

The Galway Drive, Belfast (Abandonment) Order (Northern Ireland) 2019

Observations of the Department upon the objections made to the proposed Order and not withdrawn

The Department for Infrastructure has made The Galway Drive, Belfast (Abandonment) Order (Northern Ireland) 2019.

Four objections were received from local residents whose main concerns were:-

- The area to be abandoned is not a road so why is the Department abandoning a 'road'?
- Why is the area in question being abandoned?
- Who were notified of the proposed abandonment by the Department?
- What will happen to the area in question after it has been abandoned? and
- What will happen to the remaining area i.e. the footpath?

They also made the following statements:-

- The location and size of print on the notice posted on site and the lack of further notices in the general area;
- Local residents were not adequately informed;
- The footpath and the grass area is regularly used to walk dogs;
- The developer does not own the land; and
- The Department is 'donating' this land to the developer;

In accordance with Article 133(4)(a) of the Roads (Northern Ireland) Order 1993, the Department's observations on the objections are as follows:

- For the purposes of the Roads (Northern Ireland) Order 1993 the definition of a road includes a footpath. Whilst the Roads (Northern Ireland) Order 1993 does not define the physical extent of a road, reliance, instead, is placed on Common Law. In the past the courts have ruled that a road extends from boundary to boundary where those boundaries were erected in relation to a road (Porter M.R., *Att. Gen. v. Mayo C. C.* – “When the soil has been taken for county purposes everything between the fences is *prima facie* part of the public highway”). The Department, therefore, takes the view that land within the boundaries of a road forms part of the road. In this context, where a verge forms a part of a road, DfI Roads exercises control over it. As the grassed area is adjacent to the footpath it is regarded as part of the road. The Department in its role as the road authority exercised control over the grassed area in question as it was adopted as verge and therefore part of a road.
- Any piece of land which has been adopted as part of the public road network by the Department can be abandoned if it is no longer considered necessary for road purposes or alternative facilities are available. The grass verge in this instance is not considered necessary for roads purposes.
- The Department is satisfied that the correct procedures were followed in the advertising and display of the notice of intention to make the abandonment. A copy of the notice was placed at the location of the proposed abandonment and advertised in the local press for two consecutive weeks in compliance with Schedule 8 to the Roads (Northern Ireland) Order 1993. The adjacent landowner was also informed of the proposed abandonment.

- Following abandonment, the control of it will revert to the owner of the bed and soil. Planning permission attached to a planning approval for a development at this location requires that no work on the proposed development shall commence until an abandonment Order is operative for the grassed area in question; and
- The footpath adjacent to the area to be abandoned will remain adopted as part of the public road network following the abandonment of the grass verge.

As regards the statements made by the objectors:-

- The notice posted on site was the standard A4 size, with times new roman font size 12 normally used for abandonments and was fixed to a street lighting column situated half way along the length of the footpath and approximately 1-2 feet from the edge of footpath.
- The Department is satisfied that the correct procedures were followed in the advertising and display of the notice of intention to make the abandonment. A copy of the notice was placed at the location of the proposed abandonment and advertised in the local press for two consecutive weeks in compliance with Schedule 8 to the Roads (Northern Ireland) Order 1993.
- The grass verge in this instance is not considered necessary for roads purposes and the footpath remains available as part of the public road network for use by dog walkers.
- Solicitors acting on behalf of the owners of the grassed area in question and the adjacent property have confirmed that they are content for the abandonment to proceed.
- The Department does not own the bed and soil over the grassed area in question.

The Department having considered the objections made and not withdrawn decided that the proposed abandonment Order should proceed.

Elizabeth Loughran
A Senior Officer of the Department
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