

# Appeal Decision

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<b>Appeal Reference:</b>	2024/R0001.
<b>Appeal by:</b>	Mrs. Nutchanart Denvir.
<b>Appeal against:</b>	The refusal of consent for a permitted means of access.
<b>Proposed Development:</b>	Drop kerb.
<b>Location:</b>	70 East Street, Newtownards, BT23 7DD.
<b>Authority:</b>	Southern Division Office DfI Roads.
<b>Application Reference:</b>	DCX/2024/9003/G.
<b>Procedure:</b>	Written representations with an Accompanied Site Visit on 26 <sup>th</sup> September 2024.
<b>Decision by:</b>	Commissioner Kieran O’Connell, dated 3 <sup>rd</sup> October 2024.

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## 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 parking along the frontage of the site on East Street.
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. The policy context is provided by Policy AMP 2 of Planning Policy Statement 3 – ‘Access, Movement and Parking’ (PPS3). Guidance contained in Development Control Advice Note 15 – ‘Vehicular Access Standards’ (DCAN 15) and Creating Places – ‘Achieving Quality in Residential Developments’ (CP) are also of relevance to this appeal.
4. The appeal site is located on the northern side of East Street and comprises the two-storey mid-terrace dwelling at No. 70. It has an enclosed front garden and pedestrian access. It has no in-curtilage parking provision. The road exhibits a single yellow line along the front of the property which extends from No. 68 to No. 76 East Street. The road is separated from No. 70 by a pedestrian footpath.
5. The northern side of East Street is primarily characterised by two-storey terrace dwellings with enclosed gardens and pedestrian access to the front. No. 66A, a greengrocery with an enclosed front yard area, is located on the western corner of

the terrace at the junction with Victoria Avenue. The dwellings in the vicinity of the appeal site rely solely on on-street parking on either side of East Street. There is street signage prohibiting waiting and parking beyond a 30-minute period between 8 am and 6 pm. During my site visit, I witnessed parking on the footpath in front of the greengrocers possibly due to the presence of double yellow lines on the road outside. I also witnessed parking on the footpath on either side of East Street.

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 footpath and park a car at the front of her property. The dropped kerb would also facilitate egress onto the public road.
7. Section 20 of the guidance document CP contains details of the number of parking spaces and the dimensions of the types of parking spaces required for various development proposals. Paragraphs 20.23 and 20.24 provide guidance on in-curtilage parking, setting out the minimum dimensions for an in-curtilage parking space as being 6.0m in length measured from the back edge of the footpath by a minimum width of 3.2m.
8. The Department referred to the minimum acceptable parking space standard for older established properties, such as this, as being 4.8m in length by 2.4m in width with a 0.8m strip manoeuvring/circulation space for access. These dimensions are predicated on a parking layout where the space is aligned perpendicular to the carriageway. Paragraphs 20.28 and 20.29 of CP concern parking bays contiguous with the carriageway, including those parallel to the carriageway. However, the proposed in-curtilage parking space is not contiguous with the carriageway but is separated from it by the footpath, and is not identical to the situation envisaged in CP.
9. The parties dispute the adequacy of the available space within the front garden area at No.70. The Appellant considers that sufficient space is available for her smaller-than-normal hatchback car to fit into. The Department consider that the available space is 4.6m in depth. This falls short of the 6m as set out in CP and is not sufficient to park a normal-sized car perpendicular to the road without it projecting onto the public footpath. There would still be some shortfall even if one were to apply the reduced standard of 4.8m and there is no guarantee that the Appellant will not change cars or that future owners would not have larger-than-average vehicles. As a normal sized vehicle would intrude onto the footpath potentially forcing pedestrians (including those with prams) onto the road and endangering their safety, the safety and convenience of pedestrians and other road users would be prejudiced by the proposal.
10. Although the Appellant indicated that she did not intend to parallel park into the proposed parking space, I agree with the Department that a driver attempting to do so would be forced to undertake a series of manoeuvres in forward and reverse gears leading to the crossing and re-crossing of the pedestrian footpath multiple times. This combined with the confined parking space and the on-street parking would restrict a driver's ability to carry out such a manoeuvre. Accordingly, I share the Department's concerns regarding its achievability and the consequent impact on road safety for all users.
11. Even if I were to conclude that a normal-sized vehicle could be parked either parallel or perpendicular within the available space, there is no mechanism for

enforcing this arrangement once Article 80 consent is issued. Moreover, if approved, it would set a precedent, making it difficult to refuse applications for other properties in the area with similar space limitations, thereby further prejudicing the safety and convenience of pedestrians.

12. 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.
13. Dfl Roads concerns relate in part to the lack of visibility splays because of parked cars along East Street. 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 must be cleared. Minor departures from this, such as the retention of a single slender pole or column, may be permitted as long as visibility is not materially affected.
14. Dfl Roads states that East Street is a residential housing road with a carriageway width of 7.2m. They further state that it is an unclassified road carrying approximately 4500 vehicles per day both of which are undisputed. They estimate the speed of vehicles using the road in the vicinity of the site to be approximately 20-30mph. From my on-site observations, I would agree with the 20-30mph estimate and in any event, this was undisputed also.
15. 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 Appellant advised at the site visit that she has a number of unspecified medical conditions and was a blue badge holder that provided her with parking exemptions at this location. However, as the Appellant currently benefits from an exception to parking restrictions in the locality, I am not persuaded that there are exceptional circumstances that would warrant the reduction in standards and modifications of her property beyond the minimum permitted standards.
16. The Department's witness was satisfied that the minimum standard of 2m x 33m in both directions should be applied given the type of access proposed and the undisputed traffic speed. 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.
17. The Dfl witness helpfully measured out the visibility splays on the site. I agree with Dfl Roads that the minimum acceptable standard visibility splay of 2m x 33m in both directions could not be achieved to facilitate the proposed in-curtilage parking space as cars parked along the street would obstruct the driver's view when accessing and egressing the proposed space. The proposal would, therefore, prejudice the safety and convenience of pedestrians and road users.
18. Dfl 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 East

Street owing to the stated visibility splay requirements. I find this concern to be justified given the predominantly residential context where on-street parking is already limited and constrained. 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 of the already constrained parking available, thus encouraging drivers to double park or mount footpaths, as already is occurring.

19. I accept that parking on street can be problematic at times given the quantum of space available and the restrictions posed by the yellow lines. These limitations do not outweigh the objection to the proposal as expressed above on road safety grounds. The Department has sustained its reasons for refusal. Accordingly, the appeal must fail.

This decision is based on the undated sketch layout drawing submitted with the DFI Application for Vehicular Access form.

**COMMISSIONER KIERAN O'CONNELL**

### **List of Appearances**

Planning Authority: - Mr Liam Rice DFI Roads

Appellant: - Mrs Nutchant Denvir

### **List of Documents**

Planning Authority: - Statement of Case by DFI Roads

Appellant: - Statement of Case by Mr Jim Shannon MP