



An
Bord
Pleanála

Inspector's Report ABP-302363-18

Development	Retention of a boundary wall between agricultural lands and neighbouring dwellings and associated site development works
Location	The Rock Road, Haggardstown, Blackrock, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	18/448
Applicant(s)	Donal and Caroline Carroll
Type of Application	Retention
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Sharon, Shirley and Olivia McArdle2. St Francis National School Board of Management
Observer(s)	<ol style="list-style-type: none">1. Audrey McAllister2. The Rock Road Residents
Date of Site Inspection	14 th November 2018
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.8 ha, is located on the Rock Road in Haggardstown, Blackrock, Dundalk, Co. Louth. The appeal site is located to the rear (north west) of an existing row of 5 No. detached dwellings located on the northern side of the Rock Road. An access lane provides access from the Rock Road to the appeal site. The applicants own the middle house of this row of 5 No. houses, as well as further lands to the north west of the appeal site. St Francis' National School is located to the north east of the appeal site.
- 1.2. The appeal site comprises a grassland area, which appears to be used as part of the applicants' rear garden, giving the applicants a T-shaped garden, which extends behind the two houses to either side. Concrete blockwork walls are located along the southern boundary of the appeal site and the wall for which retention permission is sought is located to the rear of the two dwellings to the west of the applicants' house.
- 1.3. A number of trees have been planted along the southern boundary of the appeal site, and the site falls from west to east, resulting in the wall having a number of steps in height.

2.0 Proposed Development

- 2.1. Retention permission is sought for a boundary wall between agricultural lands and neighbouring dwellings and associated site development works.
- 2.2. The wall for which retention permission is sought is a concrete blockwork wall with a number of piers and concrete capping. It is c. 49m long, and is typically 2.4 – 2.5m high.
- 2.3. The cover letter submitted with the planning application states that the wall is intended to provide security and privacy.
- 2.4. A letter from the owner of the dwelling bounding the eastern portion of the wall (Gerry and Marie Daly) was submitted with the application, stating that they support the presence of the wall, that it does not negatively impact on them or their property, and that it enhances the privacy and security of their property. They also state that they have no difficulty with its height or materials, and that it is structurally sound with strong foundations.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Louth County Council decided to grant retention permission and the following summarised condition is noted:

- **C2:** Within 3 months of the date of the final grant of retention permission, the developer shall submit a revised site layout plan detailing the location of the 225mm diameter public foul sewer and its access covers. The revised plan shall also detail a 6m wide wayleave centred on the public foul main and shall be submitted to and agreed with Louth County Council. No part of any permanent structure shall encroach into this wayleave area.

3.2. Planning Authority Reports

3.2.1. The Planning Officer's report can be summarised as follows:

- While no application for residential development has been submitted, the provision of such a wall would not be an uncommon feature/requirement as part of a planning application and is a requirement under Section 6.7.13 of the CDP.
- Principle of development is acceptable.
- Size, scale and massing of wall is not considered out of keeping with the character of the surrounding area. The school to the north east had a 2.4m high paladin fence approved.
- Existing wall is not visible from any public vantage point and there is no sustained inward views of the wall from either side of the Rock Road.
- Soft landscaping provided will aid integration over time.
- The boundary treatment is not causing any harmful impact to the visual amenity of the surrounding area.
- Adjoining houses have long gardens to the rear, with some at a higher level than the application site.

- Separation distances are 20 – 25m and it is not considered that the development is causing any harmful impact to residential amenity in terms of overbearing, overshadowing, loss of outlook, loss of natural light, loss of privacy or devaluation.
- AA is not required.
- Majority of issues raised are not planning-related and relate to civil matters.
- In terms of the wall being structurally unsound, this is a non-planning matter. Officer of Louth County Council inspected the wall and considered that it is not a dangerous structure.
- On inspection of the planning constraints map it is evident that the wall is sited further north, away from the existing foul pipe. Irish Water/Sanitary Services have no objection, subject to a 6m wayleave.

3.3. **Other Technical Reports**

3.3.1. **Irish Water/Sanitary Services:** No objection, subject to conditions.

3.3.2. **Dangerous Structure Report:** At this present point in time the wall is not considered to be a dangerous structure within the meaning of the Local Government (Sanitary Services) Act 1964, in that it is not likely to be dangerous to the safety of any person.

3.4. **Prescribed Bodies**

3.4.1. None.

3.5. **Third Party Observations**

3.5.1. A number of third party observations were received by the Planning Authority. The issues raised were generally as per the appeals and the observations on the appeals.

4.0 Planning History

4.1. Appeal Site

4.1.1. I am not aware of any recent relevant planning history on the appeal site.

4.2. Surrounding Area

4.2.1. **Reg. Ref. 18/439:** Retention permission granted to Donal and Caroline Carroll in October 2018 for boundary wall between two domestic dwellings. This is a wall between the applicant's house and the adjacent house to the south west. Condition 2 requires the height of a portion of the wall to be lowered within 3 months.

5.0 Policy Context

5.1. Dundalk and Environs Development Plan 2009-2015

5.1.1. The site is governed by the policies and provisions contained in the Dundalk and Environs Development Plan 2009-2015.

5.1.2. The appeal site and surrounding area, including the agricultural lands to the north, are zoned 'Residential 1, to protect and improve existing residential amenities and to provide for infill and new residential developments.

5.1.3. Section 6.6.7 relates to infill/backland development. It states that the design and scale of the proposed development should be in keeping with the surrounding character of the area. The proposed design, orientation and massing shall not cause any unacceptable overbearing or overshadowing on existing dwellings and the applicant will be required to demonstrate that there are no adverse effects on the existing buildings. It also states that materials and form shall respect those which are prevalent within the immediate vicinity of the site.

5.1.4. Section 6.7.13 relates to boundary walls and states that a 2 metre high masonry wall should be provided along the rear boundary of all new residential proposals.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located within or immediately adjacent to any sites with a natural heritage designation. The closest such sites are Dundalk Bay SPA and SAC (Site Codes 004026 and 000455) which are c. 1km to the east. Dundalk Bay is also a pNHA.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Two third party appeals were lodged by Sharon, Shirley and Olivia McArdle and the Board of Management of St Francis National School, respectively. The issues raised in the appeals can be summarised as follows:

- The new wall is at risk of collapse.
- The gap between the new wall and the existing garden wall of the adjoining property is dangerous and could cause the entrapment of a child. Gap cannot be successfully infilled.
- School is adjacent to the wall and wall should be removed in the interests of child safety.
- Issues of health and safety are referenced in planning legislation and can form the basis of a refusal of permission in the interests of proper planning and sustainable development.
- There is no evidence that the wall is safe, built in compliance with building regulations or that the gap can be eliminated by infill.
- Numerous incidents in the past of walls collapsing without warning.
- Loss of amenity and depreciation in property values.
- Gap provides nesting conditions for vermin.
- Impact on visual amenity of rough masonry wall protruding above existing wall. Impact on habitable rooms to rear of appellants' property.
- Lack of consultation.

- Precedent for future walls.
- Wall is built over wayleave and over connecting pipes from a number of houses to the public foul sewer.
- Newly planted trees will not aid integration and their roots will damage the pipes and wall foundations.
- Encroachment on and damage to existing garden wall.

6.1.2. The McArdle appeal included a planning report from Urban & Rural Planning Associates and a copy of their earlier submissions to the Planning Authority, including a report from Kavanagh Forensics.

6.1.3. The Kavanagh Forensics report addresses the engineering design and construction of the wall and concludes that both the wall and its foundations are inadequate and should be taken down and rebuilt in accordance with Eurocode design standards.

6.1.4. The Urban & Rural Planning Associates report can be summarised as follows:

- The wall is unacceptable in terms of its size, scale, massing, materials and design, which is out of character with its surroundings.
- Wall has a detrimental impact on adjoining residential amenity and devalues property. Outlook from the rear windows of a house is an essential component of residential amenity.
- The structure per se is not a planning matter, but the repercussions to the adjoining residents of its being structurally unsound and its juxtaposition to the homeowner's wall is a planning matter.
- The perception of fear from a proposal is a recognised planning matter. The wall does not create a perceived or phantom fear, but a real danger, reported by qualified engineers. This is supported by case law.
- Retention of wall would set an unfortunate precedent.
- Board is referred to its decision under case PL06D.241538 (Reg. Ref. D12A/0427).

6.2. Applicant Response

6.2.1. A response to the appeals was submitted on behalf of the applicants by EHP Services. The issues raised can be summarised as follows:

- Appeal is frivolous and vexatious.
- The new wall was constructed on the basis that it constituted exempted development to enhance security and privacy and re-establish a boundary following the deterioration of a post and chain link fence.
- Appellants have initiated legal proceedings, with the case being deferred until the outcome of this appeal.
- The character of the area is defined in part by a diversity of boundary treatments.
- The wall does not exceed the height of the McArdles' side boundary wall to the east, or the trellis fence height in their sub-divided garden.
- The walls are a conventional and unexceptional form of boundary treatment and are in keeping with the character of the area in terms of materials, height and negligible impact.
- Reliance upon non-planning related guidance is tenuous and irrelevant.
- Gap is 200mm – 340mm and is too narrow to be used for anti-social behaviour.
- Appellants wish to prevent the gap being infilled to pre-existing ground level. They wish to have wall removed to restore view into the applicants' property.
- It is factually incorrect to state that the adjoining agricultural field is easily accessible. Fence around school is 2.4m high.
- On legal advice the applicants have not yet backfilled to the original ground level not completed minor finishing works. The applicants remain open to addressing any reasonable solution regarding the cavity between the walls at both a civil law level or if it is deemed appropriate by the Board.
- Matters pertaining to build quality, structural stability and pest control are within the purview of building control or environmental health regulations.

- Kavanagh Forensics report is a summarised opinion based on conjecture. Its limited focus inherently undermines the veracity of the McArdles' appeal.
- Report prepared by Roger Cagney Chartered Engineers rebuts this report and provides an assessment of the quality and structural stability of the walls.
- At least 5 engineers have looked at the wall and foundation and none have found fault with it. It does not present a health and safety danger.
- The McArdles' house has a finished floor level at roughly the same level as the top of their 1m high boundary wall. Only the upper most 0.785m of the new wall is visible which is insufficient to be considered obtrusive or overbearing.
- The newly planted trees will partially obscure and soften the new walls and lessen their visual impact.
- No overshadowing will occur due to orientation.
- The right to a view is not expressly or implicitly protected under planning legislation or policy.
- The new wall does not affect the appellants ability to use and enjoy their garden. The perceived negative impact is ameliorated by the separation distance.
- The supposed perception of fear is a contrivance to distract from a weak planning argument.
- The statement regarding devaluation is unsupported by documentary evidence and should be disregarded.
- There is no Council wayleave registered as a burden against the applicants' legal title. The applicants are more than willing to co-operate with the Council in compliance with condition 2(a).
- The sewer is located c. 5.5m to the north of the wall and at a depth of 2.6m. Neither the walls nor the trees will impact on this, and the trees can be removed in the future if necessary.
- The planting of trees is exempted development.

6.2.2. The applicants' response was accompanied by a number of Appendices, including letters/reports from P. Herr & Associates Civil Engineering & Building Surveyors and Roger Cagney Chartered Engineers and Property Registration Authority mapping.

6.3. **Planning Authority Response**

6.3.1. The Planning Authority's response can be summarised as follows:

- All issues raised were addressed in Planner's Report.
- The Board is asked to uphold the Planning Authority's decision.

6.4. **Observations**

6.4.1. Two third party observations were received from Audrey McAllister and a group of residents of Rock Road, respectively. The issues raised were generally as per the appeals, as well as the following:

- Dangerous precedent for additional walls to rear of other houses backing onto applicants' lands.

6.5. **Further Responses**

6.5.1. Appellants' Responses to Applicants' Response.

6.5.2. Both appellants submitted responses to the applicants' response to the appeals. The following additional issues are noted:

- Each engineer acknowledges that action is required to address child safety issues, and appellants' concerns are thereby confirmed.
- Contrary to what it stated by applicants, the wall is easily accessible to children.
- Area behind wall was not used as a garden until the wall was built.
- The Dangerous Building Report refers to a wall constructed of blocks and brick which suggests that it was not the new wall. The report does not address the gap.

- Applicants' own engineer acknowledges that the gap is dangerous insofar as children or animals could get trapped.
- Report from auctioneer and valuer confirms that the wall will cause a diminution in value of €100,000 - €120,000.
- Report from appellants' engineer states that the new wall is unable to achieve the stability requirements of the Eurocode Design standards and is therefore at risk of collapse.
- The wall does not have the strength required to support additional loading from infilling or bridging over the gap.
- The wall varies in height and exceed the planning drawing dimensions. The ground level has been subsequently increased on the applicants' side.
- Applicants' accounts of meetings are disputed.
- Health and safety issues are planning matters.
- Overbearing, visual intrusion and impact on lower garden area.
- A copy of a wayleave dated 24th September 1977 is enclosed. This extends out 17m from the rear boundaries of the properties into the field and is a legally enforceable agreement.
- Appellants have a well-established right of conduit.
- Appellants set out the sequence of events in their submission.

6.5.3. The response submitted by the McArdle family included a number of appendices, including letters from ODM Surveyors & Engineers, a letter from Property Partners Laurence Gunne, a further report from Urban & Rural Planning Associates, a further report from Kavanagh Forensics and a copy of what is stated to be a wayleave agreement dated 24/09/77.

7.0 **Assessment**

7.1. I consider that the key issues in determining this appeal are as follows:

- Residential and visual amenities.
- Safety.

- Wayleave.
- Appropriate Assessment.
- Environmental Impact Assessment

7.2. Residential and Visual Amenities

- 7.2.1. The wall for which retention permission is sought is located to the rear (north west) of the two houses to the west of the applicants' house, and separates those houses from the applicants' T-shaped garden area. I note that this garden area, and the agricultural lands beyond this to the north west, which are also owned by the applicants, are residentially zoned.
- 7.2.2. Having regard to the site context, I consider that the only properties with the potential to experience negative impacts on their residential and visual amenities are these two properties to the west of the applicants' dwelling. One of these properties is occupied by one of the appellants (McArdles), while the applicants have submitted a letter from the owners of the second property, indicating that they have no difficulty with the height of the wall and that it enhances their privacy and security.
- 7.2.3. As a result of the topography of the area, the wall for which retention permission is sought is c. 2.5 – 2.6m high when measured from the applicants' side, but it is c. 1.8m high when measured from the appellants' side, due to their garden being located at a higher level than the applicants' land to the north west. I also note that the appellants' house and the portion of their rear garden closest to the house is located at a higher level again, roughly level with the top of the c. 1m high wall which is adjacent to the applicants' wall.
- 7.2.4. With regard to overshadowing and loss of sunlight/daylight, I note that the appellants' rear garden is c. 17m long, and having regard to the height of the wall relative to their garden level and its location north west of their house and garden, I do not consider that there is potential for any significant overshadowing or loss of sunlight and daylight. Similarly, I do not consider that the wall results in significant overbearing impacts due to its c. 1.8m height relative to the appellants' lower garden level, the elevated positioning of their house relative to the wall and the length of their rear garden. I also note in this regard that the height of the wall, when viewed from the appellants' side, is consistent with the blockwork boundary wall to the north

eastern side of their rear garden and the timber trellis fencing which subdivides their rear garden.

- 7.2.5. With regard to the devaluation of property, I see no particular reason why a blockwork wall at the end of a c. 17m long garden which has a height of c. 1.8m relative to garden level would result in any material devaluation of the appellants' property. I note that the report from Property Partners Laurence Gunne which the appellants have submitted appears to be based upon the impact on property value of a wall that is at risk of collapse. Since I do not consider that it would be appropriate for the Board to take a view in relation to structural issues, and that the dispute between the parties in relation to this issue is ultimately of a civil or legal nature (see Section 7.3 below), I do not consider that this would be a reasonable grounds of refusal.
- 7.2.6. With regard to the impact on visual amenities, I do not consider that the wall is visually intrusive or obtrusive. While it does somewhat change the outlook from the appellants' property, due to its increase in height above the c. 1m height of the wall which previously separated the two sites, I note that there is no general right to a view, and having regard to the generally built-up nature of Rock Road and the residential zoning of the agricultural lands to the rear, I do not consider that the wall is excessively high. By way of comparison, I note that Section 6.7.13 of the Development Plan states that a 2m high masonry wall should be provided along the rear boundary of all new residential proposals. While a rendered finish to the wall would be of benefit in terms of mitigating its visual impact, I consider that it is mitigated to an acceptable extent by the elevated positioning of the appellants' house relative to the lower garden level and the planting of trees to the rear, which will soften its impact over time.
- 7.2.7. In conclusion, I do not consider that the development for which retention permission is sought seriously injures the visual or residential amenities of the area or property in the vicinity.

7.3. **Safety**

- 7.3.1. The appellants and observers have raised health and safety issues with regard to the wall for which retention permission is sought, particularly with regard to its

structural integrity, its foundations and the presence of a gap between the wall and the existing boundary treatments.

- 7.3.2. Both the applicants and the appellants have submitted various engineer's letters and reports in relation to this matter, with each party's respective engineers taking differing views of the matter. I also note that a Dangerous Structure Report prepared by the Local Authority formed the view that the wall does not comprise a dangerous structure at the present time, although the appellants dispute this report.
- 7.3.3. In my opinion, the structural adequacy of the wall and its foundations are not matters that it would be appropriate for the Board to adjudicate on. I would instead note that the onus is on the applicants and their advisors/contractors, as relevant, to ensure that the design and construction of the wall was undertaken in a safe manner, in accordance with their obligations under separate codes, and that it does not pose a risk to public safety and I further note that the granting of retention permission would not relieve them of their responsibilities in this regard, since as stated in section 34(13) of the Planning and Development Act 2000, as amended, a person shall not be entitled solely by reason of a permission to carry out any development.
- 7.3.4. Likewise, with regard to the gap between the appellants' wall and the applicants' wall, I do not consider that this is fundamentally a planning issue. Notwithstanding this, on the basis of the information on file, it is not absolutely clear to me that works to either infill the gap or to close it with some form of flashing could be completed without encroaching on third party property boundaries. I therefore consider this to be a civil/legal matter, and I do not recommend that the Board attach a condition regarding this matter, should they be minded to grant permission.
- 7.3.5. In conclusion, I consider that the disputes between the parties in relation to matters of structural integrity, construction methods and resultant health and safety risks that may or may not arise are ultimately matters that would be dealt with more appropriately outside of the planning appeal process.

7.4. **Wayleave**

- 7.4.1. It appears that a 225mm public foul sewer runs across the applicants' lands, parallel to the wall for which retention permission is sought. The Planning Officer's report states that on inspection of the planning constraints map the wall is sited away from

this existing foul pipe and I note that the submission from Irish Water states that they have no objection to the development, subject to a 6m wayleave centred on the foul main.

- 7.4.2. The appellants contend that there is already a wayleave in place along this foul sewer, which extends for a width of 17m to facilitate their conduit to the sewer. They contend that the wall has been built within this wayleave and that it is built over their conduit to the sewer. In support of this they have submitted a document dated 24th September 1977 and associated map, which is stated to be a wayleave agreement between Mrs E. Taaffe and Louth County Council. The applicants contend that there is no Council wayleave registered as a burden against their legal title, and they have submitted copies of Property Registration Authority mapping. The applicants also state that the sewer is located c. 5.5m to the north of the wall and that they are more than willing to co-operate with the Council in compliance with condition 2(a) (i.e. a 6m wayleave).
- 7.4.3. Section 5.13 of the Development Management Guidelines for Planning Authorities, 2007, states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that only where it is clear that the applicant does not have sufficient legal interest should permission be refused on that basis, and that if some doubt still remains, the Planning Authority may decide to grant permission. It notes that such a grant of permission is subject to the provisions of section 34(13) of the Planning and Development Act 2000, as amended, which states that a person is not entitled solely by reason of a permission to carry out any development. In other words, the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.
- 7.4.4. On the basis of the information before the Board, I consider it appropriate to follow the guidance set out in the Development Management Guidelines for Planning Authorities. Issues in relation to the titles and rights over land are ultimately civil/legal issues, and I do not recommend that the issue of a wayleave should form the basis of a refusal of retention permission. I do, however, recommend including Irish Water's recommended condition in the interests of orderly development and protection of public infrastructure.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the development for which retention permission is sought, and noting the context of the appeal site and its location outside of any Natura 2000 sites, I am satisfied that no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. Environmental Impact Assessment

- 7.6.1. Having regard to the nature and scale of the development, the nature of the receiving environment and proximity to the nearest sensitive locations, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. I recommend that retention permission should be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the zoning objectives for the area and the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the development would not seriously injure the visual or residential amenities of the area or property in the vicinity and would 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.

Reason: In the interest of clarity.

2. Within 3 months of the date of this Order, the developer shall submit a revised site layout plan detailing the location of the 225mm diameter public foul sewer and its access covers. The revised plan shall also detail a 6m wide wayleave centred on the public foul main and shall be submitted to and agreed with the Planning Authority. No part of any permanent structure shall encroach into this wayleave area.

Reason: In the interests of orderly development and protection of public infrastructure and facilities.

Niall Haverty
Planning Inspector

23rd November 2018