



An
Bord
Pleanála

Inspector's Report PL92.249063

Development	Construct a 2.4 metre high security fence and gates on the boundary of a school property within Shamrock Hill.
Location	St. Peter's and St. Paul's Primary School, Kickham Street, Clonmel, County Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	17 600631.
Applicant	Board of Management of St. Peter's and St. Paul's Primary School.
Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Type of Appeal	Third Party
Appellant	Jason O'Loughlin and others.
Observer(s)	None.
Date of Site Inspection	13 th December 2017.
Inspector	Derek Daly.

1.0 Site Location and Description

- 1.1. The site is located to the north of the town centre of Clonmel. The site forms part of the grounds of a primary school which fronts onto Kickham Street which defines the southern boundary of the overall school property and the school buildings are located in the southern area of the site. The northern portion of the property is an open green area roughly triangular in configuration which has frontage onto a road referred to as Shamrock Hill. On the western side of Shamrock Hill and on lands to the north of the appeal site are residential properties forming part of an established housing area.
- 1.2. To the east of the appeal site is a secondary school and the open area at the rear of the primary school continues to the rear of the secondary school with a masonry wall defining the boundary between the two open areas with an opening set within the wall to provide access to both areas. The lands to the west of the school adjoin a Dunnes Stores premises and there is a 2 metre fence along the common boundary.
- 1.3. In relation to the open area which is the subject of the appeal the area the boundary along the northern boundary is currently composed of a concrete post and rail fence. This fence continues in part along the western boundary and the southern section of the western boundary is open but there is a random row of mature trees inside of the estate road. The southern boundary is defined by a palisade metal rail fence in excess of 2 metres in height and a chainlink fence of a similar height.
- 1.4. The appeal site itself is level but owing to a rise in level in a northerly direction there is a significant change in level between the site and adjoining road to the west and north increasing in a northerly direction. The post and rail fence is constructed on a retaining wall reflecting the change of site level. There is a footpath from the road to the rear of the school.

2.0 Proposed Development

- 2.1. The proposal as originally submitted to the planning authority on the 1st of June 2017 was for the construction of a 2.4 metre high security fence and gates. The fence in question is powder coated metal panelled fence supported by steel posts. The fence will be constructed on the retaining wall where this wall currently exists. It is

proposed to erect a pedestrian gate and also a 4 metre wide access along the western section of the proposed fencing in the southern section of the western boundary.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to grant planning permission for the development subject to 6 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Report

The planning report dated the 18th of July 2017 refers to:

- the site's planning history;
- relevant provisions of the current development plan;
- submissions received;
- an appraisal of the development where the principle of the proposed development is considered acceptable.
- That the overall intention of the proposal is to secure the site.
- The report recommends permission be granted.

Other reports

The borough engineer report dated the 6th of July 2017 outlines conditions.

3.3. Third Party Observations

A submission received objecting to the development referring to the location of the gate near a bend, the provision of a gate will provide access from Shamrock parking giving rise to illegal parking, access to footpaths will be difficult, anti-social behaviour will arise and devaluation of properties in the area.

4.0 Planning History

There are permissions relating to the school but not to this area of the site.

5.0 Policy Context

5.1. Development Plan

The current plan is the Clonmel and environs Development Plan 2013.

The site is located within an area zoned Town Centre.

6.0 The Appeal

6.1. Grounds of Appeal

The appellant in a submission dated the 10th of August 2017 refers to:

- The existing rear entrance to the school is unauthorised development and was constructed without planning permission.
- The green space is unregistered and was clearly proposed as public open space for the residents of Shamrock Hill and the greater area.
- The area is bereft of public open space and the proposed 2.4 metre high fence will require the removal of most of the trees. No landscaping drawing was requested or conditioned.
- There is no issue with the school using the green area but it is illogical to exclude local residents from it.
- The issue of dropping off and collecting children from the school and the impact on Shamrock Hill is raised in the context of parking, nuisance and general health and safety.
- The fence height is excessive and will detract from the area.
- A letter of support from residents is included in the accompanying submissions and a letter in relation to the ownership of the green area.

6.2. Applicant Response

The applicant in a response dated the 11th of September refers to:

- The area is the school's playing field and its only green field area and has been in continuous use as a playing field since in the inception of the school.
- The school includes an internal fence and pedestrian entrance between the open area and the remainder of the school property and continuous access since the inception of the school.
- The open space is used for the school's physical education activities.
- The current post and rail fence was provided in the 1980s and replaced a previous higher fence which included a gate. The new fence did not extend as far as the previous fence and the remainder of the boundary was left open.
- The school has an established access from the south end of the western boundary since its inception.
- Because of the significant variation in site levels access for maintenance has always been from Shamrock Hill and not internally within the school.
- A narrow width tarmac footway was also provided in the late 2000s along the south end of the school playing field.
- The main access to the school is from Kickham Street which also provides access to the staff car park.
- The provision of the 2.4 metre high fence is solely on the basis of health and safety and compliance with guidelines in this regard.
- This requires securing the playing area from intruders and the use of the area by drug users.
- The proposed fence will follow the alignment of the existing post and rail fence.
- The remainder of the fence will be located between the second and third row of trees. There will be no removal of trees. The fence will be 4 metres from the road and kerb.

- The colour of the fence is green and will be substantially camouflaged by the trees which are of a greater height.
- The proposed development will have no impact on traffic relative to the existing scenario and do nothing scenario.
- In relation to ownership the playing field is owned by the Christian Bothers of Ireland. Documentation is submitted in relation to the Conveyance on the lands purchased in 1961 and subsequent actions in relation to the lands.

7.0 Assessment

- 7.1. Having regard to the submissions received and the documentation submitted the primary issue in relation to this appeal relates to the acceptability of the nature of the works as proposed in particular in the context of its scale and design and impact on the area generally.
- 7.2. In the grounds of appeal submission, the issues of ownership and rights in relation to property was raised and the applicant has responded in a submission. I do not propose to address many of the issues raised and I would in this regard refer to section 5.13 of the department guidance on development management which refers to issues relating to title to land where it is indicated that *“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. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision”*.

In relation to making a planning application there is nothing definitively to cast doubt on the bona fides of any assertion by the applicant to make a planning application or that the applicant does not have sufficient legal interest or that the Board may if satisfied with matters relating to proper planning and development decide to grant permission. However, such a grant of permission would be subject to the provisions of section 34(13) of the Act, referred to above and would not negate any party rights in relation to civil law.

- 7.3. Specifically, in relation to the matters applied for in this application / appeal,
- 7.4. The proposal as originally submitted to the planning authority on the 1st of June 2017 was for the construction of a 2.4 metre high security fence and gates. The fence in question is powder coated metal panelled fence supported by steel posts. The fence will be constructed on the retaining wall where this wall currently exists. It is proposed to erect a pedestrian gate and also a 4 metre wide access along the western section of the proposed fencing in the southern section of the western boundary. It is indicated that the fence will be coloured green to assist in assimilating into its surroundings in particular where it traverses an existing area with mature trees.
- 7.5. The primary purpose of the fencing is stated as security, health and safety considerations, the avoidance of trespass and reduction of the presence of anti-social behaviour.
- 7.6. The appellants in the grounds of appeal refer to the historical importance of the open area, that the general area is bereft of public open, the proposed 2.4 metre high fence will require the removal of most of the trees and no landscaping drawing was requested or conditioned. Visual issues are raised. Issues of parking and traffic are also raised. It is noted that the appellants indicate that there is no issue with the school using the green area but it is illogical to exclude local residents from it.
- 7.7. In relation to the proposed development the construction of the fence will, I consider limit or it would be more appropriate regulate access to the play area. Although there is a fence along part of the perimeter there is a section where there is currently unimpeded access. It is not, I consider, unreasonable in the interest of security and also in relation to health and safety to construct a fence or boundary and the fence would have to be of a sufficient height and construction to secure these requirements. In this context I would not have an objection to the height and nature of the fence which will mirror an existing fence forming part of the boundary of the school lands with Dunnes Stores.
- 7.8. The provision of the fence I would acknowledge will introduce a visual presence that does not occur at present and this will visually impact on the area. I do however consider that the fencing should incorporate an appropriate landscaping scheme

response along its entire length to soften the visual impact in particular of the northern section of the fencing and to integrate the fence into its surroundings.

- 7.9. It is proposed to provide for access from Shamrock Hill to the green area, a pedestrian gate and a multi-function access and the issues of dropping off and collecting children from the school and the impact on Shamrock Hill is raised in the context of parking, nuisance and general health and safety. As indicated there is currently the facility to access the school from Shamrock Hill in an unimpeded manner and the provision of the proposed fence does not I consider alter this position.

8.0 Recommendation

- 8.1. In view of the above assessment permission for the proposed development is recommended. An advisory note stating the provisions of section 34(13) of the Planning Act should be added at the end of a decision to grant permission.

9.0 Reasons and Considerations

Having regard to the nature of the development it is considered that subject to compliance with the conditions set out below, the proposed development would not detract from the character and visual amenities of the area or seriously injure the residential amenities of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 . Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 1st of June 2017, 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 interests of clarity

2. Details of the materials, colours and textures of the proposed fence shall be agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity

3. A comprehensive landscaping scheme shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. This scheme shall include the following: -
 - (a) details of new and supplementary planting along the line of the proposed works;

(b) proposed locations of trees and other landscape planting including heights, materials and finishes.

The boundary treatment and landscaping shall be carried out in accordance with the agreed scheme and shall include a timescale for implementation.

Reason: In the interest of visual amenity.

- 4 Footpaths shall be dished at the junction with the public road in accordance with the requirements of the planning authority and the entrances onto the public road shall be designed such that surface water arising shall not discharge onto the public road.

Reason: In the interest of pedestrian safety.

- 5 Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 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.

Derek Daly
Planning Inspector

22nd January 2018