
Appeal Reference:	2023/R0002
Appeal by:	Mr. Kyle David Thomas Daly.
Appeal against:	The refusal of consent for a permitted means of access.
Proposed Development:	Drop kerb.
Location:	53 Circular Road, Newtownards, BT23 4NS.
Authority:	Southern Division Office DfI Roads.
Application Reference:	DCX/2023/9017/G.
Procedure:	Written representations with an Accompanied Site Visit on 22 nd May 2024.
Decision by:	Commissioner Kieran O’Connell, dated 4 th June 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether the proposed vehicular access would prejudice the safety and convenience of road users and result in the loss of existing lay-by parking along the frontage of the site on Circular Road.
3. Under Article 80(8) of the Roads (Northern Ireland) Order 1993, the Department for Infrastructure (DfI) may give consent for the construction of a permitted means of access to a road where it is satisfied that the safety or convenience of traffic using the road, or which may be expected to use the road, will not thereby be prejudiced.
4. The appeal site is located on the western side of Circular Road and comprises the two-storey mid-terrace dwelling at No. 53. It has an enclosed front garden and a pedestrian ramped access. It has no in-curtilage parking provision. There is a pavement and an unassigned on-street parallel parking bay which accommodates space for approximately 5 cars including a disabled parking space to the front of the property. During my site visit, I observed double parking along the length of the parking bay.
5. The eastern side of Circular Road is characterised by terrace dwellings, some of which have in-curtilage parking to the front. There is no on-street parking along this side of Circular Road given the double yellow lines along the extent of the street between Scrabo Road/Mill Street and Donard Avenue.

6. To facilitate access to the proposed parking area, the proposal involves the provision of a dropped kerb to enable the Appellant to cross the pavement and park a car to the front of his property. The dropped kerb would also facilitate egress onto the public road.
7. Planning Policy Statement 3 – Access, Movement and Parking (PPS 3) and guidance contained in Development Control Advice Note 15 – Vehicular Access Standards (DCAN 15) are material considerations in this appeal.
8. Policy AMP 2 of PPS 3 regulates new accesses to public roads and it refers to the standards set out in DCAN 15 which are to be applied. Access proposals must not prejudice road safety or significantly inconvenience the flow of traffic. Paragraph 5.13 of PPS 3 states that a properly located and well-designed access is essential for the safety and convenience of all road users – those proceeding on the public road, including cyclists and pedestrians, as well as those using the access. Paragraph 5.15 further states that whatever the type of access, good visibility is essential for the safety and convenience of all road users.
9. In this case, DfI Roads concerns relate in part to the lack of visibility splays because of parked cars within the lay-by to the front of the appeal site. DCAN 15 sets out the current standards for visibility splays that will be applied to a new access onto an existing public road. At paragraph 4.1 it indicates that the area within visibility splays i.e. the x-distance and y-distance must be cleared to provide a surface no higher than some 250mm above the level of the adjacent carriageway. Minor departures from this requirement, such as the retention of a single slender pole or column, may be permitted at the discretion of the Department as long as visibility is not materially affected.
10. DfI Roads state that Circular Road is a residential housing road with a carriageway width of 8.0m. They further state that it is an unclassified road carrying approximately 4500 vehicles per day, while traffic counters have measured the speed of vehicles using the road in the vicinity of the site to be approximately 30mph. From my on-site observations, I would agree with the 30mph estimate.
11. DCAN 15 indicates that where exceptional circumstances are considered to exist, it is highly unlikely that the Department will permit visibility standards which fall below certain figures. The Department's witness was satisfied that the minimum standard of 2m x 33m in both directions should be applied in this case given the type of access proposed and the traffic speed on the priority road. Paragraph 4.2 of DCAN 15 goes on to state that visibility in the vertical plane must normally be provided from a driver's eye height of 1.05m to 2.00m to an object height between 0.26m and 1.05m.
12. The DfI witness helpfully measured out the visibility splays on the site. I agree with DfI Roads that the minimum acceptable standard visibility splay of 2m x 33m in both directions could not be achieved when measured from a driver's eye height of 1.05m as cars parked in the existing layby would obstruct the drivers view when accessing and egressing the proposed space.
13. Whilst the Appellant argues that a reduction in visibility splay requirements could be put in place to facilitate a new access to No. 53, for his and his family's safety, I am not persuaded that the existing layby parking arrangements are unsafe, nor

am I persuaded that this issue taken in isolation would amount to exceptional circumstances to justify a reduction beyond the minimum road safety requirements in this case.

14. DfI Roads raised an additional concern, namely that the proposal would result in the loss of at least two on-street parking spaces for residents and visitors to Circular Road. However, their witness confirmed at the site visit that the provision of the minimum standard of visibility splays would result in the loss of all of the layby parking presently in place to the front of the appeal site. I find this concern to be justified given the residential context where on-street parking is already limited. Furthermore, I find that the proposed arrangement would prejudice the safety and convenience of road users and pedestrians as it would create a situation that would remove much needed parking thus encouraging drivers to double park or mount pavements for example.
15. Whilst the Appellant raised concerns regarding the level of parking in the area, on-street parking remains available and the limitations in relation to this do not override the requirement for a new access to be safe and not prejudice road safety.
16. All in all, I consider that adequate visibility splay requirements could not be achieved to facilitate the in-curtilage parking as proposed. The proposal would therefore prejudice the safety and convenience of pedestrians and road users and also result in the loss of lay-by parking. The Department has sustained its reasons for refusal. Accordingly, the appeal must fail.

This decision is based on the sketch layout drawing submitted with the DFI Application for Vehicular Access form, received by the Department on 26th September 2023.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Planning Authority: - Mr. Liam Rice DFI Roads

Appellant: - Mr. Kyle Daly

List of Documents

Planning Authority: - Statement of Case by DFI Roads

Appellant: - Statement of Case Mr. Kyle Daly
Rebuttal Statement of Case by Mr. Jim Shannon MP