



An  
Bord  
Pleanála

## Inspector's Report ABP 305403 -19

---

<b>Development</b>	Construction of two storey dwelling and all associated site works.
<b>Location</b>	Meadowlands, Athboy, Co. Meath.
<b>Planning Authority</b>	Meath County Council
<b>Planning Authority Reg. Ref.</b>	KA190060
<b>Applicant</b>	Mary Davis
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Darren and Claire Bryan
<b>Observers</b>	None
<b>Date of Site Inspection</b>	17 <sup>th</sup> January 2020.
<b>Inspector</b>	Brendan Coyne



## 1.0 Site Location and Description

1.1. The site, which has a stated area of 0.03 hectares, is located at the end of a cul-de-sac within the residential estate known as Meadowlands in Athboy. The site comprises an undeveloped greenfield site at the end of a row of detached two storey dwellings. The ground level of the site rises steeply from the south-western side boundary to the north-eastern side boundary. Lands adjoining the site to the north-east contain a detached two storey dwelling, No. 6 Highfield. The north-eastern boundary of the site separates Meadowlands estate from Highfield and is defined by a timber post and rail fence and dense mature evergreen hedging. The roadside boundary is defined with a timber post and rail fence. The end of the cul-de-sac to the front of the site provides a turning end which leads towards the site. Lands adjoining the site to the south-west contain a detached two storey dwelling, No. 26 Meadowlands. The rear / south-eastern boundary of the site is defined by a timber post and rail fence and a row of dense coniferous trees, which screen the rear garden of the adjacent dwelling No. 46 Meadowlands, located further to the south-west.

## 2.0 Proposed Development

- 2.1. Application as lodged on the 24<sup>th</sup> January 2019 - Permission sought for the following;
- Construction of a detached 2 storey 4 no. bedroom dwelling (181 sq.m.) with habitable attic space,
    - Ridge height of proposal: 8.9m
  - Excavation of the site hillside to ground level along the south-western boundary,
  - Partial removal of the existing timber post rail fence and hedgerow along the front / north-eastern boundary to create a new vehicular entrance serving the site,
  - Provision of 2 no. car parking spaces,
  - Connection to all mains services and all associated site works.
- 2.2. Revised Proposal as submitted by way of Significant Further Information on the 12<sup>th</sup> July 2019:

- Repositioning of the proposed dwelling 800mm to the south west – resulting in an increase the distance between the proposed dwelling and the neighbouring dwelling to the north-east from 2.3m to 3.1m.
- Reduction in the ridge height of the proposed dwelling by 0.8m to 8.1m.
- Omission of habitable attic space and associated rear roof slope rooflight windows,
- Removal of the timber post and rail fence and hedgerow along the north-eastern side boundary and its replacement with a new timber post and rail fence and hedgerow.
- Provision of a 2.7m high concrete retaining wall close to the north-eastern boundary,
- Removal of the existing timber post rail fence and hedgerow along the south-eastern boundary and its replacement with a new 2m high boundary wall.
- Provision of a 2m high boundary wall along the south-western boundary.
- Revisions to the size and treatment of window opes on the south-western side elevation,
- Provision of a roof light to the single storey rear annex.

2.2.1. Documentation submitted includes;

- A Structural Report, prepared by Gordon Mitchell Engineers, regarding the proposed retaining wall. Details include structural calculations and design detail of the proposed retaining wall.
- Revised location map, site layout plan, floor plans and elevation drawings,
- Certificate of Exemption pursuant to Section 97 of the Planning & Development Act (as amended).

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. Meath County Council granted permission for the proposed development subject to 13 no. Conditions. Of these, Conditions of note are as follows;

C.2 The construction of the retaining wall and all initial and associated groundworks shall be supervised by a suitably qualified engineer. The engineer shall monitor and ensure the works do not impact on the structural integrity of the site and home to the north-east. The applicant shall liaise with the adjoining homeowner to the north-east in relation to the procedure of works to the north-eastern site boundary.

C.3 The site shall be laid out and the dwelling shall be constructed as per the revised site layout plan and revised house plans submitted to the Planning Authority on the 12/07/2019.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports (14<sup>th</sup> March 2019 and 20<sup>th</sup> August 2019)

Basis for Planning Authority's Decision. Includes:

- The construction of the proposed concrete retaining wall along the north-eastern boundary and associated works will be supervised by a qualified engineer.
- The dwelling design and ridge height of the proposal would be in keeping with neighbouring dwellings in Meadowlands.

### 3.3. Other Technical Reports

#### 3.3.1. Roads Section:

No objection subject to Conditions.

#### 3.3.2. Water Services Section:

No objection subject to Conditions.

3.3.3. **Irish Water:**

No objection subject to Conditions.

4.0 **Planning History**

None for subject site.

5.0 **Policy and Context**

5.1. **Meath County Development Plan 2013-2019**

**Zoning:** The site is zoned objective 'A1 Existing Residential' which seeks 'To protect and enhance the amenity of developed residential communities'.

**S.11.2.2.3** Development Management Standard for Houses - A minimum distance of 3.2 metres shall be provided between dwellings for the full length of the flanks in all developments of detached, semi-detached and end terrace houses. This area shall be equally divided between the dwellings so separated. Where garages are provided as single storey annexes to houses, the above separation distance may be reduced, providing a direct through access from front to rear of the dwelling is maintained. and Guidelines. Section S.11.2.2 refers to 'Residential Design Criteria' and Section 11.2.2.2 refers to 'Houses'.

5.2. **Other Relevant Government Guidelines**

*Development Management Guidelines (2007)*

*Sustainable Residential Development in Urban Areas Guidelines for Planning Authorities (2009).*

*Urban Design Manual - A Best Practice Guide (2009)*

### 5.3. **Natural Heritage Designations**

5.4. The site is located 0.7km to the east of the Boyne And River Blackwater SAC (Site Code: 002299).

## 6.0 **Environmental Impact Assessment - Preliminary Examination**

6.1.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 7.0 **The Appeal**

### 7.1. **Grounds of Appeal**

7.1.1. A third-party appeal was received from Darren and Claire Bryan, who reside at No. 6 Highfield, which is the neighbouring house adjoining the appeal site to the north-east. The following concerns were raised in the grounds of appeal:

- Permission has neither been sought by the applicant in or granted by the appellants in relation to any adjustments to the shared boundary.
- There is a dense row of mature trees separating Meadowlands from Highfield. The appellants have maintained this row of trees since Oct. 2007 and claim possession of them. The appellants contend that the applicant is crossing the boundary and building on the appellant's land.
- The roots of the boundary trees are possibly growing under the appellants house and garden. Their removal, without the consent of the appellants, may cause erosion, landslide or other slippage, as the appeal site has a steep slope down to Meadowlands.
- In 2008, the appellants employed the services of an engineer to investigate cracking on the side gable wall of their dwelling and to prepare a report on this – copy submitted (further details below).

- The appellants objected to Meath County Council against any removal of the hill on the application site and requested written assurance from Meath County Council that this concern was considered by independent, qualified engineers who are experienced on such matters. No such clarification was received.

7.1.2. Documentation submitted on appeal includes;

- Photographs of the appeal site and hedge planting along the north-eastern boundary.
- A Structural report, prepared by Pat McGovern and Associates Chartered Building Surveyors, dated 13<sup>th</sup> May 2008, regarding inspection of cracking on the side gable wall of the appellants dwelling. This report concludes that the proximity of the side wall of the house to a sloping site and large mature tree may be the contributing factor to cracking on its side gable wall. The report recommends, *inter alia*, that a further period of monitoring is required to determine if there is ongoing movement.

7.2. **Applicant Response**

7.2.1. Vincent JP Farry and Co. Ltd., Planning and Development Consultant, has responded on behalf of the applicant to the third-party grounds of appeal, addressed under the headings below;

7.2.2. ***Re. Landownership***

- The proposed dwelling will be positioned entirely within the application site and will be positioned 1.2 metres from the site boundary shared with the appellants.
- The Engineers Report submitted (prepared by Gordon Mitchell Engineers) confirms that all works will be within the application site boundary and will be supervised by a qualified engineer.
- The appellants landownership concern is based, by their own words, on a claim of '*long possession*'. The Board cannot reasonably refuse permission for the proposed dwelling on such grounds. As is customary in matters of this nature, it is open to An Bord Pleanála to impose a rider which gives effect to S. 34(13) of the Planning and Development Act 2000 (as amended) which requires that 'a



*person shall not be entitled solely by reason of a permission under this section to carry out any development'.*

### **7.2.3. Re. Structural Stability**

- The Engineers Report submitted by the applicant states that the proposed 2.7m high concrete retaining wall has been designed to current engineering codes, will be 400mm wide, located approx.1.4m from the existing boundary and can be safely constructed without causing subsidence to the existing neighbouring dwelling.
- The difference in land levels between the application site and the adjoining appellants site is minimal. The proposal is unlikely to result in a landslide. The proposed retaining wall, which is to be erected close to the site boundary, would effectively replace any function of tree roots.
- The Applicant questions the relevance of the report prepared by Pat Mc Govern & Associates, submitted by the appellant (dated May 2008), whereby this document discusses an existing deficiency of the appellants homes rather than forecasting future difficulties.

The applicant concludes that the issues raised in the appeal fall outside the parameters of the planning code.

### **7.3. Planning Authority Response**

- The Planning Authority is satisfied that all matters outlined in the appeal were considered in the course of its assessment of the planning application, as detailed in the Planning Officer's report.
- In relation to the issues raised in the Grounds of Appeal, the applicant submitted an Engineer's Report and Drawing in relation to the proposed retaining wall which states that all works proposed will be within the application site boundary and will be supervised by a qualified engineer. This matter formed a Condition to the grant of permission (Condition No. 2).
- The site is zoned and serviced and is considered an efficient use of zoned and serviced land. The proposed development is consistent with the policies and objectives of the Meath County Development Plan 2013-2019.

#### 7.4. **Observations**

None

### 8.0 **Assessment**

8.1. The main issues for consideration in this appeal can be considered under the following headings;

- Land Ownership,
- Structural Stability.

These are addressed under the headings below.

#### 8.2. **Land Ownership**

8.2.1. The Site Layout Plan submitted by way of Further Information (Dwg. No. 18-12-003) details that the proposed development provides for the removal of the existing timber post and rail fence and hedgerow along the north-eastern side boundary, shared with the site of the appellants dwelling No. 6 Highfield, and its replacement with a new timber post and rail fence and hedgerow.

8.2.2. The third-party appellants have appealed the grant of permission for the proposed development on the grounds that the applicant is proposing to cross the north-eastern shared side boundary and would be building on the appellants land. The appellants state that they have maintained the trees / hedging along shared common boundary since 2007 and claim possession of this. The appellants state that they have not given consent for any proposed adjustments to the shared boundary.

8.2.3. The applicant contests this ground of appeal, stating that all works will be within the application site boundary.

8.2.4. In consideration of this issue, Section 5.13 of the *Development Management Guidelines (2007)* refers to 'Issues relating to title to land' and states that the planning system is not designed as a mechanism for resolving disputes about title to or rights over land and that these are ultimately matters for resolution in the Courts. The Guidelines advise that where there is doubt in relation to the legal title of the applicant, the Planning Authority may decide to grant permission, however a grant of

permission is the subject of Section 34(13) of the *Planning and Development Act 2000 (as amended)*. Section 34(13) of the *Planning and Development Act* states that 'a person is not entitled solely by reason of permission to carry out any development'.

8.2.5. Having regard to the above and in the absence of absolute certainty that the appellants have legal ownership of the trees / hedging along the north-eastern side boundary shared with the application site, I consider it inappropriate to refuse permission for the proposed development on these grounds.

8.2.6. I recommend, therefore, that this ground of appeal should not be upheld.

### 8.3. **Structural Stability**

8.3.1. The appeal site slopes from c.78.1m O.D. at the south-eastern corner to 73.5m O.D. at the north-western corner of the site. To create a level site, the applicant proposes to excavate the site to ground level along the south-western boundary and to construct a 2.7m high reinforced concrete retaining wall close to the north-eastern boundary. Proposed works also involve the removal of the timber post and rail fence and hedgerow along the north-eastern side boundary and its replacement with a new timber post and rail fence and hedgerow.

8.3.2. The third-party appellants have appealed the grant of permission for the proposed development on the grounds that the removal of the tress / hedging along the north-eastern side boundary of the appeal site may cause erosion, landslide or other slippage of the appellants site.

8.3.3. The applicant contests this ground of appeal, stating that the Engineers report submitted (prepared by Gordon Mitchell Consulting Engineers) details that the proposed 2.7m high concrete retaining wall has been designed to current engineering codes and can be safely constructed without causing subsidence to the existing neighbouring dwelling.

8.3.4. The Structural Engineers Report submitted to the Planning Authority, prepared by Gordon Mitchell Consulting Engineers regarding the proposed retaining wall details the following:

- The proposed reinforced concrete retaining wall will have a total height of 2.7m, and width of 0.4m.
- The retaining wall will be located 1.4m from the shared side boundary.
- The wall has been designed to current engineering codes.
- The wall can be safely constructed without causing subsidence to the neighbouring dwelling to the north-east.
- Structural calculations submitted include a summary of design detail, soil properties, loading cases, geotechnical design detail and structural design detail of the proposed reinforced concrete retaining wall.
- The report concludes that care should be taken when installing the wall, that a full photographic survey should be taken of the existing dwelling prior to construction and the works should be monitored by a suitably qualified engineer.
- The report recommends that a 100mm diameter surface water land drainage pipe be installed at the higher level (behind the wall) in a 600mm deep trench filled with 13-16mm round percolation stone, which should be connected to a BRE 365 soakaway in the rear garden.

8.3.5. The Planning Authority addressed this issue in its grant of permission, by imposing a Condition (No. 2) requiring that the construction of the retaining wall and all initial and associated groundworks be supervised by a suitably qualified engineer and that the engineer monitor and ensure that the works do not impact on the structural integrity of the site and home to the north-east.

Having regard to the Structural Engineers Report submitted by the applicant, it is my views that there is no evidence to suggest that the development of a 2.7m high reinforced concrete retaining wall close to the north-eastern boundary would cause subsidence to the site of the neighbouring dwelling to the north-east. The Structural report submitted by the appellants (prepared by Pat McGovern and Associates Chartered Building Surveyors) is dated the 13<sup>th</sup> May 2008, does not provide evidence that the removal of trees / hedging along shared common boundary would cause subsidence of the appellants site and dwelling. Having regard to Google Earth Street View images of the site, captured in May 2009, it is evident that a large mature deciduous tree previously located along the shared boundary to the side of

the gable wall of the appellants dwelling has since been removed. Notwithstanding the above, I consider that this issue can be dealt with by way of Condition in the event of a grant of permission. As recommended by the Planning Authority, such Condition should require that the removal of hedging along the boundaries of the site and the construction of the retaining wall and all initial and associated groundworks be supervised by a suitably qualified engineer and that the engineer monitor and ensure that the works do not impact on the site stability of adjoining sites and the structural integrity of dwellings on these sites.

8.3.6. I recommend, therefore, that the appeal should not be upheld in relation to this issue.

#### **8.4. Screening for Appropriate Assessment**

8.4.1. Having regard to nature and scale of the proposed development to provide one additional house in a fully serviced and zoned residential area and the nature of the receiving environment and the lack of connections to the nearest European site the Boyne And River Blackwater SAC (Site Code: 002299), 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.

### **9.0 Recommendation**

9.1. I recommend that permission be granted subject to conditions, for the reasons and considerations below.

### **10.0 Reasons and Considerations**

10.1. Having regard to the residential land use zoning of the site, the pattern of development in the area, the size of the site and the layout and design of the proposed development, it is considered that, subject to compliance with the Conditions set out below, the proposed development would not adversely impact on the residential amenity of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 12<sup>th</sup> July 2019 and the 02<sup>nd</sup> August 2019, 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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p><b>Reason:</b> To ensure adequate servicing of the development, and to prevent pollution.</p>
3.	<p>The applicant or developer shall enter into a water connection agreement with Irish Water prior to the commencement of this development.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The removal of trees / hedging along the boundaries of the site and the construction of the retaining wall and all initial and associated groundworks shall be supervised by a suitably qualified engineer. The engineer shall monitor and ensure the works do not impact on the site stability of adjoining sites and the structural integrity of dwellings on these sites.</p> <p><b>Reason:</b> In the interest of safety and residential amenity.</p>
5.	<p>(i) Any entrance gates shall open inwards towards the site and not outwards onto the public road.</p> <p>(ii) All works shall be carried out at the developer's expense and to the requirements of the planning authority.</p>

	<p><b>Reason:</b> To ensure a satisfactory standard of development and in the interest of traffic safety.</p>
6.	<p>All external finishes, including roof tiles, shall harmonise in colour and texture with the dwelling on the adjoining site to the side / south-west, No. 26 Meadowlands.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
7.	<p>All public service cables to the proposed development, including electrical, telephone cables and associated equipment shall be located underground throughout the entire site.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
8.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p><b>Reason:</b> To protect the amenities of the area.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
10.	<p>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</p>

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.

---

Brendan Coyne  
Planning Inspector  
24<sup>th</sup> January 2020