

ORAL HEARING REPORT

Re:

**PROPOSED EXTINGUISHMENT
OF
PUBLIC RIGHT OF WAY**

at

**CASTLE PARK
TALLAGHT
DUBLIN 24**

for

SOUTH DUBLIN COUNTY COUNCIL

Dated 17th April 2009

1.0 Introduction

- 1.1 The findings in this Report are subsequent to the observations made at the Oral Hearing held on 2nd April 2009 at County Hall, Town Centre, Tallaght, Dublin 24, which was facilitated by South Dublin County Council.
- 1.2 Prior to the Oral Hearing, I visited the site and its environs on 15th March 2009 and photographs taken on that date are attached to the Report.

2.0 Site Location

- 2.1 The subject pedestrian access/right of way is located at the rear western boundary of house Nos. 159-171 Castle Park and Scoil Anghus Primary School. The access/right of way consists of a 2-metre wide area with a 1-metre concrete pedestrian pathway along its entire distance. The pathway extends from the school access to its boundary with the hammerhead cul de sac to the side of No. 159 Castle Park. Similar concrete pathways are also provided between Nos. 164-165 and Nos. 170-171 Castle Park,
- 2.2 The pathways provide pedestrian access to all houses. A 2-metre high steel palisade fence is located along Scoil Anghus Primary School boundary to the west. There are four access points to the right of way, all of which are closed off with 2-metre high steel locked gates. These gates were closed at the time of my inspection.

3.0 Development Plan

- 3.1 The subject lands are located within an area zoned Objective 'A' - "to protect and/or improve residential amenity" in the County Development Plan 2004-2010. The Development Plan 2004-2010 provides at Section 12.4.8 that where the flank walls or rear boundaries of houses abut roads, pedestrian ways or public open space, suitably designed screen walls 1.8 metres in height shall be provided and shall be suitably rendered and capped in an acceptable manner.

4.0 Proposed Development

4.1 The proposal is to close the existing pedestrian access to the rear of house Nos. 159-171 Castle Park, Tallaght, Dublin 24. The proposal to extinguish this right of way was advertised in *The Tallaght Echo* on 30th September–1st October 2008 under the Roads Act 1993, Section 73(1) and signs were erected on site as were required. All representations or objections regarding the proposed extinguishment had to be made in writing to The Senior Executive Officer, Roads Department, South Dublin County Council, County Hall, Town Centre, Tallaght, Dublin 24 before 4.30pm on Friday 14th November 2008.

In response to the public advertisement notice there was a total of 20 submissions made, 10 for and 10 against the proposal. All sought to have their observations heard at an Oral Hearing.

5.0 Observers Against the Closure

5.1 The residents of Castle Park in favour of retaining the status quo, to retain the right of way, cite the following reasons in support of their claim:

- The majority of residents and the Castle Park Residents Association are against the proposed closure.
- The right of way has been in use by residents on a daily basis for over 35 years.
- It is essential to retain for emergency services.
- Only access to terraced houses for bins, delivery of goods.
- The closure would result in devaluation of their properties.

Eight of the original residents who signed in favour of the closure of the laneway subsequently changed to objecting to the closure. A total of 9 residents attended the Oral Hearing against the closure.

6.0 Observers in Favour of Closure

6.1 Nine residents in favour of closure of the right of way signed South County Dublin County Council forms to that effect. However, only the resident of No. 170 Castle Park attended at the Oral Hearing and cited the following reasons in support of his claim:

- The laneway was used for dumping by residents.
- People other than residents of 159-171 had keys to gates.
- Bicycle stolen from the laneway to rear of No. 170.

6.1 There was a conflict of fact between the parties in relation to the use and benefit of the subject right of way.

7.0 Assessment

7.1 Having visited the site and the laneway, as well as considering the observations, I am of the opinion that the main issues in this case are:

- Impact of closure overall on local residents of 159-171 Castle Park.
- Impact on residential amenity.

8.0 Impact of Closure on Local Residents of Castle Park

8.1 The residents against the extinguishment gave compelling direct evidence as to why the right of way should be retained. Evidence was given that the right of way is used on a daily basis by residents. They allege the right of way is essential as a means of access for them and emergency services. They further claim that such a closure would also result in the devaluation of their property. Of the nineteen houses (159-171) thirteen are terraced houses. The closure of the laneway would result in bins and services being brought through the main houses. I am not convinced that such a change is to the benefit of these residents, and in my opinion may be detrimental to their residential amenity.

9.0 Impact on Residential Amenity

9.1 There is clear contrast between the parties as to how the extinguishment of this right of way would impact on the residents of Castle Park and those of their neighbours living in the immediate vicinity. The residents against the closure were extremely annoyed that the closure of the right of way was ever placed on the Council's agenda for extinguishment, as they were never consulted on this matter. The resident in favour of closing the right of way made claim that the incorporation of the right of way into his property would make it more secure. However, I am not convinced that by partially closing the laneway as proposed, the situation would improve or make it more secure.

The photographs attached to this report will also show that, apart from one deposit of plastic sheeting, the right of way was clean and free of any other deposits of rubbish or debris. In evidence the Oral Hearing was informed that the right of way was last cleaned by South Dublin County Council approximately 5 to 6 years ago.

10.0 Conclusion/Recommendation

10.1 In conclusion, and for the reasons given, I consider the extinguishment of the right of way could not be recommended at this particular location. I accept that residents are entitled to seek to extend their private residential amenity, but there is also a need to make sure that all residents' rights are facilitated and are compatible with the objectives and policies of the County Development Plan.

In this case I do not consider the proposal to extinguish the right of way is warranted. I have taken into consideration all other matters raised in the representations, but none were

sufficient to outweigh the conclusions which led to my recommendation that the right of way should not be extinguished.

SIGNED: 
JOE GORMAN
Chairperson

DATED: 17th April 2009

APPENDIX 1

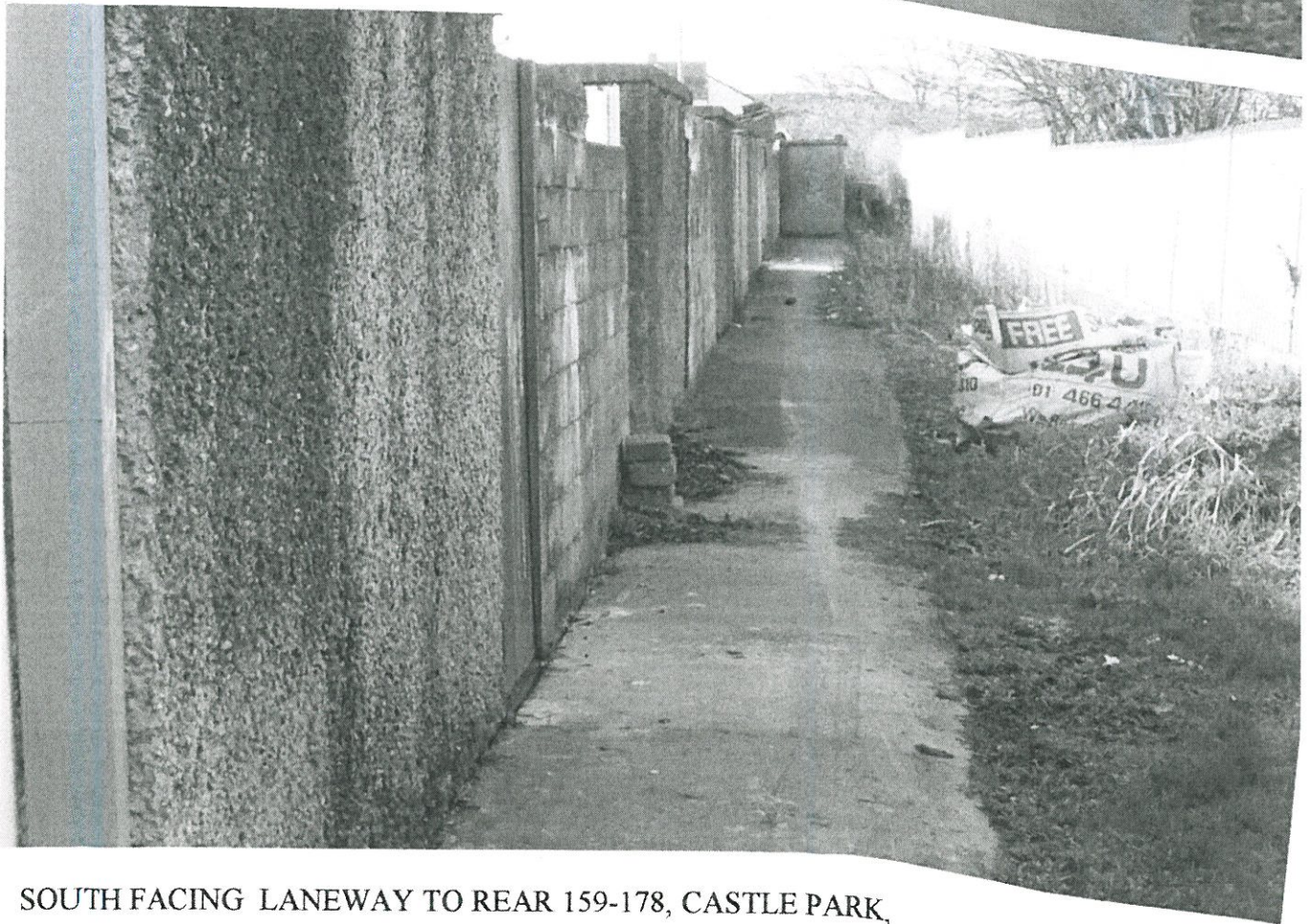
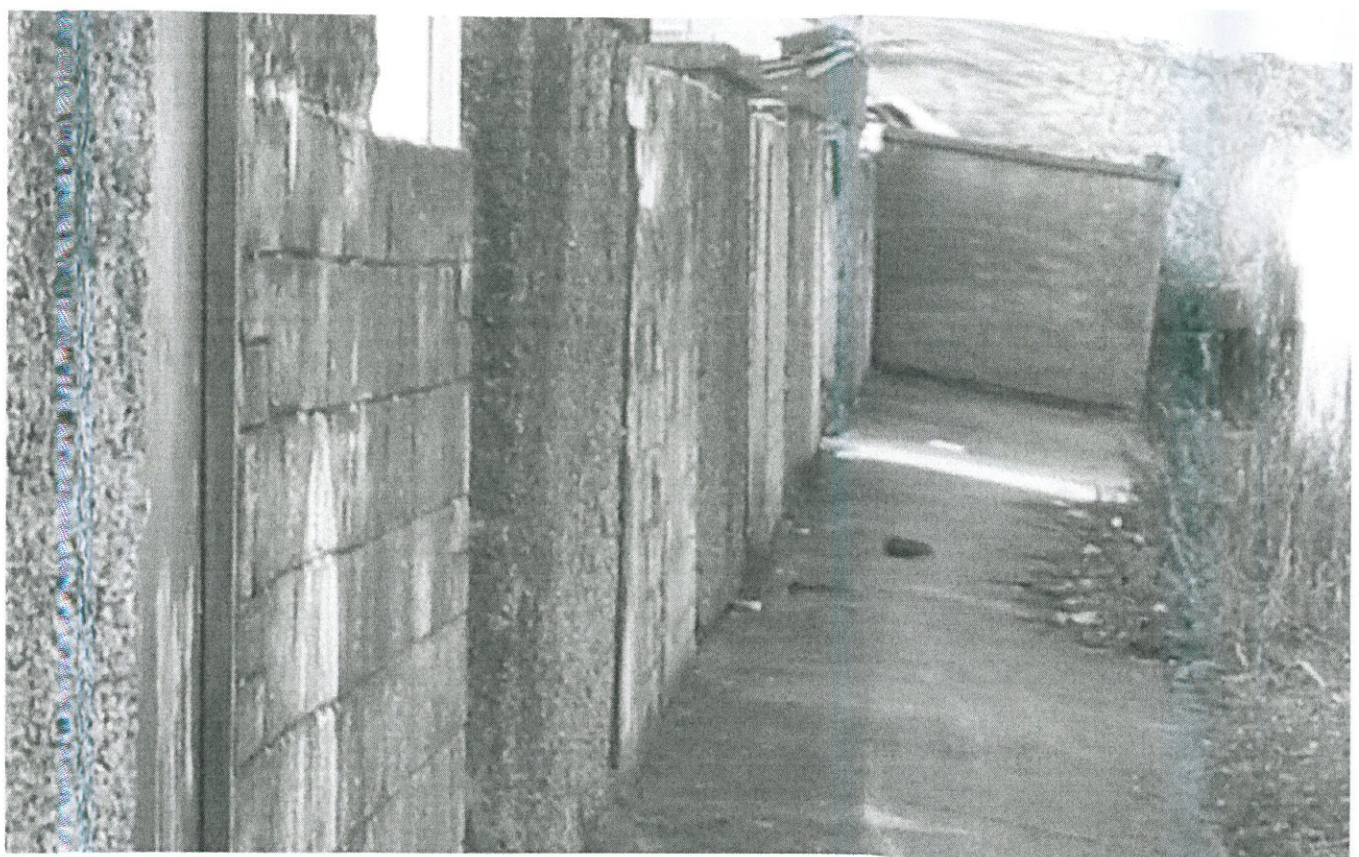
**PHOTO SURVEY OF THE
RIGHT OF WAY**



HOUSES 159-178, CASTLE PARK, FACING SOUTH..



SOUTH GATED ENTRANCE AND LANEWAY TO REAR 159-178, CASTLE PARK,



SOUTH FACING LANEWAY TO REAR 159-178, CASTLE PARK,



GATED ENTRANCE TO REAR OF 159, CASTLE PARK.



LANEWAY TO REAR 159-178, CASTLE PARK, FACING NORTH.



LANEWAY TO REAR 159-178, CASTLE PARK, FACING NORTH..



GATED ENTRANCE TO SIDE OF 170-171, CASTLE PARK.

APPENDIX 2

**AERIAL PHOTO OF SITE
AND
LOCATION MAP**



CASTLE PARK

