

ORAL HEARING REPORT

re:

**PROPOSED REVISIONS TO
EXTINGUISHMENT OF
PUBLIC RIGHT OF WAY**

at

**REAR OF
34 ST PETERS DRIVE
GREENHILLS
DUBLIN 12**

for

SOUTH DUBLIN COUNTY COUNCIL

Dated 17th April 2009

1.0 Introduction

- 1.1 I revisited the above site on 20th March 2009 in connection with the Oral Hearing due for hearing on 31st March 2009.

2.0 Site Location and Description

- 2.1 The portion of the subject laneway referred to is located immediately south of the boundary of the property known as 34 St. Peters Drive, Greenhills, Dublin 12 and immediately west of the boundary of the property known as 12 Avondale Terrace, Perrystown, Dublin 12.

The right of way consists of a concrete surfaced laneway to the rear of Nos. 34-44 St. Peters Drive to the north, the public open park to the south and terminates with the western boundary of Quarry Cottages, now known as 11 Avondale Terrace.

- 2.2 The laneway provides rear access to houses 34-44 St. Peters Drive, five of which have garages constructed. On the southern side of the laneway it fronts onto the public open space which is defined by a low concrete dwarf wall. The laneway also provides pedestrian access to the public park, bus routes and local shopping areas.

3.0 Development Plan Zoning

- 3.1 The subject site is located within an area zoned objective 'A' - "to protect and/or improve residential amenity" in the County Development Plan 2004-2010. Section 12.4.8 Development Plan 2004-2010 provides that where the flank walls or rear boundaries of house sites abut roads, pedestrian right of 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 subject site was the subject of a previous Oral Hearing and a Report on the lands was submitted to the Terenure/Rathfarnham Area Committee (1) on Tuesday 7th October 2008. A revised proposal was submitted by the owners of 34 St. Peters Drive that, in addition to the areas offered to them, shaded blue on the site location map attached, they seek to acquire additional lands shaded yellow on the attached location map. The proposal to extinguish the public right of way was advertised in *The Echo* on Tuesday 14th October 2008 and signs were erected on site in accordance with Section 73 of the Roads Act 1993. The latest date for receipt of objections, representations and requests for an Oral Hearing was Friday 28th November 2008. One valid submission/objection was recorded within the specified period requesting an Oral Hearing.

5.0 Observers

5.1 The residents, Mr and Mrs Lee of 12 Avondale Terrace, Perrystown, Dublin 12, sought an Oral Hearing in relation to the revised proposal. In the written submission it is stated that there is no objection to the extinguishment of the right of way over the area coloured blue on the site location map attached, but do have objections in the event of the right of way over the area coloured yellow being extinguished. They cite the following reasons in support of their claim:

- In April 2000 Ref.Dev.LD. 798 John and Brigid Lee acquired lands adjoining 12 Avondale Terrace, Perrystown, Dublin 12 from South Dublin County Council. The area comprising 37 sq metres or thereabouts was shown delineated in red on Drwg. No. PLS.1257 (copy attached)
- In direct evidence to the Hearing, Mr Lee said he has resided at No. 12 Avondale Terrace, Perrystown, Dublin 12 for 62 years and maintained the land referred to above over that period of time.
- His reasons for acquiring the said land was to protect mature trees from vandalism and also to seek permission for an access to his property via the public laneway.

- Mr and Mrs Lee are both adamant that the revised closure/extinguishment now sought is unnecessary and will deny them the right of access to the rear of their property.

5.2 The residents of No. 34 St. Peters Drive, Mr and Mrs Gahan, are the Applicants and are anxious to purchase both the blue and the yellow areas and extinguish the right of way over this portion of the laneway. In support of their Application they cite the following reasons:

- To protect their property from anti-social behaviour.
- To protect their property from stolen/burnt-out cars.
- To provide rear access to their property.

5.3 As in the previous Oral Hearing, the direct evidence of both parties showed serious conflict in relation to adjoining lands and to the use/abuse of the subject laneway.

6.0 Assessment

6.1 I consider the main issue to be

- Impact of closure on both parties concerned.

7.0 Impact of Closure on Residents

7.1 The residents against the extinguishment of both areas (blue and yellow), in direct evidence do not accept the need to close or extinguish the laneway in the manner proposed and say that by doing so would deny them rear access from the laneway and would only 'move the goalposts' a very short distance away outside somebody else's property.

7.2 The residents of No. 34 St. Peters Drive (the Applicants) claim that the extinguishment of the blue and yellow coloured areas identified on the attached location map would result in protection of their property and give them great peace of mind. They

said the area, if acquired, would be used for amenity purposes only and that no buildings would be built thereon.

8.0 Alternative Proposals

8.1 In an attempt to facilitate both parties in this matter I think that alternative avenues be explored to compromise this matter. In this regard, a compromise scheme is proposed that will provide for additional lands to be ceded to the residents of No. 34 St. Peters Drive, whilst retaining a rear access to the residents of No. 12 Avondale Terrace. The scheme as proposed does not provide for any blind spots in which anti-social behaviour can occur.

Should such a scheme be acceptable to both parties, it would serve to protect the residents' amenities and also provide access to both parties.

9.0 Recommendation

9.1 I have had regard to the location of the right of way and its effect on the residential amenity of the area.

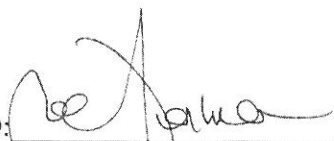
Having taken oral evidence at the Hearing, read the submissions, and visited the site:

- I accept that residents are entitled to enjoy their residential amenity without duress from noise and nuisance, but there is also a need to make sure all residents' rights are facilitated.
- I do not accept that the revised partial closure of the right of way as described is necessary, or that it will eliminate any perceived anti-social behaviour.
- I do see advantage in the consideration of the 'alternative proposal' which would extend the rear garden area of No. 34 St. Peters Drive, thus providing additional protection for their residential amenities and also provide rear access to both parties concerned.

In conclusion, it is considered that the proposal for the partial extinguishment of the public right of way as proposed would not contribute in any degree to the reduction in perceived

nuisance and would create a similar situation at a different location, contrary to the proper planning and sustainable development of the area, and for this reason recommend refusal.

SIGNED:



JOE GORMAN
Chairperson

DATED: 17th April 2009

APPENDIX 1

**DISPOSAL OF LAND
TO
JOHN AND BRIDGET LEE**

From Development

COMHAIRLE CHONTAE ÀTHA CLIATH THEAS
SOUTH DUBLIN COUNTY COUNCIL



MEETING OF SOUTH DUBLIN COUNTY COUNCIL

MONDAY 8th May 2000

ITEM NO. 8(a)

COMHAIRLE CHONTAE ATHA CLIATH THEAS
(South Dublin County Council)

Development Department,
P.O. Box 4122,
Town Centre,
Tallaght, Dublin 24.
28th April 2000

TO: EACH MEMBER OF SOUTH DUBLIN COUNTY COUNCIL.

Dev LD 798

Re: Proposed Disposal of Plot of land adjoining 12 Avondale Terrace,
Perrystown, Dublin 12 - John & Bridget Lee

An application has been received from John & Bridget Lee 12 Avondale Terrace, Perrystown, Dublin 12, for the purchase of a plot of land adjoining their property. The plot of land in question is being used for anti-social activities and as a dumping area. There are mature trees on the plot which are being vandalised and set on fire. The plot is surplus to the Council's requirements.

Accordingly, it is proposed to dispose of the plot of land adjoining 12 Avondale Terrace, Perrystown, Dublin 12 comprising 37 sq. metres or thereabouts as shown delineated in red on drawing No. PLS 1257 to John & Bridget Lee of 12 Avondale Terrace, Perrystown, Dublin 12, in accordance with Section 75 of the Local Government (Planning & Development) Act 1963 and subject to the provisions

of Section 83 of the Local Government Act 1946, as amended, subject to the following terms and conditions as recommended by the Council's Valuer: -

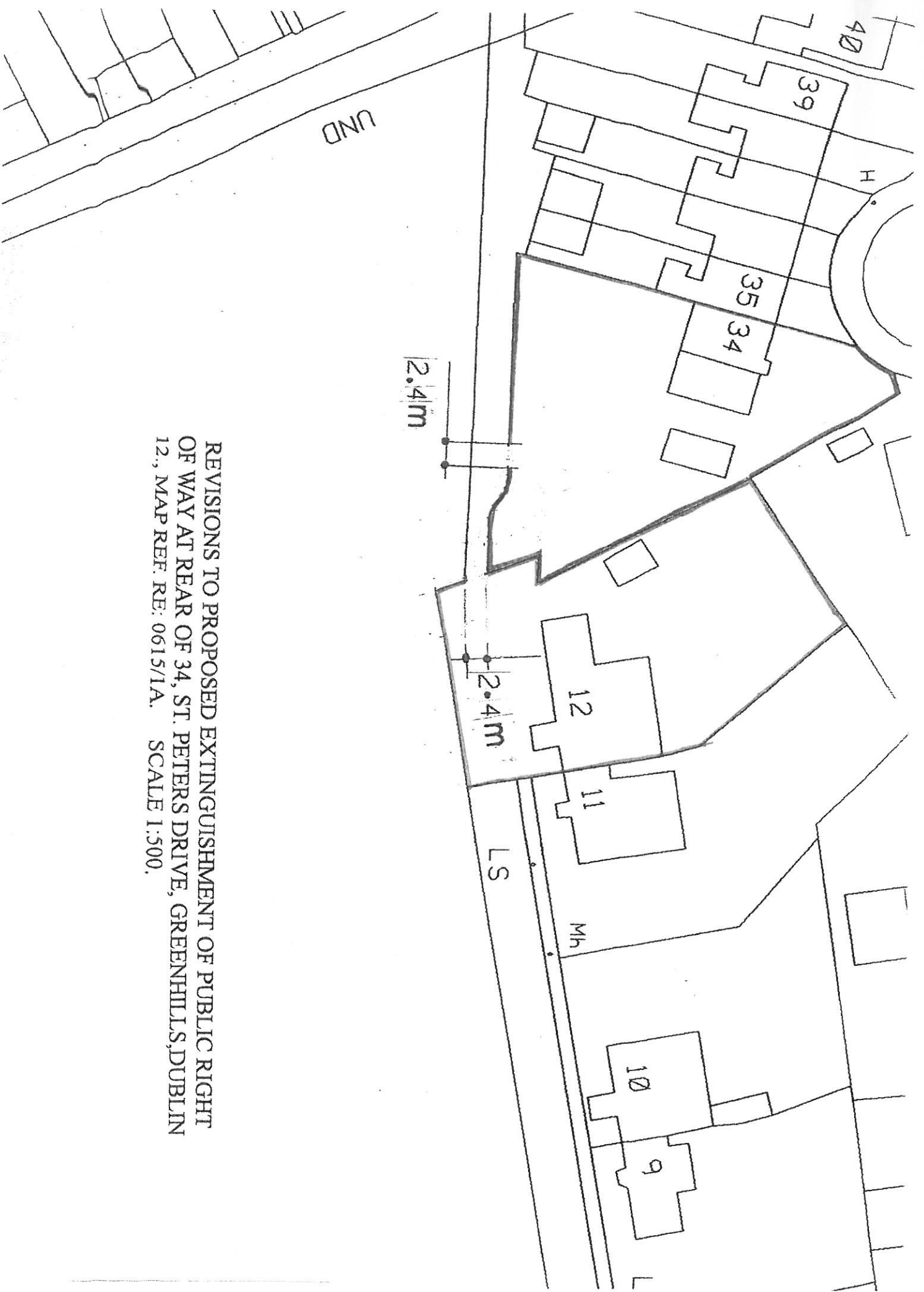
1. That the plot be disposed of by way of a 150 year lease at a capital premium of £2,000 (two thousand pounds).
2. The rent reserved in the lease shall be £1.00 per annum, if demanded, with five year rent reviews linked to charges in the Consumer Price Index.
3. The plot to be used for garden purposes only.
4. No buildings whatsoever to be erected on the plot.
5. The existing boundary wall to be relocated thereby incorporating the subject plot with existing mature trees into the garden of no. 12 Avondale Terrace, at the purchasers expense. The specification of the new wall to be agreed in advance with the Council's Parks Department.
6. Each party to pay their own legal costs of the transaction.
7. The lease to include such other conditions and general provisions as are contained in leases of this nature and as are deemed appropriate by the Council's Law Agent.
8. That no agreement enforceable at law is created or intended to be created until exchange of contracts has taken place.

The land being disposed of forms part of lands acquired from South County Utility Society Ltd. in 1966 for amenity purposes.

F. Kavanagh
County Manager

APPENDIX 3

ALTERNATIVE PROPOSAL



REVISIONS TO PROPOSED EXTINGUISHMENT OF PUBLIC RIGHT
OF WAY AT REAR OF 34, ST. PETERS DRIVE, GREENHILLS, DUBLIN
12., MAP REF. RE: 0615/1A. SCALE 1:500.