



An  
Bord  
Pleanála

## Inspector's Report PL09.249282

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<b>Development</b>	Development of a house in a side garden adjoining an existing dwelling and associated works.
<b>Location</b>	79 The Walk, Loughbollard, Clane, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council.
<b>Planning Authority Reg. Ref.</b>	17/761.
<b>Applicant(s)</b>	Peter Sweeney.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission subject to conditions.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	Loughbollard Residents Association.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	20 <sup>th</sup> December 2017.
<b>Inspector</b>	Ciara Kellett.

## 1.0 Site Location and Description

- 1.1. The appeal site is located in The Walk, Loughbollard, Clane, Co. Kildare.  
Loughbollard is on the northern side of Clane village and is a large housing area c.35-40 years old. It is c.550m from the village centre and c.230m west of the R417 Kilcock to Clane road. The housing estate is mainly comprised of semi-detached dwellings laid out in cul-de-sacs. Of note with respect to the cul-de-sacs in this location, is that the vehicular access is to the rear via a laneway that runs between two rows of houses. A pedestrian footpath provides access to the front of the houses. To the west of the dwelling lies a housing estate under construction. To the south, lies a large public open space with the Hillview housing development on the far side of the green area.
- 1.2. No.79 is at the very end of a cul-de-sac and has a larger side garden than its neighbours, where it is proposed to construct a new dwelling. The rear garden area has been completely paved. It is adjoined to no.80 The Walk to the east. The cul-de-sac currently comprises 10 dwellings in 5 semi-detached pairs. A mature row of trees and hedgerows provide a line of screening between the houses and the green area to the front.
- 1.3. Appendix A includes maps and photos.

## 2.0 Proposed Development

- 2.1. The proposed development is for the sub-division of the site and the construction of 1 no. 2 bed roomed 2 storey dwelling to effectively form a terrace of three dwellings in this location. The dwelling is proposed to be 87.8sq.m with two bedrooms at first floor and a living room and kitchen at ground floor. The ground floor projects slightly forward of the rear wall of the existing dwelling. The existing garage/shed to the rear is to be demolished to provide for parking and amenity area for the new dwelling. Three parking spaces to the rear are proposed within the boundary of the existing dwelling i.e. off-street parking. Pedestrian access from the car parking spaces is provided for through a new 2m high boundary wall. The pedestrian footpath to the front will be extended to provide access to the new dwelling.
- 2.2. All external finishes will match the existing dwellings.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant permission subject to 26 conditions. Conditions of note include condition no.2 which requires the applicant to submit an accurate front contiguous elevation and separation distance from the western boundary. Condition no.7 requires the applicant to submit revised drawings indicating storage area of 6sq.m.

### 3.2. Planning Authority Reports

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Notes that the dwelling accords with the previous planning permission granted under Reg. Ref. 05/2794 and ABP Ref. PL09.220408.
- Notes storage is less than minimum standards of 6sq.m and considers a condition can address this. Notes that a small external garden shed may be suitable to address this.
- Notes private amenity area meets requirements of 55sq.m.
- Considers design is acceptable as it ties in with the height and scale of existing dwellings.
- Refers to other matters raised by the objector who states that the applicant has removed the western boundary wall to enlarge his site, and that this is the subject of a legal dispute. Considers that the site area is the same as the initial planning application. Refers to Section 34(13) of the Planning and Development Act which state that a person shall not solely by reason of a permission be entitled to carry out development.
- The Planner recommends a grant of permission.

The decision was in accordance with the Planner's recommendation.

#### 3.2.1. Other Technical Reports

- **Water Services:** No objection subject to conditions.

- **Area Engineer:** No objection subject to conditions.
- **Environment:** No objection subject to conditions.
- **Transportation:** No objection subject to conditions.

### 3.3. Third Party Observations

Five submissions were received including one from the appellant. Submissions refer to removal of boundary wall; closure of gable end door and window of no.79 should be subject to planning and fire regulations; development would result in a terrace of dwellings; it will devalue no.80; back laneway does not have capacity for more cars; emergency vehicles will be constrained; fire hydrant will be obscured by parking; erection of shed was unauthorised and resulted in the loss of the hammerhead; no capacity in foul pump; and, proposal represents overdevelopment,

## 4.0 Planning History

There is one planning application associated with the subject site which was extended in 2011.

- **ABP Ref. PL09.220408, Reg. Ref. 05/2794:** Permission approved by the Board in March 2007 for a similar development on the site.
- **Reg. Ref. 11/1040:** Extension of permission granted in December 2011 for the 2005 application.
- **UD 6924:** Proceedings ongoing in respect of a complaint regarding the unauthorised removal of boundary wall.

To the west of the site permission has been granted for a large number of dwellings.

- **KCC Reg. Ref. 15/193:** Change of house types (79 no.) previously granted permission by the Board ABP Ref: PL09.217279 in June 2007.

## 5.0 Policy Context

### 5.1. Clane Local Area Plan 2017 – 2023

5.1.1. The site is zoned 'B' existing residential in the Clane Local Area Plan.

## 5.2. Kildare County Development Plan 2017 - 2023

Chapter 4 refers to Housing. Section 4.2 states '*The Plan will support consolidation through infill development and the redevelopment of areas that are in need of renewal and the sustainable extension of established urban areas*'.

Section 4.11 refers to Residential development in established urban areas - Infill, backland, subdivision of sites and corner sites. It states '*The development of additional new housing, which respects the amenity and character of the existing residential area and is coherent and well designed, can contribute to enhancing the vibrancy and character of an existing area while also contributing to the efficient sustainable use of serviced lands*'.

Chapter 17 refers to Development Management Standards. Minimum floor area for a two bedroom house is noted as being 85sq.m in Table 17.4. Table 17.5 states that minimum private open area for a two bedroomed house is 55sq.m. Table 17.9 refers to car parking requirements which are 2 spaces per dwelling.

## 5.3. Natural Heritage Designations

There are a number of Natura 2000 sites within 15 km of the site as follows:

- Mouds Bog SAC Site Code 002331
- Ballynafagh Lake SAC Site Code 001387
- Ballynafagh Bog SAC Site Code 000391
- Pollardstown Fen SAC Site Code 0396

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal has been lodged against the decision of the planning authority to grant permission. It is submitted by the Loughbollard Residents Association. In summary it states:

- Removal of the boundary wall was reported to the Council and assigned a reference.

- Photos included – state that the removal of the block wall is intended to give the impression that the site is large enough to accommodate a development.
- Note the proposal shows the removal of a shed within the site boundary. This shed was the subject of unauthorised development complaints in the past as it resulted in the loss of public ground including the turning hammerhead.
- Closure of gable end wall should be subject to planning and fire assessment. There is no public record of this approval.
- The proposal would result in a terrace development which will devalue no.80.
- Proposed new pedestrian entrance does not take account of the boundary hedge between Loughbollard and Hillview Green. The entrance is of a poor standard.
- The proposal sets out 3 car parking spaces to the rear. The lane already serves 22 dwellings and is 4m in width. Additional movements would result in adverse impact on existing residents. Refers to a fire incident in no.77.
- Fire hydrant that serves all 22 properties is at the very top of the lane to the rear of no.79. There is persistent parking behind no.79 and it obscures access to the hydrant.
- Refers to foul water issues in Clane – considers proposal premature and notes issues with water pressure.
- They take little consolation from condition no.2. Earlier planning permission clearly showed the development had no separation from the boundary.

## 6.2. Applicant's Response

The applicant responded to the appeal and addresses each point made by the appellant. In summary it states:

- References the initial submission of the appellants to Kildare County Council on 3<sup>rd</sup> August 2017.
- Considers appeal invalid due to inconsistency between the named parties. Concerned that submission gives impression that all residents object.

- Point about boundary is hearsay and is an attempt to confuse the matter by introducing incorrect information about a shared boundary wall.
- The shed to the rear is in situ for c.30 years, 15 years longer than the applicant owns the subject property. No information was forthcoming in his solicitors search about the shed being unauthorised development.
- Considers closure of gable end wall a non-issue.
- Development will contribute to an enhancement of value of all houses, as it will remove the eyesore of the shed and will provide an additional 3 car parking spaces within the grounds of the development.
- The 3 car parking spaces are not in the laneway but within the grounds and will help alleviate any parking issues. Any alleged issue with access is the responsibility of all users of the lane.
- Applicant is complying with Development Plan standards by providing 3 spaces – occasional illegal parking is being hyped up by the submission.
- Cars do not block the fire hydrant but if this has occurred in the past, it would be illegal parking which could happen anywhere.
- Considers points relating to foul and water supply are attempts to confuse the situation and are non-issues.
- Notes same dwelling on same footprint was approved on appeal to the Board and further extended for five years.
- References boundary wall issues and notes distance between his proposed dwelling and new housing estate is c.2m which was deemed acceptable by the planning process.

### 6.3. Planning Authority Response

The Planning Authority responded with a submission from the Chief Fire Officer. In summary it states:

- The CFO states that the development is subject to the Building Control Legislation and required to comply with the requirements of Technical

Guidance Document B. The closing of the gable wall does not breach any of these requirements.

- With respect to the fire hydrant, it is stated that the laneway being 4m wide is enough for a fire tender to drive down and the absence of a hammerhead will mean it has to reverse down the lane. Any parking in the lane will hamper the tender.
- Ideally all hydrants should be accessible all the time. There are other hydrants in the estate and KCC also carries water. A condition which requires a yellow box or barrier to prevent parking over the hydrant should be considered.

#### 6.4. Further Responses

The response of the Planning Authority was circulated. The applicant stated:

- The party wall will be constructed in accordance with all Building Regulations.
- The off-street parking will reduce pressure on parking and allow for better turning at the end of the laneway.
- With respect to a yellow box condition, the fire hydrant is outside of his control. It is less likely that people will park in front of a driveway. To place onerous conditions outside of the applicant's control would be unfair, however he is happy to facilitate a yellow box over the fire hydrant as opposed to placing a barrier over/around it, as this would reduce a vehicles ability to turn.

The appellant stated:

- Welcome CFO's statement that parking in the laneway hampers the fire engine.
- Refers to CFO comments about other hydrants – they are well outside the area and beyond 45m.
- Disappointed that CFO did not deal with their comment about the 2005 fire or the water pressure.
- Car parking space CP3 covers the hydrant.



- Reason appellants referred to gable wall was because of a planning issue, as these works were carried out well in advance of any planning application and in anticipation of a grant.

The applicant's response to the Planning Authority was circulated. The appellant responded. In summary it states:

- Refers to applicant's reluctance to accept CFOs recommendation about a yellow box – point out it is because the application proposes that one of the three parking spaces covers it.
- Refer to hammerhead not being allowed to function due to shed.
- Refers to fire and issues fire tender had with access.

## 7.0 **Assessment**

The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Residential and Visual Amenities
- Boundary wall
- Parking and lane access
- Services
- Appropriate Assessment.

### 7.1. **Residential and Visual Amenities**

- 7.1.1. The area is zoned Existing Residential, therefore the proposed development is in accordance with the zoning. The dwelling meets all the minimum standards in terms of minimum room sizes and private amenity area. The dwelling is designed to integrate with the existing dwellings and the materials to be used match the existing dwellings.

- 7.1.2. The appellant expressed concerns with the addition of a dwelling thereby turning the semi-detached block into a terrace. I accept that the area is predominantly semi-detached but having regard to the particular location of this proposal, I do not consider that it will seriously negatively impact on the visual or residential amenities of the area. The existing dwelling is at the end of a cul-de-sac which is only accessed from the front via a footpath. Vehicular access is from the rear. During my site visit I viewed the dwellings from the opposite side of the large green area to the front - the Hillview Green area. Having regard to the distances, the existing trees and landscaping, I am satisfied that the addition of a dwelling to form a small terrace of three will not look incongruous nor will it introduce a discordant element into the street.
- 7.1.3. In conclusion, I am satisfied that the addition of one dwelling in this location will not cause serious injurious impact to residential amenities and the introduction of a third unit that meets all minimum standards will not seriously injure visual amenities.

## **7.2. Boundary Wall**

- 7.2.1. The issue of the boundary wall was raised by the appellant at submission and appeal stage. It is contended that the boundary wall has been moved to provide additional area to enable the second dwelling.
- 7.2.2. The applicant states that the area for the proposed dwelling is the exact same as that identified in the 2005 application. The drawings appear to indicate an existing 1.8m high concrete post and panel fencing set back from the western boundary of the proposed new dwelling but outside of the redline boundary and within a third party's land. However it does appear that the dwelling is being built up to the land ownership boundary i.e. parallel to the redline boundary.
- 7.2.3. During my site visit, I noted that the nearest dwelling under construction to the west is set back from the concrete post and panel fence by approximately 1m. Should the Board consider granting permission, I consider it appropriate to include a condition requiring the western boundary of the proposed new dwelling to be set back from this concrete post and panel fence by 1m, to ensure that the residential amenities of occupants of both new dwellings are not negatively impacted. The drawings indicate

that it is setback but there is no distance clearly marked on the drawings. Drawings indicating this setback clearly should be submitted to the Planning Authority.

- 7.2.4. With respect to ownership of the lands, I refer the Board to Section 34(13) of the Planning and Development Act which states that an applicant is not entitled to develop solely on receipt of planning permission. I note that the owner of the lands to the west, where the housing development is under construction, has not objected.
- 7.2.5. I am satisfied based on the information on file, that the development proposed is within the redline boundary and Section 34(13) of the Planning and Development Act, 2000, as amended applies.

### **7.3. Parking and Lane Access**

- 7.3.1. The issue of the proposed parking spaces was raised by many of the objectors at planning authority stage and again as part of the appeal. The concerns relate to loss of a hammer head, congestion on the lane and concerns with emergency vehicle access.
- 7.3.2. The Chief Fire Officer responded to the appeal and did not express concerns with accessing the lane. I am satisfied on this basis that the proposal will not hinder the emergency services. I also accept that if there is difficulty with accessing the lane (should a car be parked along the lane for example) that this situation could occur with or without the subject dwelling.
- 7.3.3. It is proposed to provide 3 no. car parking spaces to the rear. The drawings indicate that CP3 is for the existing dwelling and CP1 and CP2 are for the new dwelling which complies with the Development Plan standards of 2 spaces per dwelling. I consider the number of spaces to be acceptable. I also noted that there are opportunities for on-street parking at the top of the laneway on the avenue.
- 7.3.4. The existing rear garage/shed is being demolished to enable access to the spaces. Currently the shed is at the top of the lane. The applicant states that the shed has been there in excess of 30 years, long before he bought the property. The appellant states that it was erected without authorisation and resulted in the removal of the hammerhead. The history of the shed is not on file but it is shown within the redline boundary, thereby indicating it is in lands within the ownership of the applicant. Notwithstanding this, I agree that its removal will improve the visual amenities and

provide more room for manoeuvring cars, which will be a benefit to all users of the lane.

- 7.3.5. The issue with congestion on the lane was raised as part of the submissions and the appeal. The proposal indicates that the three spaces will be within the applicant's lands and I am satisfied that it will result in an improved parking regime at the end of the lane.
- 7.3.6. The other concern raised was with respect to the location of the Fire Hydrant. The appellant states that CP3 will be located directly above the hydrant. Having regard to my site visit, I noted that the car park space is likely to be above the hydrant. I consider a condition can be applied requiring that this hydrant is moved at the developer's expense, out into the middle of the lane, in accordance with the requirements of the Chief Fire Officer, should the Board consider granting permission.
- 7.3.7. In conclusion, I consider the proposal to place three car parking spaces within the boundary of the dwelling to be an improvement on the current arrangement. I consider that the removal of the shed will improve visual amenities which will be a benefit to all the residents.

#### 7.4. **Services**

- 7.4.1. The appellant refers to concerns with foul and water services. There may be localised issues with these services in the estate, however I do not consider that the addition of one extra house will further exacerbate any existing issues. I am satisfied that the addition of one dwelling will not seriously impact the amenities of the existing residents.

#### 7.5. **Appropriate Assessment**

Having regard to the nature and scale of development proposed and to the nature of the receiving environment, 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.

## 8.0 Recommendation

I recommend that planning permission should be granted for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the residential zoning of the site under the Clane Local Area Plan 2017 – 2023, and compliance with the development standards as set out in the Kildare County Development Plan 2017 – 2023, it is considered that the proposed development, subject to compliance with the conditions below, would not detract from the character of the area or the pattern of development in the vicinity, would not seriously injure the residential amenities of the area and would be acceptable in terms of traffic safety. The proposed development 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, 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 proposed development shall be amended as follows:
  - a) The proposed development shall be set back from the existing concrete post and panel western boundary by 1m.
  - b) The existing Fire Hydrant shall be removed at the developer's expense, out of the footprint for the car parking spaces, to the Planning Authority's satisfaction.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interests of visual and residential amenity.

3. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

4. Water supply and 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.

5. Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwelling without a prior grant of planning permission.

**Reason:** In order to ensure that a reasonable amount of private open space is provided for the benefit of the occupants of the proposed dwellings.

6. Notwithstanding the provisions of Article 10(4) of the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, no room in the proposed house shall be used for the purpose of providing overnight paying guest accommodation without a prior grant of planning permission.

**Reason:** In order to prevent overdevelopment of the site in the interest of residential amenity and traffic safety and convenience.

7. Both rear gardens shall be bounded by block walls, 1.8 metres in height, capped, and rendered, on both sides, to the written satisfaction of the planning authority.

**Reason:** In the interest of residential and visual amenity.

8. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, parking for contractors and off-site disposal of construction/demolition waste,.

**Reason:** In the interests of public safety and residential amenity.

9. The existing shed/garage shall be demolished as proposed and the area made good and resurfaced to match the materials used in this area of the cul-de-sac.

**Reason:** In the interest of residential and visual amenity

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Ciara Kellett  
Inspectorate

21<sup>st</sup> December 2017