

South Central Area
Eblana House,
Marrowbone Lane.

8th March 2023

To the Chairperson and Members of the
South Central Area Committee

**Proposal to extinguish the Public Right of Way over a laneway
at No. 9 St Catherine's Avenue, Dublin 8.**

*(- Abutting properties 9 to 16 St Catherine's Avenue and No.'s 248, 250, 252, 254,
256, 258, 260, 262, 264, 266, 268, 270, 272, 274, South Circular Road, Dublin 8).*

Application

An application to extinguish the Public Right of Way over the laneway entranced at No. 9 St. Catherine's Avenue by means of a lockable gate was submitted to the South Central Area office on the 29/4/2021. The application was made by residents whose properties back onto St. Catherine's Lane including No.'s: 9 – 16 St. Catherine's Avenue and No.'s 248 - 274 (even numbers) South Circular Road. The reason for the application is to improve the security of homes, prevent antisocial behaviour, rough sleeping and illegal dumping in the laneway.

The South Central Area Committee at its meeting on the 15th Sept. 2021 in accordance with section 73 Roads Act 1993, voted to initiate the statutory procedures to extinguish the public right of way (- by means of a lockable gate set back from the laneway entrance as shown on the attached drawing R.M 37683).

Service Check of DCC & Utility Services

A service check was undertaken. Dublin City Council's Road Maintenance, Water Services, Public Lighting, Waste Management services and the Planning section advised they had no objection to the application. Dublin Fire Brigade specified that the gate be set back at least 1.5 Mtrs from the house line, also that the gate and fixings provide the maximum opening width and that a chain and padlock be used. Open Eir specified that they be supplied with three copies of the key and that they be provided with the contact details of the nominated key holder(s), that the laneway be kept free of rubbish and that access to the laneway be available to Open Eir at all times.

The applicants have confirmed in writing that the above requirements will be complied with.

Statutory Requirement

Notice of the application to extinguish the public right of way was published in the Irish Independent on Friday 24th June 2022 and a site notice erected at the entrance to the laneway for a period in excess of 16 days. Members of the public were invited to view the application at Eblana House and to submit objections by Friday 5th August 2022

Objections

One objection to the application (to extinguish the public right of way over the laneway) was received). The laneway is not located to the rear or run adjacent to the objector's' property.

The reasons for objecting to the application were given as follows:

- 1) It would interfere with their private property rights provided for in their property deeds to access the private section of the laneway (- i.e. the rear privately owned section not in charge) and that any interference with their free access to the laneway would be litigated.
- 2) That they had continually used the laneway as a 'right of way' since 1995 and wished to continue to do so.
- 3) That motorists use the entrance to the lane to reverse and turn their vehicles and that wheelie bins currently being left in the laneway are already a problem and that the installation of a gate would exacerbate the problem of wheelie bins obstructing cars turning.
- 4) That the application was not supported by all the residents of South Circular Road or St. Catherine's Avenue backing onto the laneway.
- 5) That there are residential units opening onto the lane not shown on the OS map and that emergency services would not be able to reach them.
- 6) That it is not within the remit of DCC under the roads act 1993 section 73.1 to approve the erection of a padlocked gate on account that to do so would be excessive and unreasonable as a means of preventing the public and private right of way from becoming an eyesore.

Oral Hearing:

At the request of the South Central Area Office, Brian Hanney, Area Manager for South East Inner City and Pembroke held an Oral hearing with the objectors on the 6th Dec 2022 in Eblana House. The objectors presented the case that they had property and constitutional rights to access the private (not in charge) rear section of the lane-way. The objectors further reiterated the points made in their written objection.

Following the hearing, the South Central Area Office wrote to the Objectors and requested they submit a copy of their property deeds documenting the property access rights they held to the privately owned section of the lane (to be received by the 6th January 2023). Documentation was received and considered. The statutory procedure does not extinguish any pre-existing property rights that may or may not exist.

Waste Management Advice:

The matter of wheelie bins being left on the footpath/within the entrance to the laneway is a matter that comes under the provisions of the Bye laws for Segregation, Storage & Presentation of Household and Commercial Waste 2018 rather than section 73 of the Roads Act 1993.

Recommendation

I have considered the written submission of the objectors to the application and the issues raised at the oral hearing. I am satisfied that the laneway entranced at No. 9 exists solely as a service access to the residents of properties backing onto the said laneway and that in light of the wishes expressed by those same residents seeking; to improve the security of their homes/prevent antisocial behaviour/rough sleeping and illegal dumping in the laneway that this application is consistent with the provisions of section 73 of the Roads Act 1993 to extinguish a public right of way. I am also satisfied that the council is entitled to invoke the statutory procedure under Section 73 of the Roads act 1993 and if the extinguishment proceeds that it does not extinguish any pre-existing property rights.

I accordingly recommend that the committee recommend to the City Council that the extinguishment of the Public Right of Way over the area indicated on Drawing No. R.M. 37683 be approved in line with the written undertakings given by the applicants to comply with the requirements of DFB Fire Officer and Open Eir.

The extinguishment of a public right of way is a function reserved to Dublin City Council.

Derek Kelly
South Central Area Manager