



An
Bord
Pleanála

Inspector's Report PL03.249232

Development	Retention of Planning Permission for landscaping works including altering garden levels.
Location	3 St. Bridget's Well, Derreen, Liscannor, County Clare.
Planning Authority	Clare County Council.
Planning Authority Reg. Ref.	P17/362.
Applicant	Edward Hansom.
Type of Application	Retention of Planning Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party -v- Grant
Appellant	Caroline Guthrie.
Observers	None.
Date of Site Inspection	9 th November, 2017.
Inspector	Paul Caprani.

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1.0 Introduction

PL03.249232 relates to a third party appeal against the decision of Clare County Council to issue notification to grant planning permission for the retention of landscaping works including the alteration of garden levels at a dwelling at Derreen, Liscannor, County Clare. The grounds of appeal argue that the landscaping works undertaken has destroyed an existing boundary wall and damaged the natural water/spring/well which was a drinking source of cattle in the adjoining field.

2.0 Site Location and Description

- 2.1. The subject site accommodates a single detached dwelling which forms a row of four detached dwellings in the townland of Derreen approximately 3 kilometres north-west of the village of Liscannor in West Clare. The site is located on the southern side of a local road which ends in a cul-de-sac approximately 200 metres further west of the site. The four detached dwellinghouses on the southern side of the road incorporate the same design and appear to be used as holiday homes. The lands on which the sites are located are elevated and provide fine views southwards over Liscannor Bay. The subject site is rectangular in shape and is the second most westerly dwelling of the four dwellings along the roadway. The local road links up with the R478 (the main road to the Cliffs of Moher) approximately 100 metres further east.
- 2.2. The subject site is bounded to the north by the local access road and to the east and west by the common boundaries with adjoining dwellings. The southern boundary of the site separates the site from a large field which is under grass and used for the grazing of livestock. The site incorporates a pronounced downward slope from north to south. The main garden area serving the dwelling is located in the southern portion of the site. Notwithstanding the landscape works undertaken, the garden area to the south of the dwelling nevertheless incorporates a pronounced slope (see photo's attached to this report. The southern boundary of the site comprises of a timber fence with a recently planted hedgerow inside the fence.

3.0 Planning Application

- 3.1. Planning permission is sought for the retention of landscaping works which included the alteration/raising of ground levels within the rear garden area inside the boundary fence.
- 3.2. It appears from the documentation on file that the works undertaken were the subject of a Section 5 declaration, where Clare County Council determined that the landscaping works undertaken within the curtilage of a house resulted in the ground levels being altered by more than 1 metre above the level of the adjoining ground, and as such the works undertaken were not exempted development having regard to Class 6(a) of Part 1, Schedule 2 of the Planning and Development Regulations 2001. It appears that on foot of this declaration a planning application for retention of permission for works carried out was lodged with the Planning Authority.

4.0 Planning Authority's Assessment

- 4.1. The planning application was lodged on 15th May, 2017.
- 4.2. An observation from the current appellant was submitted along with a report by Hassett Leyden and Associates. The report contends that the raising of ground levels at the subject site has resulted in the desecration of a stone wall beneath the fence and has also resulted in the covering over of a well/spring depriving livestock of drinking water.
- 4.3. The initial planner's report requested further information in relation to the following issues:
 1. Details of the legal interest in the proposed site and in particular the applicant is requested to demonstrate legal interest in the works on/adjacent to the rear boundary of the site.
 2. Having regard to the scale of the proposed development the applicant is requested to clarify potential waste permit/licence requirements for the proposed development and is requested to outline the composition of the fill material and approximate volume of fill imported into the site.

- 4.4. Further information was submitted on 26th July, 2017. It included a land registry folio and file plan which confirms the ownership of the land in question. It is also confirmed that no fill was imported into the site. The landscaping works involve the redistribution of existing soil that was on the site.
- 4.5. The subsequent planning report dated 14th August, 2017 recommended that planning permission be granted subject to two conditions. The first condition related to compliance with plans and particulars submitted to the application. The second condition required that all surface water generated within the site boundaries shall be disposed of within the curtilage of the site.

5.0 Planning History

- 5.1. There are no history files attached.
- 5.2. Details of the relevant planning history is set out in the planner's report. It is briefly summarised below:

The parent permission to grant four dwellings, together with proprietary wastewater treatment systems was granted under Reg. Ref. 04-662. Under Reg. Ref. 05-398 permission was granted for the extension of duration of permission in respect of the four dwellinghouses.

- 5.3. Reference is also made in the planner's report to the Section 5 Declaration issued under Reg. Ref. R16-56 where the Planning Authority concluded that the filling of the site to the rear of No. 3 was not exempted development having particular regard to Class 6(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

6.0 Grounds of Appeal

- 6.1. The decision of Clare County Council to issue notification to grant retention of planning permission for the works undertaken was appealed by the owner of the field to the south of the subject site.
- 6.2. The grounds of appeal argue that the landscaping undertaken has caused considerable difficulty in respect of the appellant's field adjacent. The raising of the ground levels and the erection of screening has destroyed an existing boundary wall

and has damaged the natural water spring/well along the boundary. Reference is made to a report prepared by Hassett and Leyden and Associates. It is noted that this report was not submitted with the grounds of appeal. However, a copy of the report submitted with the original observations of the Planning Authority is contained on file. This report includes a series of photographs taken from the field to the south and the report contends that the alterations in site levels has resulted in the destruction of a stone wall and has also resulted in the filling in of a well/spring which previously existed along the boundary. It is also stated that the fill material is now spilling out onto the appellant's lands along the boundary of the site.

7.0 Appeal Responses

A response was received on behalf of the applicant by McMahon and Hardiman Consulting Engineers. It states the following:

The applicant carried out landscaping works on the site in question in 2013. These works included the raising of part of the garden at the rear by around 1 metre. Photographs are submitted indicating the site before and after the works were carried out (P1 and P2). It is stated that only part of the rear garden was raised and this is apparent from the photographs where some of the original timber fencing was retained. It is stated that there was no spring on the client's site before the works were carried out. There does appear to be a spring/water feature on the appellant's land to the rear and these can be seen in photos 3 and 4 attached to the appeal response.

7.1. Planning Authority's Response to the Grounds of Appeal

- 7.1.1. It states that the proposed development subject to compliance with conditions attached would not seriously injure the amenities of the area or property in the vicinity and therefore the Planning Authority respectfully request that An Bord Pleanála uphold the decision to grant planning permission in this instance. Where analysis of the issues pertaining to the proposed development the Board are requested to have regard to the assessment contained in the planner's report.

8.0 Development Plan

- 8.1.1. The site is governed by the policies and provisions contained in the Clare County Development Plan 2017 – 2023. The subject site is not governed by any zoning objective. The R478 Regional Route located approximately 100 metres to the east is designated as a scenic route in the development plan.

9.0 Planning Assessment

- 9.1. I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. Having inspected the site, I consider that the proposed alteration in ground levels does not give rise to any material planning issues in terms of visual impact or impact on surrounding amenity. I therefore consider that the principle of works carried out in this instance are in accordance with the proper planning and sustainable development of the area. It also appears from my site inspection that the works in question were carried out within confines of the applicant's holdings.
- 9.2. The three issues raised in the grounds of appeal are in my opinion related to issues which are outside the planning code as they essentially relate to civil matters in respect of boundary disputes etc. between the parties involved. The first issue raised in the grounds of appeal relates to the impact of the proposed works undertaken on a stone wall which appears to have run along or adjacent to the common boundary. As the works in question have already been undertaken it is not possible in my view to determine with any degree of accuracy whether or not the works undertaken adversely impacted on the integrity of the stone wall. If it were the case that the stone wall was damaged or destroyed by the works undertaken this is a civil matter between the parties involved.
- 9.3. Having inspected the site, I saw no evidence of any spring/well located along the common boundary. The report prepared on behalf of the appellant indicates that a spring/well feature was located along the boundary of the site and it is contended that the works undertaken have impacted on the spring/well. The applicant in photographs submitted in response to the grounds of appeal indicated that a well type feature still exists on the lands in question. As in the case of the boundary wall, I do not consider that the Board are in a position to adjudicate as to how what extent

historic works on the site for which retention is now being sought have potentially impacted upon a well or spring on site. Whether or not the proposed works undertaken have impacted upon a source of drinking water for the appellant's livestock is again a legal matter to be determined by the parties. Whether or not such a spring is existed and whether or not any such spring was affected by the works undertaken cannot be determined by the Board as it is impossible to determine to what extent, if any, the works undertaken on the subject land contributed may or may not have contributed to the alterations / blocking up on a natural spring/well on site.

- 9.4. In relation to land slippage I note that both the subject site and the appellant's lands incorporate a significant slope. It is not possible in my opinion to adjudicate on whether or not the works carried out as part of the landscaping have resulted in land slippage/spillage into the appellant's lands. I found no concrete evidence of such an occurrence when carrying out my site inspection.
- 9.5. Arising from my assessment above therefore I do not consider that any issues raised in the grounds of appeal which are primarily legal or civil matters between the parties involved would not constitute reasonable grounds to refuse retention of planning permission in this instance. As the works have already been carried out, it is impossible to ascertain whether the works contributed or caused the concerned raised in the grounds of appeal as the inspector in this instance is not in a position to assess the lands in question before and after the works were carried out.
- 9.6. Furthermore, I consider that the works undertaken on site do not present any significant planning problems in terms of impact on residential amenity etc. Any structural or engineering implications which may or may not have arisen as a result of the proposed development are legal matters which are beyond the jurisdiction of An Bord Pleanála. I therefore recommend that the decision of Clare County Council be upheld and that retention of planning permission be granted for the proposed development based on the reasons and considerations set out below.

10.0 Reasons and Considerations

10.1. It is considered that the retention of landscaping works on the subject site subject to conditions set out below would not seriously injure the visual amenities of the area or property in the vicinity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 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 the 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. Surface water drainage arrangements including the attenuation and 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.

Paul Caprani,
Senior Planning Inspector.

18th December, 2017.