



An
Bord
Pleanála

Inspector's Report

ABP-305259-19

Development	Retention of an existing concrete block intersite boundary wall, rear entrance gates, blockwork piers and associated works.
Location	116 Dunan, Thomastown, Co. Kilkenny,
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	18820
Applicant(s)	Paddy Raggett
Type of Application	Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Kieran Waldron.
Observer(s)	none
Date of Site Inspection	30th December, 2019.
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located in an established residential development to the north of the centre of Thomastown. The site comprises a semi detached two storey house located on a cul de sac, and the development has an open plan front garden area to the houses. The site has space for parking to the western side of the house and this area is separated from the adjoining site to the west (No. 115) by a block wall that extends out beyond the front building line of the two houses (Nos. 115 and 116). It is noticeable that the house at No.115 is located at a lower level than that on the appeal site, and such that there is a significantly greater height of wall to this side of the boundary than is the case when viewed from within No.116.
- 1.2. The rear garden area of the appeal site has been hard surfaced and there is a small shed located close to the south west corner of the site. There is a wooden gate located at the side of No.116 which provides access to the rear garden of the house. This gate is approximately in line with the rear building line of No. 116. The front and rear building lines of No.116 are both located approximately 3 metres further north than the corresponding building lines at No.115.
- 1.3. The stated area of the appeal site is 0.04 ha.

2.0 Proposed Development

- 2.1. The development the subject of appeal comprises the retention of an increase in height of a section of the boundary wall that separates the appeal site from the adjoining house to the west at No.115. The section of wall in question extends over a distance of c.2.4 metres in length running from approximately the rear building line of the house at No.116 and extending in a southerly direction to close to the rear building line of the adjoining house at No.115. Due to the differences in building lines, this section of wall forms part of the boundary of the rear garden of No.116 but is located to the side of No.115 and in an area that is north of the gate that provides access to the rear garden of No. 115.
- 2.2. The increase in the height of the wall is indicated on the submitted drawings as being 0.673 metres and has the effect of raising the overall height of the boundary wall in

this location to 1.728 metres when measured from ground level within the appeal site and to c.2.66 metres when measured from ground level within No.115.

- 2.3. The wall as constructed is capped with a concrete coping which approximately matches with the original and a new pier has been added at the southern end of the raised section of wall. The new section of wall is constructed in concrete blocks similar to those in the original wall, however it is constructed using a stacked bond rather than the running / overlapped bond in the original wall.
- 2.4. A timber gate separating the rear garden of No.116 has been erected and the height of this gate is c. 1.9 metres. This gate is located at the rear building line of No.116, and the retention of this gate forms part of the application which is the subject of this appeal.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to the issuing of a Notification of Decision, the Planning Authority requested further information on the following issues:

- Proposals for the plastering / capping of the wall to address concerns regarding its current unsightly appearance.
- Noted that a shed has been constructed in the rear garden of the site (No. 116) and requested that it be demonstrated that this structure constitutes exempted development and meets any limitations relating to such exemptions.

In response, the request for further information the applicant submitted the following:

- Stated that the wall has a limited impact on visual amenity due to its set back from the road. Also stated that the consent of the adjoining landowner to the plastering of the wall was not available.
- Stated that the shed constructed in the rear garden is exempted development under Class 3 of Regulations being 12 sq. metres in area and 2.4 metres in height. All limitations and conditions relating to Class 3 are stated to be met

as the retained area of open space exceeds 25 sq. metres and the shed has been relocated so as not to oversail the shared boundary with No.115.

3.2. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to a single condition which required the development to be retained in accordance with the submitted drawings as modified by the further plans and particulars submitted during the course of the assessment by the Planning Authority.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The report of the Planning Officer notes the location of the section of wall for which retention is sought and that in principle it is considered acceptable. Noted that it is a party boundary and that the consent of the adjoining property owner is required. Further information is recommended and second report subsequent to the submission of further information states that the planning authority are only able to consider the development in the context of the proper planning and sustainable development of the area and that a person is not entitled solely by a grant of permission to carry out any development. A grant of permission consistent with the Notification of Decision which issued is recommended.

3.3.2. Other Technical Reports

None on file.

3.4. Third Party Observations

An observation was made by the owner of the adjoining property to the west at No.115. The main issues raised in this submission can be summarised as follows:

- Inaccurate project and site description and objection to the ability of a retention application to be submitted.

- Increased height not in keeping with the existing boundary layout and would de value No.115.
- Poor quality workmanship and finishes to the wall.

4.0 **Planning History**

Reference is made in the report of the Planning Officer to the original grant of permission for the residential estate that dates from 2003 (Ref. P03/491) and an extension of duration of this permission which was granted in 2009 (Ref. P09/70).

There is also reference to an enforcement case relating to the wall as constructed, (Ref. ENF17098).

5.0 **Policy Context**

5.1. **Development Plan**

The site is located on lands that are zoned Existing Residential under the provisions of the *Thomastown LAP, 2019* with the stated objective *'to allow for new residential development and other services incidental to residential development.'*

5.2. **Natural Heritage Designations**

The site is not located within or close to any European site. The closest such site to the appeal site is the River Nore SPA which is located c.500 metres to the south of the appeal site at the closest point.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issue raised in the third party appeal:

- That the address of the wall is not correctly stated and should make reference to No.115 and that it is a shared wall.
- That the planning authority have been very generous in facilitating a retention application.
- That it is a breach of the law not to consult a joint owner about an increase in height of a shared wall.
- That the application should have been refused on account of the poor quality workmanship and pier as constructed. This makes the area unsightly. The change in the bond used in the wall construction is unsightly and has a negative impact on the stability of the structure.
- That the further information request refers to the wall being unsightly, yet permission was granted without any improvement in the appearance of the wall being undertaken.
- The development devalues No.115.
- Requested that retention is refused.

6.2. Applicant Response

None on file.

6.3. Planning Authority Response

Planning authority responded to state that it has no further comments to make on the case.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development, Legal and Other Issues.
- Impact on visual and residential amenity.
- Other issues.

7.2. Principle of Development, Legal and Other Issues.

7.2.1. The appeal site is located on lands that are zoned for residential use and which have been the subject of a comprehensive residential development. The works for which retention are sought comprise alterations to the permitted residential layout and, in principle, are considered to be consistent with the zoning objective of the site which is *'to allow for new residential development and other services incidental to residential development'*.

7.2.2. The appellant has raised concerns regarding the shared location of the wall, querying the description provided in the public notices and stating that there is no consent given to works undertaken to the shared boundary wall. Regarding the notices and the location description, I note in the first instance that the application was deemed to be valid by the Planning Authority. The application site is stated to be No.116 Dunan and this is the correct address for the party who undertook the works and made the application which is the subject of appeal. I also note the fact that the description of development provided in the notices makes reference to works to an *'intersite boundary wall'*. Having regard to these factors, and notwithstanding the fact that the application was accepted and determined by the Planning Authority, I do not consider that there is a clear basis on which the application could be deemed to be invalid.

7.2.3. With regard to the legal interest in the boundary wall and the lack of consent of the third party appellant to the undertaking of the works for which retention is now sought, I note the issues raised by the third party appellant. In accordance with section 34(13) of the Planning and Development Act, 2000 (as amended), a grant of permission does not mean that the party shall solely be entitled to carry out or retain any development. The issues raised by the third party regarding their legal interest in the party boundary and the lack of their consent being provided for the works

undertaken remain outstanding and are a legal matter between the parties to the appeal. The following sections address the planning merits of the works for which retention is sought.

7.3. Impact on Visual and Residential Amenity.

- 7.3.1. With regard to residential amenity, the section of raised boundary wall is located such that it is to the side of the appellant's property at No.115. The section of wall in question would not be clearly visible from the private amenity area to the rear of the appellant's house and, while the section of wall is not rendered or plastered, its finish is consistent with the existing boundary treatment on the appellant's side of the boundary and there is a capping. The wall would not result in the overshadowing or obstruction of any windows to habitable rooms in the appellant's house such as would result in a loss of amenity.
- 7.3.2. With regard to materials and workmanship, I note the comments of the third party regarding the bonding used in the blockwork on the extended section of wall and the fact that it does not match that used in the rest of the wall. Given its position to the side of the appellant's house and significantly set back from the public footpath I do not consider that this alternative wall construction has any significant impact on visual amenity. The appeal notes that the request for further information sought that improvements in the appearance of the structure would be submitted and questions why permission was granted in the absence of the submission of such proposals. As stated in the response to further information no proposals for the dressing of the wall on the appellants side were put forward as no consent to the undertaking of such works was forthcoming from the appellant. In any event, as noted above, the bare block finish to the extended / raised section of wall is consistent with the finish to the rest of this section of wall. I also note and agree with the submission of the first party that the location of the section of wall in question is such that it is not clearly visible from the public footpath and would not therefore have a significant negative impact on visual amenity.
- 7.3.3. In terms of structural integrity, the fact that the blocks are laid in a stacked bond and not overlapped in each course may result in some reduction in strength. However the section in question comprises a limited additional height of c.700mm which given

its location at the top of the existing wall should not negatively impact on the integrity of the wall structure. An inspection of the site indicated that the structure to be sound.

- 7.3.4. From an inspection of the site, I note the fact that in its original configuration the boundary wall resulted in a very low height to the boundary wall within the rear garden of No.116 over the section which has been raised. This section of boundary wall effectively comprises the section between the rear building line to the two houses (Nos. 115 and 116) and it would appear appropriate from an amenity and safety perspective that the height of the wall in this section would be raised. Specifically, I note the fact that the original height of the wall over the section in question was approximately 1.05 metres on the appeal site side and that the drop on the other side (No.115) was almost 2 metres and such that there was a potential safety issue for occupants of the rear garden of No.116.
- 7.3.5. The gate as constructed to the side of the house on the appeal site is considered to be acceptable in scale and design and is generally consistent with those on a number of houses in the vicinity. I note that the entirety of the rear garden area of the site at No.116 is hard surfaced (although street view images indicate that it was originally grassed) and that the gate provides vehicular access to the rear garden. No vehicles or materials were observed in the rear garden at the time of inspection and in any event the gate for which retention is sought does not change the ability of vehicles to access the rear garden area.
- 7.3.6. I note the comments made in the third party appeal regarding the development devaluing No.115, however having regard to the issues discussed above, I do not consider that this is the case.

7.4. Other Issues / Appropriate Assessment.

- 7.4.1. I note the comments of the first party with regard to the shed structure located at the south west corner of the appeal site. On the basis of the information submitted and from an inspection of the site this structure does not oversail any site boundaries and would appear to be a form of development which is exempt from the requirement to obtain planning permission.

- 7.4.2. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no **appropriate assessment** issues arise and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that retention permission is granted based on the following reasons and considerations and subject to the attached condition:

9.0 Reasons and Considerations

Having regard to the residential zoning objective for the area and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the retention of the development as constructed would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. 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 retained 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.

Stephen Kay
Planning Inspector

10th January, 2020