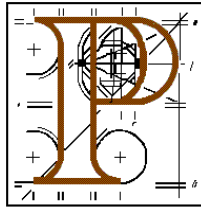


# An Bord Pleanála



## Inspector's Report

**PL 61 245810**

**DEVELOPMENT:** Retention of Timber Fence at the rear.  
(Amendment to previously permitted fence under P. A. Reg. Ref. 13/83)

**LOCATION:** Nos. 70 and 72 Rockbarton Park, Salthill,  
Galway.

### PLANNING APPLICATION

**Planning Authority:** Galway City Council.

**P. A. Reg. Ref:** 15/247

**Applicant:** Elizabeth and Killian Walsh and Orla and  
Alistair Purdy

**Decision:** Grant Permission

### APPEALS

**Appellant:** Elizabeth and Killian Walsh and Orla and  
Alistair Purdy

**Type of Appeal:** First Party Against Condition No 1.

**Observers:** Mary Joyce.

**Date of Inspection:** 12th February, 2016.

**Inspector:** Jane Dennehy.

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 Nos 70 and 72 Rockbarton Park are two storey detached houses with front and rear gardens which are back to back with the rear gardens of residential properties on the east side of Threadneedle Road. The timber panel fence which is subject of the application is erected along the boundary of the rear gardens of the Nos. 70 and 72 Rockbarton Park which adjoin rear gardens of properties on Threadneedle Road. Rockbarton Park is a cul de sac of Rockbarton Road and is parallel to and to the east of Threadneedle Road. These roads rise northwards from Salthill and there is also a significant drop in ground level from the west eastwards from Threadneedle Road towards the properties on Rockbarton Park.
- 1.2 The finished floor and ground levels of Nos 70 and 72 Rockbarton Park properties are considerably lower than those of the Observer party's property at No 21 Threadneedle Road. The footprint of the houses Threadneedle Road appears to be highest point between the rear boundary and the road frontage.<sup>1</sup> At No 72 Rockbarton Park there is variation in the levels in the rear private open space between the rear boundaries and the footprint of the houses due to hard and soft landscaping works.

## **2. PLANNING HISTORY.**

- 2.1 **P. A. Reg. Ref. 13/83:** Permission was granted for the retention of the fence at the rear of the two properties subject of the current application.

Condition No. 2 contained a requirement for lowering of the fence to a height of two metres from the ground level of the rear gardens abutting the fence of the dwellings on Threadneedle Road. This condition also requires removal of an undulating top feature so that the fence has a uniform level.

Condition No 3 contains a requirement for treatment and painting subject to access being provided to the applicant.

The planning authority opened an enforcement file regarding compliance with condition Nos. 2 and 3, (File UD 12/104 refers.)

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<sup>1</sup> *At the time of an unannounced inspection the proposed development was viewed from the interior of the rear garden of No 72 Rockbarton Road and from the public road and front curtilage of No 21 Threadneedle Road. It was not possible to obtain access to the rear of this property.*

- 2.2 There is a prior planning history for No 70 Rockbarton Park relating to demolition of a dwelling, replacement with the existing dwelling, and alterations and extensions. (P. A. Reg. Refs 09/190, 09/394, 10/ 130 and 10/321 refer.)

### 3. THE PLANNING APPLICATION

- 3.1 The application lodged with the planning authority indicates proposals for the retention of the timber fence constructed in vertical timber panelling erected along the entirety of the rear boundaries of the two properties at 70 and 72 Rockbarton Road. According to the documentation on file the height is reduced from an initial height to a maximum of 2.21 metres above the garden ground level of the properties on Threadneedle Road.
- 3.2 Section drawings accompanying the application indicate a ground level of 51.10 – 51.30 on the outer side and 49.97 on the inner side of the proposed fence on the rear boundary of No 72 Rockbarton Park and 51.71 on the outer side and 49.99 on the inner side of the proposed fence on the rear boundary of No 70 Rockbarton Park.
- 3.3 The observer submission of the occupant of No 21 Threadneedle Road includes objections relating to measurements and height with a request for lowering of the height to two metres, overshadowing and lack of compliance with the conditions of the grant of permission for retention.
- 3.4 The proposed fence was erected to screen off the wall and to prevent undue overlooking of the applicant's property according to the planning officer report. According to application details, Leylandii trees on the rear boundary were removed, revealing a wall at the time of the demolition and construction of the new dwelling at No. 70.

### 4. DECISION OF THE PLANNING AUTHORITY

- 4.1 The planning authority decided to grant permission subject to the appealed condition which is reproduced in full below:

*“Within one month of the receipt of the final grant of permission the fence shall be reduced by a height of 0.50 metres, this measurement shall be taken from the ground level directly adjacent to the existing fence located within the applicants’ rear gardens. The planning Authority shall be informed in writing when completed.*

**Reason:** *In the interest of residential amenity and to protect the privacy of adjacent dwellings and residents.”*

4.2 The planning officer having noted the planning history, differences in opinion as to the actual height between the parties and implications of the variation in ground levels recommends a reduction in the height to a maximum of two metres when measured from the level within the application site. The planning officer notes that access to the adjoining property has not been obtained and that it is *ultra vires* the planning authority's powers to require works to be carried out on third party lands. It is concluded that the fence protects privacy and residential amenity and is a visual screen between the properties with the differential in ground levels necessitating the height. A reduction in height, a measured from the applicant's side by condition is recommended.

## 5. THE APPEAL.

5.1 An appeal was received from McCarthy Keville O'Sullivan on behalf of the applicants on 26<sup>th</sup> November, 2015 in which deletion of Condition No 1 so that the fence height can remain unaltered is requested.

5.2 According to the appeal:

- Due to the different ground levels the fence height is necessary to protect the privacy, a visual screen and amenity of the applicants' properties. If the height is lowered to two metres, the fence will remain partially visible from the adjoining property on Threadneedle Road, the property of the Observer party.
- If the fence height is lowered as required by Condition No 1, a metal fence at rear of the adjoining property at No 21 Threadneedle Road will overshadow the properties on Rockbarton Park. The metal fence and a clothesline in the rear garden of the property at Threadneedle Road are ugly and visually unacceptable.
- The 2.21 metre fence height is not significantly different to the two metres provided for exempt development on a flat site. The fence replaces a higher Ielandii hedge. A brick wall and concrete post and wire mesh fencing on the adjoining property is 2.21 metres in height. A block wall at the rear of No 72 extends to the same height as the fence and trees are higher.
- The proposed fence is not detrimental to the amenity or privacy of the Threadneedle Road properties. There is a thirteen metre distance to the rear building line of houses on Threadneedle Road where overshadowing affects a small portion of the gardens in the mornings. The fence had an approximate height of 3.6 metres above garden ground level on the Rockbarton Park side and 2.21 metre height on the Threadneedle Road when

permission was sought under P. A. Reg. Ref. 13/83. The top was levelled off. The estimated maximum height on the outer side remains circa 2.21 metres and the treatment or painting required under Condition No. 3 has not been carried out due to lack of access to the adjoining property on Threadneedle Road.

**6. OBSERVER SUBMISSION. Ms Mary Joyce.**

6.1 A submission was received from Ms Joyce of No 21 Threadneedle Road along with an accompanying submission prepared on her behalf by Diarmuid Keane and Associates which includes drawings and photographs.

6.2 The statement prepared by Ms Joyce contains comments on the background to the current and prior applications and the assessments by the planning authority.

6.3 The contents of the submission by Mr Keane on Ms Joyce's behalf can be outlined as follows:

- The planning authority decision is reasonable for all parties.
- There are a number of inaccuracies and mistakes in the appeal submission relating to the application and background. (Details are provided.) The appeal should be invalidated.
- The appellants have made little effort to comply with the under P. A. Reg. Ref. 13/83. No effort to access Ms Joyce's property to treat/paint the fence has been made. Ms Joyce is willing to allow access in order to carry out the works required under Condition Nos 2 and 3 and the modifications required by Condition No 1.
- If the height is lowered by 0.5 metres as required under Condition No 1 the height would be 2.18 metres. The appellants would be in a position to continue to enjoy privacy and their properties would not be overlooked.
- Ms Joyce has confirmed that she will remove the wire mesh fence and associated poles within two weeks of the lowering of the fence, by 0.5 metres as is required. It has been left in place because the applicants / appellants have not reduced the height of the fence.
- Ms Joyce will be fully satisfied if the fence is lowered to a height of two metres as per the condition even though the

height will be 0.18 metre higher than the maximum required under P. A. Reg. Ref. 13/83.

**7. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY.**

7.1 There is no submission from the planning authority.

**8. DEVELOPMENT PLAN.**

8.1 The operative development plan is the Galway City Development Plan, 2011-2017 according to which the site location is within an area subject to the zoning objective: R, *“To provide for residential development and for associated support development which will ensure the protection of existing residential amenity and will contribute to sustainable residential neighbourhoods.”*

**9. ASSESSMENT.**

9.1 The issue to be considered is that of the residential amenity and the fence height. The applicants in their appeal require the retention of the existing height of 2.68 metres whereas there is a requirement for it to be lowered to 2.18 metres under Condition No 1 attached to the planning authority decision. The observer party has indicated that a 2.18 metre height is acceptable along with a willingness to remove an unsightly fence so that it would no longer be visible from the Rockbarton Park properties and that they allow access to their property for maintenance works to be carried out.

9.2 Having reviewed the variation in ground levels, site configurations, the footprints and separation distances between the houses and the house types, it is considered that the 2.18 metre height as measured from the inside boundaries is sufficient to ensure the protection of the residential amenities and privacy of the properties on Rockbarton Park and Threadneedle Road. The option to plant hedge and/or shrubs within their properties inside the fence is also open to the parties. The planning authority’s assessment and decision on the proposed development and the conditions are attached are supported.

9.3 The willingness indicated in the observer party’s submission to remove the fence and to allow access for painting and maintenance purposes is noted. However, as pointed out by the planning officer in his report, it is *ultra vires* for the planning authority to impose requirements on third parties. The involvement of the legal process could be sought in the event of dispute about these matters between the parties.

## **10. APPROPRIATE ASSESSMENT SCREENING**

Having regard to the nature and scale of the proposed development and the likely emissions from it, the nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on European sites.

## **10. CONCLUSION AND RECOMMENDATION.**

- 10.1 In view of the foregoing, it is recommended that the planning authority decision be upheld and that the requirements of the conditions attached should remain unchanged. A draft order to this effect is set out overleaf.

## DECISION

**Grant Permission for retention on the basis of the Reasons and Considerations and subject to the Conditions set out below:**

### REASONS AND CONSIDERATIONS

Having regard to the planning history variation in ground levels, site configurations, the footprints of and separation distances between the houses and the house types at the sites of the proposed development and adjoining sites on Threadneedle Road, it is considered that subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of protection of residential amenities and privacy and would be in accordance with the proper planning and sustainable development of the area.

### CONDITIONS

- 1 The development shall be in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

- 2 Within four weeks of the date of this order, the fence shall be reduced to a height of 2.18 metres when measured from the ground directly adjacent to the inner side of the fence within the application site. A written statement of confirmation of the completion of the required modifications and a photograph shall be submitted to the planning authority.

**Reason:** In the interest of clarity and the protection of privacy and residential amenities.

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**JANE DENNEHY.**  
**Senior Planning Inspector.**  
**22<sup>nd</sup> February, 2016.**