

An Bord Pleanála



Inspector's Report

<u>Appeal Reference No:</u>	PL06F.246675
<u>Development:</u>	Retention of new boundary wall between 'Glenheder' and 'The Coach House' varying in height from 2.25m to 4.8m and all associated works
<u>Location :</u>	The Coach House, Claremont Road, Howth, Dublin 13
<u>Planning Application :</u>	
Planning Authority :	Fingal Co. Co.
Planning Authority Reg. Ref. :	F16A/0103
Applicant :	Hugh & Margaret Wilkinson
Planning Authority Decision :	Granted, with Conditions
<u>Planning Appeal :</u>	
Appellant(s) :	Jerry & Gemma Hughes
Type of Appeal :	3rd Party
Observers :	None
Date of Site Inspection :	25th August 2016
<u>Inspector :</u>	L. W. Howard

1. SITE LOCATION AND DESCRIPTION :

The stated 0.0837ha application site is located at 'The Coach House', 17A Claremont Road, Howth, Co. Dublin. Located on the northern side of Claremont Road / the Dart line, the application site lies within a predominantly residential neighbourhood. Site access is enabled over the Corr Bridge, which links the Howth Road with Claremont Road. A 70m long driveway, orientated north to south, enables access to the dwelling on site. The stated c.153m² dwelling is located set back c.2.1m from the sites N-Boundary.

The site enjoys impressive seaward views, and is positioned c.4.4m below the adjacent, neighbouring dwellings of 'The Orchard' to the southwest and the 'Glenheder' to the southeast. A stone seawall runs east to west along the site's northern boundary. A pathway exists outside the northern wall enabling limited access along the foreshore.

A wall has been newly constructed along part the northern section of the site's eastern boundary. This wall is now the subject of the current application for retention.

2. PROPOSED DEVELOPMENT :

The retention of an existing block wall that has been constructed along the northern section of the application site's eastern boundary between 'Gleneden' and 'The Coach House'. The wall measures 19.4m in length, with heights from ground level varying through this length. The wall height ranges from 2.25m to 3.8m and 4.8m at the highest point.

The wall is to be finished in a smooth plaster, with concrete capping. A temporary timber panel has been attached to the top of the wall over a length of 3.4m, at the southern end. The timber panelling raises the overall wall height along this section to 4.8m. Notation on Drawing No. 16.029.001 indicates the temporary timber panels have been erected to provide privacy until the works are allowed to be completed.

3. PLANNING HISTORY OF THE APPEAL SITE AND ITS ENVIRONS:

Reg.Ref.No. F98A/1315 Permission GRANTED to S. Wilkinson for a new separate entrance gateway and driveway, subject to 2no. Conditions

Reg.Ref.No. F12A/0152 Permission GRANTED to Hugh & Margaret Wilkinson for the demolition of the existing single storey detached dwelling and construction of new 2 storey detached flat roof dwelling with

first floor terrace and all associated site works, subject to 9no. Conditions. Noteworthy are :

- 4(d). "All necessary rights and permissions shall be obtained for lands not under the applicants control".
5. "This grant of permission relates only to the development as described in the public notices and any other works that may have been carried out are not approved under this grant of permission".
8. Measures to prevent spillage or deposition of materials on adjoining lands / roads.

Reg.Ref.No. F12A/0204 Permission GRANTED to Hugh & Margaret Wilkinson for construction of a new vehicular entrance, driveway and associated works, subject to 5no. Conditions. Noteworthy are :

4. This grant "relates only to the development as described in the public notices and any other works that may have been carried out are not approved under this grant of permission".
5. Measures to prevent spillage or deposition of materials on adjoining lands / roads.

Reg.Ref.No. F14A/0182 Permission GRANTED to Hugh & Margaret Wilkinson for modifications to previously approved **F12A/0152** which include the omission of the southern first floor cantilever, elevational alterations throughout and the reduction of the ground floor footprint, subject to 3no. Conditions. Noteworthy are the following footnotes, supplemented to the Conditions :

"Note 1: ... under the provisions of Section 34(13) of the Planning and Development Act 2000 a person shall not be entitled solely by reason of a permission to carry out any development".

"Note 2 : The issue of encroachment or oversailing is a civil matter the applicant is advised that in the event of encroachment or oversailing of adjoining

property, the consent of the adjoining property owner is required”.

4. PLANNING AUTHORITY DECISION :

(1) Planning Authority Decision :

Fingal Co. Co. decided to GRANT RETENTION PERMISSION for the proposed development, subject to 5no. stated Conditions. The most noteworthy of these include :

Condition No.2 : Replacement of the temporary timber panels as shown on Drawing 16.029.001, with a block wall, capped with a smooth plaster finish on both sides to match the existing. The replacement wall being retained shall be finished with a smooth plaster finish on both sides.

Condition No.3 : Prevention and mitigation measures regarding prevention of spillage or deposit of clay, rubble or other debris on adjoining roads.

Noteworthy are the following footnotes, supplemented to the Conditions :

Note 1 : “... under the provisions of Section 34(13) of the Planning and Development Act 2000 a person shall not be entitled solely by reason of a permission to carry out any development”.

Note 2 : The applicant is responsible for compliance in full, with the Building Control Regulations.

Note 3 : “The issue of encroachment or oversailing is a civil matter the applicant is advised that in the event of encroachment or oversailing of adjoining property, the consent of the adjoining property owner is required”.

(2) Planning and Technical Reports :

The Planning Officers report dated 05/05/2016, recommends that permission be GRANTED, generally subject to the same Conditions set out in the Manager’s Order below. This recommendation was made having regard to:

(a) No pre-application consultation.

(b) **Planning Assessment of Key Issues :**

(i) **Compliance with relevant Objectives and Policies :**

Having regard to the RS Zoning Objective, the proposed retention of a boundary wall considered acceptable in principle.

(ii) **Visual and Residential Amenity :**

- Having regard to :
 - the height variance of the wall when viewed from within the application site,
 - the ground level variance of c.4.2m between the application site and the adjacent ‘Glenheder’ property to the east,
 - photographs submitted by the 3rd party objector’s, and to observations of visual impact made at the time of site visit,assert the view that :
 - the height and scale of the wall is not visually obtrusive,
 - when viewed from the Glenheder property, the wall is at a height reasonably anticipated on a residential site,
 - the length of wall greater than 2m in height is at a minimal distance of 1m. this is not considered to cause such overshadowing or serious visual obtrusion to Glenheder, so as to warrant a refusal decision,
- Drawing No. 16.029.001 indicates the western side of the wall to have a smooth plaster finish. Consider the east facing side into Glenheder should have the same smooth plaster finish. A Condition to be included addressing this.
- A Condition to be included ensuring the temporary timber panel is replaced with a block wall and finish to match the existing.
- Consideration of impact on the foreshore to the north :
 - the wall sits perpendicular (north / south) to the stone seawall (east / west) along the site’s northern boundary,
 - the wall ridge height matches the existing seawall, thereby sitting behind the seawall,

- the path is c.3.6m below the top of the existing seawall. Therefore views of the wall are minimal, with only a small section available when walking west passed the site.

Conclude the visual impact of the wall will be negligible from the public footpath.

- The greatest visual impact of the wall is on the application site, having regard to :
 - the ground levels of the site,
 - the wall height when viewed from the site.
- The wall considered as acceptable, having regard to :
 - the dwelling has already been designed to respond to the high eastern bank, and overshadowing threat, as follows :
 - no windows exist in the eastern elevation,
 - no private open space exists along the eastern site boundary
 - the 1.2m wide path between the dwelling and the bank is a service area enabling access around the dwelling. The wall does not adversely impact on this.
- Conclude the wall proposed for retention, is acceptable, having regard to possible visual and residential amenity impacts.

(iii) **Appropriate Assessment :**

- Having regard to the location and nature of the proposed development, no adverse impacts to European sites either alone, or in combination with other plans and projects, will result.
- Recommend inclusion of Condition ensuring no encroachment (by vehicles or by storage or placement of any materials) into the Special Area of Conservation during the construction phase of development.

(iv) **Other Issues :**

The Planning Authority has no remit over the following issues argued by the 3rd party objector neighbours :

- The wall location over a neighbouring boundary, unauthorised disruption and trespass, and damage to private property consequent of construction works, are argued as civil matters, and
- Compliance with current design codes and building regulations.

(c) **Conclusion :**

- (i) The proposed retention of the wall considered as in keeping with the existing dwelling.
- (ii) Retention of the wall will not detract from adjoining residential amenity, subject to compliance with Conditions.
- (iii) Retention of the wall considered in accordance with the proper planning and sustainable development of the area.

(d) **Recommendation :**

Grant of Retention Permission, subject to Conditions.

(3) **Departmental Technical Reports :**

No reports apparent.

(4) **Prescribed / Statutory Bodies :**

No referrals apparent.

(5) **3rd Party Objections / Submissions:**

- (a) 1no. 3rd party objection – Jerry and Gemma Hughes (c/o R. A. Duggan, R. A. Duggan and Associates – Consulting Engineers (13/04/2016).
- (b) Issues argued include :
 - (i) they have never agreed to the wall as constructed.
 - (ii) construction of the wall has involved considerable and unauthorised disruption and trespass onto the Glenheder property, which was not properly reinstated.
 - (iii) Drawing 16.029.002 is misleading and the development is not screened.
 - (iv) the wall is structurally inadequate, having regard to expected loading.

(v) a properly designed gabion or crib wall requested.

5. 3rd PARTY GROUNDS OF APPEAL – Jerry and Gemma Hughes (c/o R. A. Duggan, R. A. Duggan and Associates – Consulting Engineers, 31/05/2016) :

- (1) Description of the works as a “jointly agreed boundary wall”, is incorrect. The 3rd party appellants’ have never agreed to the wall as constructed. This should be rejected as an invalid application, as the description is not accurate.
- (2) Construction of the wall involved considerable and unauthorised disruption and trespass to the Glenheder garden, which has never been properly reinstated. A grant of retention permission, would be to condone the applicant’s unlawful behaviour.
- (3) Drawings submitted are incorrect and misleading. Reference the Contiguous Elevation on Drawing No. 16.029.002, showing ground levels and mature trees effectively obscuring the new development. Rather, construction of the new boundary wall removed all existing vegetation, with consequence of no effective screening. Include ‘Photo 1’.
- (4) The concrete block gravity retaining wall is structurally inadequate for the loading imposed, having regard to current Design Codes and Building Regulations. Rather, the current wall is significantly undersized, therefore representing a serious hazard.
- (5) The 3rd party appellants are advised, due to the complex legal rulings on boundary walls, that if retention permission were to be granted, they would be, in law, part owners of the wall, and so could incur liabilities arising from this hazard.
- (6) The walls unsafe condition has resulted in a serious loss of amenity for the 3rd party appellants, effectively restricting their use and enjoyment of their garden :
 - (a) Vegetation lost without permission consequent of construction, cannot be restored with the non-compliant wall.
 - (b) Whereas the 3rd party appellant’s garden comprised 3 grass terraces, construction of the wall resulted in a considerable reduction in site levels. This represents a significant loss of usable garden area at Glenheder. Photographs included illustrating this impact.
 - (c) For health and safety reasons the 3rd party appellants have been advised to stay away from the wall area. Effectively, this has sterilised this portion of their garden, until a properly designed

retaining wall replaces the current structure. The amenity and enjoyment of the garden is seriously compromised.

- (7) As a solution, the 3rd party appellant's indicate they would facilitate the construction of a crib wall or gabion wall in lieu of the current block wall and believe that this is a reasonable and achievable solution to the problem.
- (8) The 3rd party appellants requested an oral hearing to review this appeal.

Note : At a meeting held on the 19th July 2016, the Board decided that an Oral Hearing should not be held.

6. RESPONSES / OBSERVATIONS TO 3rd PARTY GROUNDS OF APPEAL :

(1) Planning Authority Response :

Late response. Documentation returned to the Planning Authority.

(2) Applicants Response – Hugh and Margaret Wilkinson (c/o Roger Cagney Chartered Engineers, 28/06/2016) :

Referencing the 'Structural Engineering' report, and 'the Chronological Listing of the Actual Events' :

- (a) The original boundary wall, constructed with brick, suffered "a catastrophic collapse", due to poor structural condition – see photographs 1 – 3.
- (b) The neighbours, Mr and Mrs Hughes, agreed to the reconstruction of the wall, with blockwork on new foundations – see photograph 4, and to match the original height 2.1m – see photograph 5..
- (c) The adjoining owners, under discussion, requested the wall be raised "with the addition of 8 courses blocks along the section to be raised" – photographs 6 and 7. Photograph 7 shows the agreement discussions taking place.
- (d) Additional fencing was further agreed to facilitate the neighbours Mr and Mrs Hughes – photograph 9.
- (e) The wall was never built as, or intended to be a retaining wall, to allow for retention of soil conditions, as set out in the 3rd party appeal by R.A. Duggan at Figure 1. Rather, argue Figure 1 is a function of Engineering assessment, and not either a planning matter or grounds for an appeal.

Subject to a satisfactory agreement, the applicant's would "take no issue", with the neighbours Mr and Mrs Hughes constructing an appropriate retaining wall structure for their own purposes.

- (f) Photographs 10 and 11 confirm the site conditions historically, with respect to the profiling ground levels and angles of repose for the terracing and battering to the grounds, and gardens of Glenheder. Confirm these conditions significantly predate the works recently completed with respect to the reconstruction of the boundary wall, and the Coach House Building. No retaining structures are evident or historically constructed to effect the historic conditions.

7. POLICY CONTEXT :

Fingal Co. Development Plan (2011-2017):

Relevant provisions incl. –

Chapt. 9 Land Use Zoning:

Zoning Objective “RS” Residential

Objective: Provide for residential development and protect and improve residential amenity.

Vision: Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity.

Use Classes related to Zoning Objective

Permitted in Principle incl. – ‘Residential’

(see Map – Fingal Co. Dev. Plan 2011 Land Use Zoning Objectives).

Application site located adjacent to the Baldoyle Bay Special Protection Area, a Special Area of Conservation and a Natural Heritage Area.

Green Infrastructure Map 1 – local area designated as a highly sensitive landscape

Green Infrastructure Map 2 – an area ‘within 100m of coastline vulnerable to erosion’

8. PLANNING ASSESSMENT :

- (1) I have examined the file and available planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application.

I believe that the relevant planning issues relate to :

- (a) Principle and location of the proposed development.
- (b) Visual Impact.
- (c) Residential Amenity Impact.
- (d) Land – Legal and other Civil Matters.
- (e) Appropriate Assessment.

(2) **Principle and location of the proposed development:**

I believe the planning principle of residential development and associated boundary wall at The Coach House, within the existing, established Claremont Road neighbourhood, has been established. Framed against the permissions previously granted under **F12A/0152** and **F14A/0182**, and clearly zoned “RS – Residential”, the proposed retention of a boundary wall is considered acceptable in principle. I do not believe that any of the interested parties contest this.

However, in terms of the applicable “RS” Residential zoning objective, the primary consideration is to, whilst enabling residential development, ensure the protection and improvement of the residential amenity prevailing in the contextual, established Claremont Road neighbourhood. In fact, the “RS” Residential Vision, seeks to “Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity”.

Understandably, this is a primary concern of the neighbouring 3rd party appellants at Glenheder. I will discuss the threat of negative impact by the proposed retention of the boundary wall, on adjacent established visual and residential amenities below.

(3) **Visual Impact / Streetscape:**

The sense of place of the Claremont Road neighbourhood is clearly influenced by the architectural style, design, and general finishing with respect to materials and colouring of the existing generally substantial 2-storey houses, all set in a local topographical and environmental context along the foreshore, and with considerable set back from Claremont Road. I have taken note of the established, contextual scale and pattern of low density residential development locally.

What is certain, having regard to my own observations made at the time of site visit, is that as one moves along Claremont Road to the front / south, no direct visibility is possible at all, of the rear / north facing elevations of any of the houses, and including and specifically,

the northernmost section of the shared boundary between the application site / The Coach House and Glenheder.

Further, when viewed generally from the rear, with particular regard to public intervisibility from the footpath along the seawall, I believe that the associated bulk and massing of the boundary wall, proposed for retention, would not be overbearing on the common scale and uniformity of the residential amenity enjoyed in the neighbourhood generally, and by the applicant's at The Coach House and the 3rd party appellant's at Glenheder, specifically. In this regard, I note

Consequently, I conclude that the proposed retention of the boundary wall between The Coach House and Glenheder, would have no overbearing or disproportionate negative impact on the established character and associated visual amenity of the local area generally, or the adjacent 3rd party appellant's at Glenheder specifically. The proposed retention of development would be in accordance with the proper planning and sustainable development of the area.

(4) **Residential Amenity Impact:**

In as much as I understand amenity values as referring to those natural or physical qualities and characteristics of the Claremont Road neighbourhood along the foreshore, that contribute to residents appreciation of its pleasantness, liveability and its aesthetic coherence, I am of the view that the proposed retention of the boundary wall, will have no serious, or disproportionate negative impact on this prevailing residential amenity.

I consider this to be the case having regard to the discussion of the impact on the prevailing visual amenity at 8(3) above, which I have argued, would not negatively influence the character and quality of the contextual residential amenity enjoyed locally, and by the 3rd party appellant's at Glenheder particularly.

Privacy or a freedom from observation is, a basic qualitative aspect of residential design, and which is acknowledged within the Fingal Co. Dev. Plan (2011).

I believe that neither of the boundary wall proposed for retention, or The Coach House 2-storey dwelling permitted under **F12A/0152** and **F14A/0182**, threaten the levels of privacy currently enjoyed by the adjacent 3rd party appellants, resident at Glenheder. In itself an

inanimate object and of reasonable domestic size, height and appearance when viewed from Glenheder, threat to privacy must be regarded as impossible from the wall. With respect to The Coach House, whilst not the subject of the current application, I note that no windows exist at all in the east facing elevation towards Glenheder.

Similarly, no threat of overshadowing or loss of light to the existing house at Glenheder is possible. Neither will the 3rd party appellant's lower terraced lawns at Glenheder be materially affected in this regard. I reference that Objective OS36 – 'Overshadowing' of the County Development Plan 2011 simply provides "Ensure private open space for all residential unit types are not unduly overshadowed".

I do acknowledge the potential for negative impact of construction activity on contextual residential amenity, whilst site works and construction activity are on the go, towards completion of the boundary wall. However, and having had regard to the 3rd party appellant's expressed concerns in this regard, I consider that these impacts are only temporary, are to reasonably facilitate the completion of the proposed development, and certainly cannot be regarded as unique to this development. Further, I consider that given these impacts are predictable and to be expected, they can be properly and appropriately minimised and mitigated by the attachment of appropriate conditions to a grant of retention permission. The existing Conditions attached by the Planning Authority, could be reasonably supplemented in this regard, should the Board be mindful to grant permission, and deem such mitigation of negative impact of site works and construction activity on contextual residential amenity necessary.

Consequently I believe the proposed retention of the boundary wall satisfactorily complies with the Zoning Objective "RS" – "Provide for residential development and protect and improve residential amenity", and accordingly would be in accordance with the proper planning and sustainable development of the area.

When viewed from the front and rear adjacent gardens, and particularly from Glenheder, I believe that the associated bulk and massing of the boundary wall to be retained, would not be overbearing on the common scale and uniformity of the residential amenity enjoyed by the immediate adjacent residents.

(5) **Land – Legal and other Civil Matters :**

I have had careful regard to the arguments made in this regard by the 3rd party appellants Jerry and Gemma Hughes, against the proposed development. These arguments include – that the boundary wall was not jointly agreed, considerable and unauthorised disruption and trespass to the Glenheder garden, which has never been reinstated and the complex legal rulings on boundary walls, which would make them in law, part owners of the wall and subject to liabilities.

However, I have had regard to the current application on its planning merits alone, as set out in the above discussions. I am of the view that any decision on the planning application does not purport to determine the legal interests held by the applicant, in relation to the adjacent lands at Glenheder. I draw attention to Section 34(13) of the Planning and Development Act – 2000 (as amended), which relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development”. In this regard, I make reference to the explanatory notes which read as follows – “This subsection ... makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate”.

Consequently I understand that any legal obligation on the applicant, to ensure no unreasonable compromise to the interests and rights of the neighbouring 3rd party appellants at Glenheder, is covered.

Accordingly, I do not consider this issue to be a reasonable and substantive grounds for refusal of the current application for retention of development. I share the expressed conviction of the Planning Authority in this regard.

(6) **Appropriate Assessment :**

Having regard to the nature and scale of the proposed development, to the location of the site within a fully serviced urban environment, and to the separation distance to any 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 a European site.

9. RECOMMENDATION:

Having regard to all of the above, I recommend that retention permission be GRANTED in accordance with the following Schedules.

REASONS AND CONSIDERATIONS

Having regard to the Zoning Objective “RS” for the area and the pattern of residential development in the area, it is considered that, subject to compliance with Conditions set out in the Second Schedule, the proposed retention of development would be in accordance with the relevant provisions of the Fingal Co. Dev. Plan 2011-2017; would not seriously injure the amenities of the Claremont Road neighbourhood, or of the property in the vicinity; would not be prejudicial to public health; and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

- (1) The development shall be carried out and completed 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. 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 temporary timber panels as shown on Drawing 16.029.001 shall be replaced with a block wall, capped with a smooth plaster finish on both sides to match the existing. The replacement wall being retained shall be finished with a smooth plaster finish on both sides.
Reason : In the interest of the visual amenities of the area.
- (3) That all necessary measures be taken by the contractor including wheel wash facilities, to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.
Reason : To protect the amenities of the area.
- (4) No stormwater shall discharge onto the public road or path. Any damage to the surrounding public areas shall be made good to the satisfaction of the Planning Authority.
Reason : In the interests of public safety and orderly development.

- (5) Site development and building works shall be carried out only between the hours of 08h00 to 19h00 Mondays to Fridays inclusive, between 08h00 to 14h00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Leslie Howard
Planning Inspector
25/08/2016