

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL19.246451

Development: Raised boundary wall to north west of site.
Srah, Rahan Road, Tullamore, Co. Offaly.

Planning Application

Planning Authority: Offaly County Council

Planning Authority Reg. Ref.: 15/312

Applicant: John O'Halloran

Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Michael O'Sullivan

Type of Appeal: Third Party v Grant

Observers: None on file.

Date of Site Inspection: 3rd July 2016

Inspector: Sarah Moran

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The site is located on the western side of Tullamore, Co. Offaly. It is a detached dormer bungalow located within a row of such residences on the southern side of the R443. The houses all have long rear gardens that slope down to the Dublin – Galway railway line. The site is located c. 14.5 km from Tullamore town centre and the surroundings are rural / suburban in nature. Sragh Industrial Estate is nearby to the east and there are open agricultural lands on the other side of the railway line. The total stated area is 0.020 ha and levels fall across the site in a southerly direction. There are 2 no. separate outbuildings in the rear garden of the site. There is an existing large shed / outbuilding with a foot print of c. 35 sq.m., located close to the western site boundary and a gazebo attached to the western site boundary.

2.0 PROPOSED DEVELOPMENT

- 2.1 Permission is sought to retain an existing raised boundary wall and fence along the western site boundary, which is shared with the adjoining residential property to the immediate west. The structure in question comprises a concrete wall with a wooden fence sheeting affixed on top. There are 2 separate stretches of the structure along the shared boundary:

- 'A', c. 14.2 m long. Located to the side of the existing house at the subject site, between the applicant and appellant's properties and to the north of the shed / outbuilding. It is close to the applicant and appellant's houses.
- 'B', c. 10.6 m long, between the adjoining rear gardens. There is a small, open wooden gazebo located halfway along this stretch of the boundary, within the applicant's property.

Due to the sloping nature of the site, the timber fencing begins at a height of c. 0.8m above ground levels and extends to a height of c. 2.6m above ground level at the lower, southern end of the site. According to the documentation on file, the fence was constructed in April / May 2015.

- 2.2 The applicant submitted further information to Offaly County Council on 26th February 2016, comprising a report by Dermot O'Keefe & Associates Consulting Engineers, which assesses the structural condition of the existing fence.

3.0 PLANNING HISTORY

- 3.1 Permission was originally granted for the house at the subject site to Liam Keegan in 1971 under reg. ref. PD380. Permission was granted to P.J. Egan for a conservatory to the rear in 1992 under PD2520. Offaly County Council issued a warning letter to John O'Halloran, the above named applicant, on 6th August 2015, ref. UD15/21.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports

- 4.1.1 Offaly County Council Area Engineer 4th December 2015. No objection.
- 4.1.2 Municipal District of Tullamore comment on further information, 7th March 2016. No objection.
- 4.1.3 Offaly County Council Planning Report 8th December 2015. Recommends a request for further information regarding the structural condition of the boundary. Attached AA screening report notes that the site is 2km from Charleville Wood SAC (site code 000571) but concludes that AA is not required as significant effects are unlikely. Second planning report dated 15th March 2016, on foot of further information submission. Recommends permission.

4.2 Submissions by Prescribed Bodies

- 4.2.1 The Health and Safety Authority made a submission to the PA dated 10th November 2015. The site is located at a Seveso site. The HSA does not advise against the granting of planning permission in the context of major hazards. There is no specific comment or recommendation in relation to the subject development.

4.3 Third Party Submissions

- 4.3.1 The above named appellant Michael O'Sullivan made a submission to the PA, which objected to the development to be retained on grounds similar to the raised in the third party appeal.

4.3 Planning Authority Decision

- 4.3.1 The PA requested further information on 8th December 2015, requiring the applicant to submit a report on structural safety of the boundary structure by a suitably qualified and indemnified engineer. Following the submission of further information on 26th February 2016, the PA granted retention permission on 21st March 2016, subject to 5 no. conditions. Condition no. 2 required the implementation of recommendations set out in the structural report submitted by the applicant as further information.

5.0 GROUNDS OF THIRD PARTY APPEAL

- 5.1 The main points made may be summarised as follows:
 - The appeal has been submitted by Sean Lucy & Associates Ltd. Town Planning Consultants on behalf of Michael O'Sullivan. The appellant has an address at Srah, Rahan Road, Tullamore, Co. Offaly. He owns the adjoining residential property to the immediate west of the subject site, on

the opposite side of the boundary structure that is the subject of this appeal.

- The appellant has no objection in principle to a properly constructed, well thought out boundary of increased height, constructed of appropriate, maintenance free materials, but objects to the development as constructed in this instance.
- The development is completely out of character with the long established existing boundary between the two properties, due to its poor quality compared to the original boundary wall. The new boundary structure has poor quality materials, rusting metal supports and untreated wood. The development to the side of the houses is of slightly better construction but also is not representative of the quality of the original boundary wall due to its disproportionate height. The development has been carried out with no thought as to its longevity or maintenance. Photographs of the original boundary wall and of the new structure are submitted in support of the appeal.
- The existing structure detracts significantly from the appellant's enjoyment of his private garden and from the long established character of the appellant's home. The development has a significant adverse impact on the residential amenity of the appellant due to its poor quality, poor materials and the ad hoc erection. The quality of materials, the lack of any plan for the ongoing maintenance of its structural elements and the method of construction have left the applicant unable to maintain the existing walls of the house and shed, evidence that the structure is unsuitable in its current form.
- The appellant has lived at this address since 1971, when the house was built, and has put considerable time and effort into improving the residential amenity of his property. The appellant has developed a patio area to the immediate rear of his house, which is most affected by the subject development. Due to the poor quality of the materials and their perishable and unmaintained nature, which are completely at odds with the existing boundary wall, the boundary fence constitutes an eyesore when viewed from this area of long established high quality residential amenity.
- The wall to which the unauthorised structure is attached was constructed by the appellant on his land. The applicant does not have sufficient legal interest in the wall to carry out the development for which retention permission is now sought. It is acknowledged that a grant of planning permission does not, of itself, entitle an applicant to carry out the development for which permission was granted, however, in this case, where the development has already been carried out on lands not in the ownership of the applicant, it is submitted that this matter is of utmost relevance to the appeal. In addition, the capping of the wall has been broken without the appellant's permission, in order to facilitate this unauthorised development. Whilst this is a civil and legal matter, it is the case that where the applicant cannot show sufficient legal interest in the

wall to enable the development to be undertaken in accordance with planning, permission must be refused due to the fact that the development has already been constructed in this instance.

6.0 PLANNING AUTHORITY RESPONSE TO FIRST PARTY APPEAL

6.1 The PA has made no comment in response to the appeal and requests the Board to support its decision in this instance.

7.0 APPLICANT RESPONSE TO THIRD PARTY APPEAL

7.1 The main points made may be summarised as follows:

- The appellant's property seriously overlooks that of the applicant. The appellant has inserted 4 no. CCTV cameras, which directly overlook the applicant's property. The applicant increased the height of his boundary in order to prevent this overlooking. The cameras were erected in March and April 2015 and the applicant made several attempts to negotiate with the adjoining property owner to resolve the situation. It is submitted that these cameras contravene policy on residential development as set out in Offaly County Development Plan as they overlook the applicant's residential property.
- The applicant notes a comment in the Offaly County Council planning report on file, which states that the impact of the fence would not be greater than a semi-mature screening hedge that could be planted in the adjoining property without planning permission.
- The timber sheeting used in the fence is a soft material in keeping with the mature gardens of both properties and is preferable to a boundary constructed from blocks or concrete. The raising of the boundary was not done in an ad-hoc fashion and the applicant in fact had to remove a mature, slow growing hedge to facilitate the development.
- The fence is reinforced by steel and the timber panelling is pressure treated. It will fade in time to blend with its surroundings and will not rot. The applicant submits a letter from the supplier of the fence in support of this statement. The applicant notes the recommendations of the structural report by Dermot O'Keefe & Associates Structural Engineers and will carry out the recommended works immediately if granted permission. The steel supports can easily be painted to prevent rust.
- The applicant has no objection to the appellant painting his side of the fence.
- It is submitted that the applicant laid a course of blocks under the fence and had intended to plaster them to match the existing wall. However, he underwent a continuous barrage of verbal abuse from the appellant while the works were underway and decided not to continue.
- The area of fencing to the side of the houses (A) was designed to be easily removed to allow for access to the party wall and the wall of the greenhouse / utility area.

- The original wall was constructed in the 1970s and is now a defined party wall with the centre line of the wall capping now well-defined through the expiration of time as the legal boundary line between both households.

8.0 POLICY CONTEXT

8.1 Tullamore and Environs Development Plan 2010-2016 (extended until 2020)

8.1.1 The site is zoned for residential development under the current Tullamore and Environs Development Plan. Chapter 14 of the plan sets out standards for residential development.

9.0 ASSESSMENT

9.1 Whilst the development to be retained is acceptable in principle with regard to the residential zoning of the site, there is an obligation to reconcile the need to meet the requirements of the applicants seeking to carry out alterations with the need to protect the residential amenities of adjoining properties whilst maintaining the visual amenities and architectural character of the parent building and wider area.

9.2 I note that Schedule 2, Part I, Class 5 of the Planning and Development Regulations 2001 (as amended) specifies the following as exempted development:

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.

Subject to the following conditions and limitations:

- 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 a house, 1.2 metres.*
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
- 3. No such structure shall be a metal palisade or other security fence.*

The subject development is just outside the 2m high threshold and therefore does not come within the scope of exempted development, however most of it would be exempt with regard to the above provision.

- 9.3 Both the applicant and the appellant's properties have large rear gardens with a south west facing orientation and mature vegetation. The boundary treatment is simple, relatively modest and in keeping with the character of this residential area. Having inspected the site and viewed the structure in question and with regard to the photographs on file submitted by the applicant and the appellant, I am satisfied that it does not have a significant adverse impact on visual or residential amenities. I do not accept that it is unduly obtrusive or overbearing when viewed from the appellant's property. The structure appears to be robust and I note the structural engineer's report submitted as further information. The applicant is happy to carry out the recommended improvements and a condition requiring same could be imposed if the Board is minded to grant permission. With regard to ownership / boundary issues, the Board generally does not arbitrate on matters of dispute in relation to private property as they are not strictly planning matters.
- 9.4 Having regard to the nature and scale of the development within a fully serviced location, no AA 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 a European site.
- 9.5 The PA has not imposed a condition requiring development contributions. The relevant section 48 scheme is the Offaly County Council Development Contribution Scheme 2014-2020. Section 2.4.2 and Table 1 of same provide details of general charges for residential and industrial / commercial development. Section 2.4.4 of the scheme states that a development contribution will not be required in the case of extensions to residential units. Therefore, no section 48 development contribution is recommended in this case.

10.0 RECOMMENDATION

- 10.1 Having regard to the foregoing, I recommend that retention permission be granted for this development subject to the conditions set out below.

REASONS AND CONSIDERATIONS

Having regard to the residential land use zoning for the area, the objective for which is to protect and provide for residential uses, to the pattern of development in the area and to the scale, nature and design of the structure to be retained, it is considered that, subject to compliance with the conditions set out below, the development does not seriously injure the amenities of the area or of property in the vicinity and is in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by Offaly County Council on the 26th day of February, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The recommendations contained within the Chartered Engineer's report regarding strengthening of the support of the fence as submitted to the planning authority on the 26th day of February 2016 shall be carried out in full. Full details of the works shall be submitted to the planning authority for agreement in writing prior to the commencement of development.

Reason: In the interests of visual and residential amenities.

3. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

**Sarah Moran,
Senior Planning Inspector,
5th July 2016**