts; existing and proposed.

Recent Relevant Planning History

There is no recent relevant planning history for the site. It is noted by the applicant that the declaration is being sought to integrate with Avonbeg Road Cycle Scheme which is currently at the consultation stage.

Recent Relevant Enforcement History

There is no record of recent relevant enforcement history for the site.

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Zoning and Council Policies

The subject site is subject to zoning objective 'RES' - *'To protect and/or improve residential amenity'*.

Assessment

Consideration as to whether an entrance gate constitutes development or constitutes exempted development or not is governed by Sections 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and Articles 5, 6, 9, 10, 11 of the Planning and Development Regulations 2001 (as amended).

Is the proposal development?

The Planning and Development Act 2000, as amended, under 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'*. The term *'works'* is defined in Section 2(1) of the 2000 Act as *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'*.

Having regard to the above, and to the drawings submitted, it is considered that the proposed entrance gateway would involve demolition and construction and is therefore development.

Is the proposal exempted development?

Part 1 of Schedule 2 of the Regulations provides a table of general exempted development. Of relevance is Class 9 and Class 40:

Class 9

CLASS 9 *'the construction, erection, renewal or replacement, **other than within or bounding the curtilage of a house**, of any gate or gateway.'* The limitation to this class is that *'the height of any such structure shall not exceed 2 metres.'*

Regarding Class 9, the site is not within or bounding the curtilage of a house. No details of the gate have been provided, it is not known if the height of the gate would exceed 2 metres. An elevation is required with dimensions and should be sought by further information.

Class 40

CLASS 40 *'works incidental to the use or maintenance of any burial ground, churchyard, monument, fairgreen, market, **schoolgrounds** or showground **except** –*

- (a) **The erection or construction of any wall, fence or gate bounding or abutting on a public road** [emphasis added]

In relation to a determination under Class 40, in considering whether the proposal directly bounds or abuts a public road, the Roads Act, 1993 defines as follows:

- "road" includes –

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- a) *Any street, lane, **footpath**, square, court, alley or passage*
- *“public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority. [emphasis added]*

Based on the above, it is considered that the proposed gated entrance would bound/about a public road and would therefore **not** be considered exempt development as a result of the Class 40 limitations.

Article 9 Restrictions of the 2001 Regulations

Article 9 of the 2001 Regulations specifies circumstances when development which Article 6 of the Regulations relates to is not exempt.

Article 9 (a) (iii) states development will not be exempt if carrying out such development would *‘endanger public safety by reason of traffic hazard or obstruction of road users’*.

Having consulted the Roads Department, it is considered that the proposed entrance would create a traffic hazard given the existing road environment, with parked cars along St Dominic's Road obstructing the view of the entrance for cyclists or vehicles driving along the road.

Following further consultation with the Roads Department, the Council is at detailed design stage to deliver an approved 4m wide shared cycle and pedestrian scheme known as Avonbeg Road Cycle Scheme. The Scheme will go to construction in early 2022. The Project Manager in the Roads Section has confirmed that the safety of the students exiting will be ensured through design measures in the Scheme. As such, it is considered that the traffic hazard concerns are mitigated and the proposal will not endanger public safety by reason of traffic hazard.

Assessment Under SI/Circulars

An assessment of all recent circulars and Statutory Instruments has taken place and no exemptions have been included for pedestrian/cyclist gates at schools.

Conclusion

Having regard to the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), it is considered further information is required to confirm the overall height of the gate proposed.

Recommendation

The applicant should be written to and requested to submit an elevation of the proposed gate and confirm the height of the structure shall not exceed 2m.


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I recommend that **Additional Information Requested** be requested from the applicant with regard to the following:

1. Under Class 9, 'the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway has a limitation to requiring that 'the height of any such structure shall not exceed 2 metres.'
The applicant is requested to submit an elevation of the proposed gate and confirm that the height of the structure shall not exceed 2m.



Jim Johnston,
Senior Executive Planner

ORDER: That **ADDITIONAL INFORMATION** be requested from the applicant as set out above and that notice thereof be served on the Agent/Applicant.

Dated: 7/12/21



Eoin Burke, Senior Planner