



An
Bord
Pleanála

Inspector's Report ABP 304585-19

Development	Temporary fence (protected structure) and associated site works.
Location	Cois Sruithain, Croom, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	18/1065
Applicant	Matt Costello
Type of Application	Retention permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. refusal
Appellant	Matt Costello
Observer(s)	None
Date of Site Inspection	10/08/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The appeal site runs parallel to the boundary between Cois Sruthain housing estate and a cul-de-sac driveway which provides access to both a number of dwellings and Croom Castle to the south of Croom village centre. The said boundary is delineated by a masonry wall in which there is a gap which may originally have coincided with a gate access.

Planting abuts the wall along the driveway with the area within the estate immediately adjoining forming part of an open space area.

2.0 Proposed Development

The application was lodged with the planning authority on the 01/11/18 with further plans and details submitted 12/04/19 following a request for further information dated 20/12/18.

The fence to be retained on a temporary basis is of heavy gauge steel mesh 27.5 metres in length and 2.5 metres in height. It has steel box poles at 2 metre intervals and is finished dark green/black.

The public notices, in setting out the nature and extent of the development, state that the fence will be removed when the Local Authority erects a secure boundary fence to the estate (now taken in charge).

The fence was erected to prevent trespass onto the applicant's property including trespass to Croom Castle. It is considered necessary for health and safety reasons.

By way of further information, it is stated that a fence on the inner side of the wall would not be effective against trespassers whilst a fence constructed on the wall would be difficult requiring stays to keep it in position. The wall is considered to be 19th century and formed part of the walled garden. The applicant intends to remove the fence when the incidents of trespass cease and to arrange for a suitable set of gates to the historic opening to the walled garden.

3.0 Planning Authority Decision

3.1. Decision

Refuse retention permission for the above described development for two reasons which can be summarised as follows:

1. The proposal and the precedent which it would set and its impact on the established amenity of Croom Castle and the Cois Sruthain residential development would be contrary to the proper planning and sustainable development of the area.
2. The planning authority is not satisfied that the applicant has demonstrated sufficient legal interest to carry out the proposed development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 14/12/18 notes that the stone boundary wall has been identified as part of a recorded monument. It is considered that the fence detracts from the view of the castle. The applicant has been advised that it should either be relocated inside the wall or an alternative fence be constructed on top of the wall. The existing wall is considered to be a suitable boundary between the housing estate and Croom castle. A request for further information is recommended on the matters raised in the Conservation Officer's report summarised below. The 2nd report dated 07/05/19 following further information states that the Planning Authority maintains the view that the fence should not have been constructed in its current location and there are alternative locations available on lands that are in the ownership of the applicant if he wishes to prevent trespass of his property. The fence detracts from the visual amenity of the site of Croom Castle and has a negative impact on the amenity of Cois Sruthain housing estate. A refusal of permission for 2 reasons recommended.

3.2.2. Other Technical Reports

Conservation Officer in a report dated 14/12/18 considers that the positioning of the fence right up against the face of the wall is unacceptable. Whilst this is the 4th

attempt made to retain the fence the documentation standard required for making a planning application relating to a protected structure remains un-achieved. Basic photographic record, drawings to an appropriate scale and statement of justification have not been provided. A refusal of retention permission recommended.

3.3. Prescribed Bodies

Mid West National Road Design Office has no observations.

TII has no observations

3.4. Third Party Observations

None

4.0 Planning History

18/446 – permission refused for retention of temporary boundary fence erected adjacent to protected structure and permission to erect similar temporary fence through unused open space. The 2 reasons refer to loss of public open space and, in the absence of an appropriate conservation report, that the planning authority is not satisfied that the proposal would not materially affect the protected structure.

17/1124 – permission refused for retention of boundary fence erected adjacent to protected structure and permission to erect similar fence on adjoining waste ground. The 2 reasons cited are comparable to those given in file ref. 18/446 summarised above.

16/85 – permission refused to erect a fence between Cois Sruthain and Croom Castle. The 2 reasons are comparable to those given in file refs.18/446 & 17/1124 summarised above.

5.0 Policy Context

5.1. Croom Local Area Plan 2009 (as extended)

Croom Castle is a protected structure with the masonry wall part of a recorded monument within an Architectural Conservation Area.

BNO16 – it is policy to protect and enhance the character of structures within the designated ACA by seeking to ensure that development:

- (b) contributes to or enhances the character and streetscape of the area,
- (c) avoids a negative visual impact on the landscape and visual appearance of the area.

BNO18 – it is policy to safeguard the value and settings of archaeological remains and monuments in and around Croom.

The site is within an area zoned Special Control Area in which the impact of any development on the setting of Croom Castle and on archaeological heritage shall be a prime consideration. Only development that can demonstrate a high quality of design may be considered.

5.2. **Natural Heritage Designations**

None in the vicinity.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The 1st Party appeal against the planning authority's notification of decision to refuse retention permission, which is accompanied by supporting detail, can be summarised as follows:

- The sensitivity of the site has been dealt with in the further information response by the applicant's Conservation Architect. The report and attached photographs demonstrate that the fence has been sensitively designed and that it is not obtrusive in any views of the castle.
- The fence is necessary to prevent trespass and injury. The party wall is in a structurally poor and unstable condition. The Council would be liable in the event of an accident.
- The applicant is willing to remove the fence when the matter of a proper and permanent fence is resolved.

- The issue of sufficient legal interest was not raised during the assessment of the application by the planning authority. If it is an issue it should have been raised at further information stage. A letter from the owner of the site at the time the fence was erected is attached.

6.2. **Planning Authority Response**

None

6.3. **Observations**

None

6.4. **Section 131 Notice**

Due to the location of the site adjacent to Croom Castle which is a protected structure certain prescribed bodies were invited to make a submission on the appeal. No responses received.

7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

- Legal Interest
- Impact on Setting of Protected Structure

7.1. **Legal Interest**

As noted above the current application constitutes the 4th seeking permission for a security fence to protect the applicant's property against trespass including trespass of Croom Castle. The fence is erected alongside the masonry wall which delineates the boundary between his property and that of the Cois Sruthain housing estate. The fence is erected outside of his property and within the housing estate grounds. He seeks its retention until the Local Authority erects a suitable fence. At the outset the applicant secured the consent of the owners of the estate to erect the fence, a copy of which accompanies the appeal. However, in the intervening period the

estate has been taken in charge by the local authority and, de facto, its consent is now required to retain the fence on the lands. In view of the consistent view taken by the planning authority as to the unsuitability of the fence in its decisions to date, it is not unreasonable to assume that such consent would not be forthcoming. As per the planner's report on file the existing masonry wall is considered to be most appropriate boundary between the housing estate and Croom Castle.

I acknowledge the appellant's frustration that the matter of consent was not raised at further information stage and the perceived failure by the local authority to engage in a constructive debate in terms of addressing trespass and health and safety issues. Notwithstanding, on the basis of the above, I consider that the applicant does not have sufficient legal interest to make the application. I therefore concur with the planning authority's reason for refusal in this regard.

7.2. Impact on Setting of Protected Structure

As per the current Croom LAP the site is within a Special Control Area in which the impact of any development on the setting of Croom Castle and on archaeological heritage shall be a prime consideration. Only development that can demonstrate a high quality of design may be considered.

As noted above the purpose of the mesh fence is prevent trespass onto the applicant's property and trespass of Croom Castle via Cois Sruthain housing estate. The area in the immediate vicinity is open space associated with the estate. The length of fence in question is 27.5 metres. The opening in the wall may have originally allowed access between the sites. Both the castle and the wall, due to their condition, are considered to raise safety concerns, whilst the trespass arising, in its own right, is having further negative impacts on their structural stability. In this regard reference is made by the agent for the applicant to section 58 of the Planning and Development Act, 2000, as amended, which requires the owner to protect such protected structures from endangerment.

The applicant's Conservation Architect in her report submitted by way of further information considers the wall to be 19th century which formed part of the walled garden. It is made from random rubble with crenellations. The wall is at its lowest along the length of the temporary fence. The wall increases in height as it progresses eastwards towards the Old Road and the River Maigue. The wall is

backed by planting along the driveway to the north serving the castle and houses in its curtilage. Croom Castle forms the backdrop to views northwards from the residential estate.

I would concur with the view that the mesh fence painted dark green/black, which is not attached to the wall and is a reversible intervention, is not discernible in views save in close proximity and does not detract from the character or setting of the castle and adjoining house which is a protected structure or views of same from the housing estate. The backdrop of the existing vegetation along the driveway further assists in this regard. As a temporary measure I consider the solution to be reasonable and would suffice until a more appropriate resolution has been agreed on. On this basis it is my opinion that the proposal would not contravene the relevant policies and objectives for the Special Control Area or the protected structure as set out in the current Croom LAP. Should the Board be disposed to a favourable decision a condition stipulating the temporary period for which the fence can be retained would be appropriate.

Appropriate Assessment

Having regard to the location of the site and the nature and scale of the proposed development 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

Having regard to the foregoing I recommend that retention permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has:

- (a) sufficient legal estate or interest in the land the subject of the application to enable the person to retain the fence on the land, or
- (b) the approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of retention permission for the development the subject of the application.

Pauline Fitzpatrick
Senior Planning Inspector

August, 2019