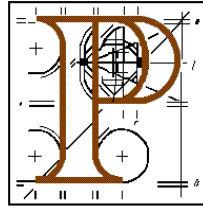


An Bord Pleanála



Inspector's Report

Appeal Reference No:	PL04.245486
Development:	Retention of garden wall at Armidale, 6 Hilton, Model Farm Road, Cork.
Planning Application	
Planning Authority:	Cork County Council
Planning Authority Reg. No:	15/05098
Applicant:	Barry & Michelle Manze
Planning Authority Decision:	To grant permission subject to conditions.
Planning Appeal	
Appellants:	Nora & Cathal Hurley Arus Kanata, Hilton Model Farm Road Carrigrohane, Cork
Type of Appeal:	Third party v. decision
Observers:	None
Date of Site Inspection:	25 November 2015
INSPECTOR:	Brendan Wyse

1.0 SITE LOCATION & DESCRIPTION

- 1.1** Hilton is a small residential estate off Model Farm Road in the western suburbs of Cork city. The houses are detached on substantial gardens.
- 1.2** Armidale, No. 6, the application property, occupies a corner site. The plot has a dual orientation, main vehicular entrance from the north, main pedestrian entrance from the east leading to the front door of the house in the eastern elevation. The appellants residence, Arus Kanata, occupies the adjoining plot to the south. The house has a north-east/south west orientation and the extensive front garden abuts the front/side garden of Armidale.
- 1.3** The wall in question is the boundary wall between the two properties. It was originally c.0.7 metres in height, block construction and rendered. It has been raised to an overall height of 1980mm. 5/6 courses of blockwork have been placed on top of the original wall and supporting pillars have been constructed at intervals on the north side. Rendering has been applied also to the north side – the south side is exposed blockwork.
- 1.4** There is substantial tree planting close to the wall, particularly on southern side. The eastern extremity of the wall is visible from the public road where it abuts a stone pillar, being a part of the front boundary wall of Arus Kanata.
- 1.5** See maps/photographs in file pouch.

2.0 PROPOSED DEVELOPMENT

- 2.1** The development, i.e. the wall in question, is as described at section 1.3 above. The application is to retain the wall as constructed.
- 2.2** Further information submitted to the Planning Authority on 29 July refers to the issue of legal ownership. It includes land registry details and a map from the Property Registration Authority.

3.0 PLANNING HISTORY

P.A. Ref. 0224/15

Section 5 Declaration by Planning Authority that the raising of the wall was development and was not exempted development.

P.A. Ref. EF15063

Enforcement file in relation to the raising of the boundary wall.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

4.1.1 Planners Reports

Include:

- Case involves a boundary dispute.
- Structural issues fall outside the remit of planning.
- Development Plan policy objective HOU 3-2 considered more relevant to new residential development in urban areas.
- As there is an existing wall tree damage is not likely.
- There are a variety of wall heights in Hilton.
- Wall is not considered to be visually prominent, is not out of character with an urban landscape and is generally acceptable from a design perspective.
- Further information requested re. legal ownership of the wall.
- Reference to Development Management guidelines, section 5.13.
- Recommendation to grant permission and as per Planning Authority Decision.

4.1.2 Irish Water

No objections.

4.1.3 Submissions/Observations

Nora and Cathal Hurley, Arus Kanata, Hilton, Model Farm Road, Carrigrohane, Cork.

Contents noted. Similar documentation to that submitted in appeal – see section 5.0 below.

5.0 GROUNDS OF APPEAL

5.1 Nora and Cathal Hurley

Main grounds include:

- The applicants are not the owners of the land/structure concerned and they do not have the consent of the appellants to make the application.
- The applicants in their response to the Planning Authority's request for F.I. avoided answering the question in relation to ownership of the wall.
- The planning authority decision is in breach of the Development Plan objective HOU 3-2 Urban Design. Contrary to the planning authority Planner's ascertainment this objective does apply to applications through the development management process. The breach cited relates to the Council's Design Guide for Residential Development in relation to constructing walls near trees.
- In relation to tree damage the original wall, at 0.7m in height, has a number of substantial cracks. Due to its low height falling was not a concern but it is reckless to increase its height as has now occurred.
- The appellants constructed the original wall in 1969 entirely on their own property and in order to define and control their property boundary. It was constructed to approximately 0.7 metres in height with foundations, expansion joints and block support pillars to match. It was never envisaged that it would be heightened.
- The height of the wall is not in keeping with the heights of existing boundary walls in Hilton.
- Enclosures include a Consulting Engineers Report that refers to legal, structural and planning issues. It includes drawings and photographs.

6.0 RESPONSE/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority

No further comments.

6.2 Applicants

Includes:

- The applicants solicitor has three times sought sight of the appellants title documents for the wall but has not been furnished with any. The applicants solicitor can only conclude that they do not have a title document.

7.0 S.132 – Further Submissions

The Board requested evidence by way of title deeds/documents relating to the land boundary in dispute from both parties.

7.1 Applicants

Documentation includes:

- Land Registry folio details.
- Map from Property Registration Authority, scale 1:1,000, indicating outline of applicants property.

7.2 Appellants

Documentation includes:

- Land Registry folio details.
- Map from Property Registration Authority scale 1:1,000, indicating outline of appellants property.
- An affidavit of Cathal Hurley.

8.0 POLICY CONTEXT

8.1 Cork County Development Plan 2014

Objective HOU 3-2: Urban Design

This sets objectives for good design in all new urban developments. It references the “Council’s Design Guide for Residential Estate Development.”

This document, formally entitled “Making Places: a Design Guide for Residential Development” (2011) provides guidance in relation to walls and fences (p.64) which includes the following:

- Care should be taken to route walls well clear of trees to avoid damage to tree roots during construction and damage to walls from tree growth or shrinkage.
- All rear or side plot or garden boundaries facing public roads, footpaths or open spaces should be in the form of 1.8 metre high walls, which may be of stone, facing brick or blockwork rendered on both sides. Unfaced blockwork is not acceptable.

9.0 ASSESSMENT

9.1 The main issues in this appeal can be considered under the following headings:

- Legal matters
- Structural matters
- Planning matters

A note on appropriate assessment is also required.

9.2 Legal Matters

9.2.1 It is clear in this instance that the ownership, or legal interest, in the wall in question is in dispute. On this basis, and given the somewhat incomplete documentation on file in relation to this matter the Board issued a Section 132 Notice to both parties requesting evidence by way of title deeds/documents relating to the land boundary. The documentation received is as described at sections 7.1 and 7.2 above.

9.2.2 I would be of the view that the weight of the evidence available tends to support the ascertainment of the appellants (Nora and Cathal Hurley), that they own the wall in question, by reference, in particular, to their detailed account of the construction of the original wall (cover letter and affidavit) and the report of their consulting engineer. At a minimum, and on the basis of the documentation from both sides, it seems likely that the wall is a party wall, effectively in joint ownership.

9.2.3 However, it is not possible, on the basis of the documentation that is available, to be definitive. Furthermore, as advised at section Section 5.13 of the Development Management Guidelines for Planning Authorities (DEHLG, 2007), *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the courts”*. While the guidance envisages that some enquiry be made

where a dispute arises it goes on to advise that *“only where it is clear... that the applicant does not have sufficient legal interest should permission be refused on that basis.”*

9.2.4 In the circumstances of this case, therefore, it would not be appropriate, in my view, for the Board to refuse permission on grounds relating to a lack of sufficient legal interest on the part of the applicants.

9.3 Structural Matters

9.3.1 I concur with the Planning Authority's Planner's Report that these matters fall outside the scope of the planning code.

9.4 Planning Matters

9.4.1 In the first instance, I would dismiss the contention in relation to breach of the development plan objective HOU 3-2 by reference to the Councils Design Guide for Residential Development advice on the construction of walls near trees. In my view, this advice is in the nature of guidance for good practice. It does not indicate any absolute requirement or point to a significant planning issue in the context of the subject development.

9.4.2 I consider the general guidance offered in relation to boundary walls to be of greater relevance – see Section 8.1 above, second bullet point. While this does refer to boundaries facing public places (roads/footpath/open space) it is of interest to note that, in referring to blockwork walls, it stipulates rendering on both sides. It also expressly indicates that unfaced blockwork is not acceptable.

9.4.3 The main difficulty from a planning perspective, in my view, with the subject wall is that it includes unfinished (unfaced) blockwork on its southern face, that is, on the appellants side. It is unsightly and should not be deemed acceptable from the appellant's perspective where it forms a side boundary wall in a prominent position to their front garden, notwithstanding an element of screening from existing trees. At its eastern extremity the wall is also visible from the public footpath and from where the exposed blockwork can also be easily seen.

9.4.4 It is clear, given the boundary dispute between the parties, that the option of conditioning the rendering of the wall on its southern face is not available.

9.4.5 I consider, therefore, contrary to the decision of the planning authority, that the development as carried out is prejudicial to residential amenity and that planning permission should be refused on this basis.

9.5 Appropriate Assessment

Having regard to the nature and small scale of the development for which permission is sought, and its location within an established urban area, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

10.0 RECOMMENDATION

10.1 I recommend that permission be refused for the following reasons and considerations.

1. Having regard to the unfaced blockwork finish on its southern face it is considered that the wall, for which retention permission is sought, is prejudicial to residential amenity and is, therefore, contrary to the proper planning and sustainable development of the area in which it is located.

Brendan Wyse,
Assistant Director of Planning.

December, 2015

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