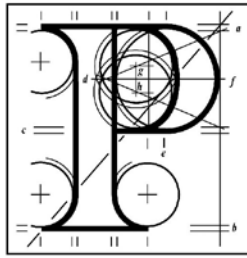


# An Bord Pleanála



## Inspector's Report

**An Bord Pleanála Ref.:** PL61.245999

**Development:** Retention of timber fence at no.7 Devon Court, Salthill

### Planning Application

Planning Authority:	Galway City Council
Planning Authority Reg. Ref.:	15/278
Applicant:	Maoiliosa O'Gorman
Type of Application:	Retention Permission
Planning Authority Decision:	Refusal

### Planning Appeal

Appellant(s):	Maoiliosa O'Gorman
Type of Appeal:	First Party
Observers:	Alma Cunningham Teresa and Michael Keane
Date of Site Inspection:	10 <sup>th</sup> of March 2016
<b>Inspector:</b>	Angela Brereton

## 1.0 SITE LOCATION AND DESCRIPTION

The application site is located at no.7 Devon Court which is a residential cul-de-sac off Devon Gardens in the Salthill area of Galway. These are detached properties and no.7 is a large two storey detached house with substantial gardens to the rear and with a side passageway separating it from no.6 to the north and no.8 Devon Court to the south. It is noted that there is a very high stone wall c.7.5m in height separating it from 'The Maples' to the rear. The site which forms part of the walled garden area of the old convent grounds is at a lower level than the houses in The Maples which are more elevated. The timber fence to be retained is along the southern boundary between nos.7 and 8 Devon Court. The fence is attached to the wall on the applicant's side. It is partially screened by existing planting along the boundary of no.7. It appears more visible along the side boundary when seen from the rear garden of no.8 Devon Court. There is limited screening by shrubs along this side of the boundary. The fence is not very visible from the cul-de-sac road.

## 2.0 RETENTION DEVELOPMENT

Retention permission is sought for the timber fence (fence is located at the common rear side boundary with no.8 Devon Court).

The application form provides that the area of the site is 0.071ha.

A letter submitted with the application from M.J Designs Consulting Engineers and Architectural Designs provides details and a rationale of the fence to be retained and include photographs and drawings. A Site Layout Plan and elevations showing the height of the fence proposed or retention, and an Axonometric View of the Fence and the rear boundary wall has also been submitted.

## 3.0 PLANNING HISTORY

There is no recent planning history relevant to the subject site. The planning register shows that there were a number of applications granted to Pdraig O'Gorman at No.7 Devon Court, Salthill, in the 1990's i.e:

- Reg.Ref.95/137 – Permission for extensions and alterations.
- Reg.Ref.96/521 - Retention permission was granted for retention of revised porch and front elevation.
- Reg.Ref.98/415 – Permission granted to carry out extension and alteration to existing dwelling house.

### Adjoining site

- Reg.Ref.10/140 – Planning permission granted by Galway City Council and subsequently on appeal by the Board (Ref.PL61.237355 refers) for Construction of a first floor extension of approx.23sq.m above existing garage, and the replacement of the existing rear extension of approx. 44sq.m with a new rear extension of approx. 51sq.m at No.8 Devon Court, Devon Gardens, Salthill, Galway.

## 4.0 PLANNING AUTHORITY APPLICATION

The **Drainage Section** has no objections in relation to Surface Water Drainage.

**Submissions** have been received from the owners of No. 8 Devon Court and from their daughter who object to the retention of the boundary fence. Their concerns include the following:

- The height of the fence grossly exceeds the Regulations re: maximum height of such a wall between detached houses.
- The wall is oppressive and overbearing and intrusive structure that impacts adversely on their residential amenities.
- Lack of compliance with health and safety procedures regarding the construction of the fence on top of the wall.
- Screening along the site boundaries by trees and hedgerows has been incorrectly shown on the drawings.
- They are satisfied that the original 2m wall more than adequately ensures that there is no possibility of overlooking.
- The 2m high timber extension to the front wall bordering Nos.8 and No.7 contravenes the Planning Regulations and should be removed.
- Creation of wind tunnel effect and safety issues regarding the construction of the fence on top of the boundary wall.
- The fence impacts blocks light from the kitchen window of No.8 and impacts on their quality of life.

### **Planner's Report**

The Planner had regard to the locational context of the site, planning history and policy and to the submissions made. The Planner had serious concerns about the construction of this boundary fence in excess of 3.5m high and considered that the existing 1.8m boundary wall provides adequate privacy. They were concerned about precedent and being contrary to policy for residential development and recommended that retention permission be refused.

## **5.0 PLANNING AUTHORITY DECISION**

On the 3<sup>rd</sup> of December 2015 Galway City Council recommended that the retention of the timber fence be refused for the following reason:

*Having regard to its nature, scale appearance and location, it is considered that the retention of the additional fencing on top of the existing boundary wall would result in a loss of residential amenity for the adjoining property, detrimentally affect the appearance of the property and the character and visual integrity of the streetscape at this location. Hence the development would compromise the policy objectives for the area as set out in the Galway City Council Development Plan 2011-2017, in particular Chapter 2, and would be contrary to the proper planning and sustainable development of the area.*

## **6.0 GROUNDS OF APPEAL**

M.J Designs has submitted a First Party appeal on behalf of the applicant. The grounds of appeal include the following:

- No.7 Devon Court is located in the *Established Suburb* of Salthill. The Policy objectives are included in Chapter 2 and Policy 2.4 of the GCCDP 2011-2017. The retention of the timber fence does not compromise or breach these objectives.
- They consider that the Council's grounds for refusal are flawed.

- They submit that the timber fence to be retained is in keeping with the established pattern of high boundary walls at Devon Court. The stone wall is in excess of 3m higher than the fence. They attach photographs to show this.
- It is not causing overshadowing or blocking any sunlight from the rear garden of no.8 Devon Court and is therefore not causing any loss of residential amenity.
- The retention of the timber fence will not affect the character and visual integrity of the streetscape.
- They would not object to a permission for a set period of time to allow the hedge in no.7 Devon Court to mature, after such time the fence can be reduced in height or reduced as conditioned by ABP.
- The retention of this fence is not contrary to the proper planning and development of the area.
- They include a number of Appendices.

A letter from the applicants also includes the following grounds of appeal:

- They have been living at No.7 Devon Court for 25 years and note the very tall 7.5m stone wall to the rear of the property separating it from 'The Maples' estate.
- They provide details relative to the planning history of the renovations they carried out to their property.
- They note the extension carried out at No.8 Devon Court (referred to in the History Section above: Ref.no.PL61.237355 refers).
- They refer to the mature hedging they have nurtured along the boundary between nos.7 and 8 Devon Court.
- In 2011 construction began on the extension to No.8 causing their hedge to deteriorate. A large work shed was erected and continues to be in regular usage and there are noise issues associated with the usage of the shed.
- In July 2015 they erected fencing on their side of the block wall (built 1991) to restore some of their privacy.
- They reiterate that it could be a temporary measure (10-15years specified) until their hedge matures.
- The previous footprint of No.8 has been extended almost to the limits of its site at the rear. The new extension exceeded the footprint of the old.
- There are no overshadowing issues and any shadows on the boundary wall would be the result of the existing extended building/features/trees within No.8 Devon Court.
- The visual integrity of the streetscape has not been altered by the fence and this fence is barely visible.
- They enclose a number of photographs and consider that in view of the high stone wall to the rear of their properties that the fencing is not disproportionate.
- They include a number of Appendices regarding the following:
  - Appendix A – Showing Photographs of Hedging between 2004 and 2009.
  - Appendix B – Extract from the Connacht Sentinel – July 2010.
  - Appendix C – Photographs taken from 2010 onwards showing deterioration of hedging.

- Appendix D – Letter from Madden Landscaping.
- Appendix E – Photographs of Streetscape and new laurel hedging – Autumn 2015.

## 7.0 OBSERVATIONS

Theresa and Michael Keane the owners of the adjoining property no.8 Devon Court and Alma Cunningham, their daughter has made separate Observations and for convenience these are considered together and include the following:

- The fence was erected without planning permission and is not in compliance with Planning Regulations. The applicants have disregarded the planning process.
- There has been a lack of compliance with Health and Safety Regulations during the construction of this wall. They are concerned about dangers posed by the unauthorised building of this fence upon an already weak and poorly constructed boundary wall.
- They consider that there are Health and Safety issues relative to the construction and maintenance of this fence, and that there are risks to their safety and enjoyment of their rear garden area.
- There is a wind tunnel effect running behind the house and the forces of nature will collide with this weak fence to bring it down.
- It is now dangerous for children to play in the back garden due to this fence.
- This fence is now blocking light from the kitchen of No.8 Devon Court.
- This structure is non-compliant with the existing Regulations that boundary fences should not exceed 1.8m in height. The fence far exceeds the legal maximum height allowed for boundary walls.
- There is no risk of security in the area and the wall restricts access to their back garden area.
- The height of the fence in addition to the boundary wall is overbearing and their enjoyment of their home has been affected and is anti-social.
- They do not have a screening of trees/hedgerows on their side of the fence.
- Their rear outdoor space formerly a suntrap is now overshadowed by this fence.
- They consider it unreasonable that No.7's hedge be allowed to mature and be protected by the fence as a temporary measure for another 10-15 years.
- They seek to dispel assertions by the First Party relative to the extensions and renovations at No.8 and note that they do not have machinery in their shed.
- Appendices include photographs showing the wall and the fence from the rear garden of no.8 Devon Court including showing their shed used for storage.
- A copy of the Warning letter from Galway City Council to the applicants requesting the removal of the fence.
- They conclude that the Planning Laws and Regulations need to be enforced.

## 8.0 RESPONSES

There has been no response from Galway City Council.

## **First Party Response**

M.J. Designs response on behalf of the First Party includes the following:

- They refute the assertions of the objectors.
- In order to progress the matter to a satisfactory conclusion, they suggest the following:
  - The height of the fence be reduced by over 50% to a height of 0.75m over the existing block wall.
  - A temporary permission be granted for the reduced height timber fence for a period specified by ABP.
- This temporary protective fencing is necessary to protect their new hedging.
- By reducing the height of the fence by over 50% they are reducing the scale and appearance of it.
- The grant of a temporary permission will ensure that the fencing is not permanent.
- They trust that the Board will grant them temporary permission for a reduced height fence.

## **9.0 PLANNING POLICY**

### Galway City Development Plan 2011-2017

This is the pertinent plan. Chapter 2 refers to Housing. Section 2.2 refers to the Neighbourhood Concept. This includes: *Sustainable neighbourhoods can contribute to fostering community spirit, to reducing traffic movements and to the provisions of high quality residential environments. It is the policy of the Council to promote this neighbourhood concept in existing residential areas and in new developments.* Table 2.1 and Fig. 2.1 set out the framework relative to residential neighbourhoods in the city. Section 2.4 refers to the *Established Suburbs* – Policy 2.4 relates.

Chapter 7 refers to the Built Heritage and Urban Design. Policy 7.4 seeks to *encourage high quality urban design in all developments.*

Section 9.3 notes that Salthill is an established urban village within the city – Policy 9.3 relates to the enhancement of Salthill.

Section 11.2.0 refers to the Land Use Zoning and Table 11.1 provides the Land Use Zones and Zoning Objectives. The site is within the ‘R’ Residential Land Use Zoning – Section 11.2.8 refers. Part B Section 11.3.2 provides the General Development Standards and Guidelines relative to the Established Suburbs. Section 11.7 refers to Salthill.

## **10.0 ASSESSMENT**

### **10.1 Principle of Development having regard to Planning Policy**

The issue for consideration in a retention application is whether the development would be sustainable and permission would have been granted in the first instance in accordance with planning policies and taking into account the character and amenities of the area, if the unauthorised development had not taken place. In this case the applicant has applied to retain the side/southern boundary fence between nos.7 and 8. This timber

fence has been erected attached to the 2m boundary wall on the applicant's side in order to provide additional screening and privacy and to allow the hedge along no. 7's boundary to grow to sufficient height and maturity. The issue is whether the modifications that have taken place to this boundary i.e. the increase in height would now be deemed to be acceptable and in the interests of the character and amenity of the area and not be detrimental for neighbouring residents.

Regard is also had to the issues raised in the Observations made by and on behalf of the owners of the adjoining site, and their concerns that the retention development impacts adversely on the amenities and the enjoyment of their property, and does not enhance the character and amenities of the residential area. Section 2.2 of the Galway CDP 2011-2017 refers to the Neighbourhood Concept and it is the policy of the Council to promote this concept for the promotion of sustainable development and the provision of high quality residential environments. Fig.2.1 shows that the site is located in the *Established Suburbs* – Policy 2.4 relates and seeks to: *Ensure a balance between the reasonable protection of the residential amenities and the established character and the need to provide for sustainable residential development.* The site is within Zoning Objective R (Residential) i.e: *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.*

Therefore whereas the principle of integrated well-designed residential development (which would include regard to boundary treatment in the context of design and layout) is supported in the residential land use zoning and in Section 2.4 of the Galway City Development Plan 2011-2017, these issues having regard to the impact of the retention development on the residential amenities of the adjoining property and the character of the area are discussed further in this Assessment below.

## **10.2 Regard to the Exempted Development Provisions**

The Observers have raised the issue that the retention development does not comply with the provisions of the Planning and Development Regulations 2001 (as amended). Schedule 2, Part 1 *Exempted Development –General* includes regard to exempted development i.e. permitted development within the curtilage of a house. Class 5 relates specifically to boundary treatment and is as follows:

*The construction, erection or alteration within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.*

Column 2 provides for 3no. Conditions and Limitations on this including:

1. *The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of the house, 1.2m.*

In this case the original block boundary wall is c.1.8 – 2m in height which would come within the range of permitted development. However the boundary has been recently increased in height by the provision of the fence

attached to the wall to an overall height in excess of 3.5m, therefore permission is necessary for retention of this structure in addition to the height of the boundary wall.

### **10.3 Impact on the Character and Amenities of the Neighbouring Property**

Details submitted with the application provide that the timber fence to be retained is located to the rear of the front building line of the properties. The timber fence was erected to improve the privacy and amenity of the property and they were unaware that it required planning permission. The rear (western and northern boundaries) of the property is bounded by an existing natural stone wall (former convent garden walls) which is c.7.5m high (also taking into account its elevated position above the bank at the rear garden). This high wall bounds the houses at the rear of this cul-de-sac from the more elevated estate 'The Maples' to the north and west. In view of the height of this wall along the rear boundary they do not consider that in this context the height of the fence is disproportionate. In this respect the elevations and the Anonimetric View show the context of the fence/wall in relation to this stonewall.

The southern boundary is the common boundary between No.7 and 8 Devon Court. Prior to the erection of this fence the boundary consisted of a block wall and trees/hedging. They note that the hedging has deteriorated and that this maybe due to climatic, and also considerations regarding the extensions constructed in the last few years to the rear of no.7 Devon Court (PL61.237355 refers).

The Observers at No.8 are concerned about Health and Safety issues relative to the construction and maintenance of this fence. They note that only one side of the wall is buttressed and are concerned that the wall is totally inadequate to also support a fence of this extended height. The existing block wall is 1.8 - 2m in height, the timber fence which is fixed onto the applicant's side of the boundary wall has increased the overall height to a minimum of 3.5m. There is concern that this would not comply with Health and Safety Standards and would lead to a wind tunnelling effect. They are concerned that the fence is not properly supported and that it could be blown down as a result of high winds. They consider that it leads to overshadowing of their rear garden area, and kitchen windows and has had an adverse impact on the enjoyment of their residential amenity. It is noted that the fence is more visible from their garden area in view of the lack of tall screen planting along their boundary.

### **10.4 Regard to First Party response**

In response to the Observations the First Party has suggested that the fence be revised as follows:

- The height of the fence be reduced by over 50% to a height of 0.75m over the existing block wall.
- A temporary permission be granted for the reduced height timber fence for a period specified by ABP.

Having regard to the revisions proposed by the reduction option, it must be noted that this is an application for retention rather than for modifications to an



existing structure. If the fence were to be reduced no indication has been given as to how this would be achieved. These are individual timber panels, it would be difficult to downsize them without replacing them, or perhaps attaching them further towards the bottom of the wall. As shown on the elevations there is some variation in the height of the fence and even if it were reduced this would still allow for a height of approx. 2.75m along the boundary.

They also ask the Board that the fence be thus reduced and that a temporary permission be granted to ensure that the reduced height fence is not permanent. They have suggested that 10 -15 years would be necessary to allow for the maturity of the boundary hedge and that it could be conditioned that the fence would then be removed. A period of at least 10 years is supported by the letter from Madden Landscaping included in Appendix D of their Grounds of Appeal.

The Observers consider that this period is too long, that the combination of the fence and the wall is overbearing and that in view of this and health and safety issues the fence should be removed. It is noted that a temporary permission is normally granted for a 5 year period and there is no guarantee that the hedge will have grown to adequate height or be of sufficient maturity to allow for its removal in any such time period. In this respect regard is had to Section 7.5 of the Development Management Guidelines 2007 which includes the following relative to temporary permissions: *The reason for a temporary permission can never be that a time limit is necessary because of the adverse effect of the development on the amenities of the area. If the amenities will certainly be affected by the development they can only be safeguarded by ensuring that it does not take place.* If the Board decide to permit it is not considered appropriate that such a temporary condition be included.

#### **10.5 Impact on the Character and Amenities of the Area and Precedent**

The main impact of the fence is on the adjoining neighbour at no.8 Devon Court. In view of set back and screening and its location in the rear garden area it is not particularly visible from the cul-de-sac in Devon Court or Devon Gardens. However there is an additional panel along the side of the front garden area with no.8 which increases the height to above the permitted 1.2m and if the Board decide to refuse it is recommended that this panel should also be removed.

It is considered that to allow for the retention of this fence would set an undesirable precedent taking into account the location of the site within the *Residential* land use zoning and would be contrary to Policy 2.4 of the GCCDP 2011-2017 relative to promoting sustainable neighbourhoods within the *Established Suburbs*.

#### **10.6 Appropriate Assessment**

It is considered that having regard to the nature and scale of the retention development which is for domestic/residential purposes in a fully serviced suburban location, and to the nature of the receiving environment, that no appropriate assessment issues arise.

## 11.0 CONCLUSION AND RECOMMENDATION

Having regard to the documentation submitted and to the grounds of appeal and observations made and having visited the site and also viewed the property from the side of the Third Party site, it is considered that the fence proposed for retention is not permissible in view of health and safety issues, the impact it has on the amenities of the adjoining property no.8 Devon Court and the potential for undesirable precedent. The Board may decide to refuse retention permission. If they decide to permit I would recommend that it be conditioned that the modifications proposed to reduce the height of the fence be included and that permission only be granted for a temporary period not exceeding 5 years.

However taking the above into consideration it is recommended that retention permission be refused for the reasons and considerations below.

## 12.0 REASONS AND CONSIDERATIONS

Having regard to the residential land zoning pertaining to the site within the Established Suburbs where the Neighbourhood Concept is supported, it is considered that the fence proposed for retention, having regard to its scale and height over and above the 2m boundary wall would be out of character with the existing dwelling and the pattern of development in the area, would have an overbearing impact and cause loss of residential amenity for no.8 Devon Court, and would set an undesirable precedent for further such inappropriate boundary treatments for residential developments in the area. The proposed retention development would detract from the established character of the area and injure the amenities of property in the vicinity, and would be contrary Section 2.4 and Policy 2.4 (*Established Suburbs*) and to the Residential Zoning Objective R as outlined in Section 11.2.8 of the Galway City Development Plan 2011–2017. The proposed retention development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Angela Brereton,  
Inspector,  
18<sup>th</sup> of March 2016