



An
Bord
Pleanála

Inspector's Report ABP 305837-19

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| Development | (a) Retain boundary wall (b) Modifications to boundary wall (c) Retain garden equipment storage enclosure. |
| Location | Deerpark, Killarney, Co. Kerry |
| Planning Authority | Kerry County Council |
| Planning Authority Reg. Ref. | 19/43 |
| Applicants | Maurice & Joan Foley |
| Type of Application | Retention Permission & Permission |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | 3 rd Party v. Grant |
| Appellants | Larry and Louise Murphy |
| Observer(s) | None |
| Date of Site Inspection | 07/02/20 |
| Inspector | Pauline Fitzpatrick |

1.0 Site Location and Description

The appeal site at Deerpark is accessed via a local road c. 1.5 km to the north of Killarney town. The road runs parallel to the rail line at this point, screened by way of a mature hedgerow. The road slopes up from south to north.

The site, which has a stated area of 0.127 hectares, forms part of a ribbon of 4 dwellings along this stretch of local road. The two to the south have a comparable building line to the dwelling on the appeal site. The 4th to the north has a greater set back and is at an angle to the road. The lands in the vicinity are in agricultural use.

The two storey dwelling is roughly centred on the site. An enclosed covered storage area has been developed to the southern elevation of the dwelling. The boundary wall along the property line forms the southern boundary of the enclosed area with timber lattice fencing delineating the front and rear. The enclosure has a perspex roof covering.

The boundary with the dwelling to the south is delineated by a block wall in excess of 2 metres in height along its entire length. The northern face of the wall has been painted. A stone wall delineates the roadside boundary. Due to the site falls from north-east to south-west towards the road there is approx. a 1 metre differential between the level of the dwelling on the appeal site and that of the dwelling to the south.

2.0 Proposed Development

The application was lodged with the planning authority on the 25/01/19 with further plans and details submitted 28/08/19 following a request for further information dated 19/03/19. Revised public notices were submitted 16/09/19. As amended the proposal entails:

- Retention of enclosed area to side of dwelling with a stated area of 39.82 sq.m.
- Retention and modifications to the wall erected along the southern (side) boundary. The rear section of the wall is to be reinforced with concrete capping and lateral support by a bracing pier. The wall along this stretch ranges between 3.185 and 2.45 metres as measured from the site to the

south. The front section of the wall extending from the road to the front building line of the house is to be reduced in height to 1.8 metres as measured from the site to the south.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission for the above described development split between two schedules and subject to 7 conditions.

1st Schedule – retention of wall and garden storage enclosure:

Condition 2: Safety measures detailed in further information to be carried out within 3 months of date of decision.

Condition 3: Southern façade of wall to be plastered within 3 months of date of decision

2nd Schedule - permission to modify boundary wall

Condition 6: Safety measures detailed in further information to be carried out within 3 months of date of decision.

Condition 7: Southern façade of wall to be plastered within 3 months of date of decision

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report considers that the enclosed storage area does not take from the character of the area. The wall to be retained is very high along its full extent with the site on higher ground than that to the south. The wall, therefore, has a greater visual impact on the latter. It is overbearing when viewed from the south. Further information recommended seeking revised proposals reducing the height of the wall and details on its structural stability. The 2nd report following further information considers the revised proposals to be acceptable. Grant of permission subject to conditions recommended.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

None

3.4. Third Party Observations

An objection received by the planning authority is on file for the Board's information. The issues raised are comparable to those set out in the 3rd party appeal summarised in section 6 below.

4.0 Planning History

13/357 – 1st floor side extension granted to dwelling on the site. Not constructed.

5.0 Policy Context

5.1. Development Plan

The site is within an area zoned rural general in the Kerry County Development Plan 2015.

No specific requirements in terms of boundary wall treatments in rural areas are detailed.

5.2. Natural Heritage Designations

The Deenagh River which forms part of the Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment SAC (site code 000365) is c. 100 metres to the north.

6.0 The Appeal

6.1. Grounds of Appeal

The submission by Ger O'Keefe Consulting Engineers Ltd. on behalf of the appellants, which is accompanied by supporting documentation and photographs, can be summarised as follows:

- The height and finish of the wall is a source of nuisance and detracts from their property.
- It is visually obtrusive and not in keeping with boundary treatments normally acceptable in rural areas.
- There are ongoing safety issues with the wall's construction and integrity.
- Walls to the front of dwelling houses should not be more than 1.2 metres above ground level. Thereafter, walls 1.8-2 metres high are acceptable providing that they are properly constructed.

6.2. Applicant Response

The submission by Pdraig J. O'Donnell on behalf of the applicants, which is accompanied by a report from Malachy Walsh & Partners, can be summarised as follows:

- The survey information submitted is accurate. The nature of the grounds is that there is a level difference between the two properties. This results in an embankment along the boundary with the wall built on top of same.
- The wall is structurally adequate. The new capping acts as a structural beam on top of the higher wall and transfers the horizontal load into the new buttressing frames.
- It is always the intention to plaster the neighbour's face of the wall.
- The appellants' property has gable windows. The wall protects against overlooking. This is helped by the natural topography of the site.
- The garden equipment storage enclosure respects the building line.

6.3. **Planning Authority Response**

No further comment

6.4. **Observations**

None

7.0 **Assessment**

The proposal before the Board comprises of two elements. The first entails the retention of a covered storage area between the dwelling and wall along the southern boundary which is used for purposes ancillary to the dwelling. Timber lattice fencing finished in the colour of the main dwelling delineates the front and rear elevations with a perspex roofing over. There is no objection to this element of the proposal.

I submit that the substantive issue is the boundary wall to be retained. The appellants' dwelling has an approx. set back of 8 metres from same. As can be extrapolated there is up to a 1.0 metre floor level differential between the applicants' and appellants' dwellings with falls from north-east to south-west. As a consequence, the wall varies in height ranging from 1.828 to 2.868 metres as measured from the applicant's side and between 2.175 to 3.185 metres along the appellants' side. Whilst the wall is 3.230 metres in height in the southern most corner this is offset by the site falls to the road at this point. The wall is of block construction. It has been painted on the applicants' site and is backed with planting.

By way of further information the applicants propose a reduction in the height of the wall forward of their dwelling for a distance of c.15.5 metres to a height of 1.8 metres as measured from the appellants' property save for the immediate section to the roadside boundary which is to be retained is due to the site falls to the road. The wall will remain between 2.45 and 3.185 metres high to the rear of the dwelling (again as measured from the appellants' property). It is also proposed to provide new reinforced concrete capping and a steel bracing frame to reinforce the structural integrity of the wall along this retained section. The applicants are willing to plaster the wall on the appellants' side.

The wall in its current iteration is visually evident when viewed from the south and detracts from the rural amenities of the area and the amenities of the appellants' property. The reduction in the wall height to the front of the dwelling is acceptable and will assist in improving the visual amenities. Due to the change in site levels and taking into consideration the setback of the appellants' dwelling from the wall I have no objection to the maintenance of the height along the remainder subject to the necessary reinforcement works. Obviously rendering/plastering of the wall along the appellants' side as offered by the applicants and referenced on the drawing submitted by way of further information would be materially beneficial in terms of improving the visual amenities. Notwithstanding, a grant of permission cannot, and does not, presume to give the applicants the right to enter 3rd party lands to undertake works. In this regard they should be advised of section 34 (13) of the Planning and Development Act, 2000, as amended.

Note: The planning authority saw fit to divide its decision into two schedules, the first dealing with the retention of the storage enclosure and boundary wall and the second dealing with the modifications to the wall. I do not consider that this is necessary and that the development, as amended, can be addressed as a whole.

Appropriate Assessment – Screening

Having regard to the nature and extent of the development as proposed to be retained and altered, the receiving environment and the distance to the nearest European site it is considered that 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 retention permission and permission for the above described development be granted subject to the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the scale, nature and extent of the enclosed storage area and boundary wall to be retained and to the pattern of development in the area, it is considered that subject to compliance with the conditions set out below, the development to be retained and altered would not seriously injure the amenities of the area or of property in the vicinity. 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, as amended by the further plans and particulars submitted on the 18th day of November, 2019, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The alterations and modifications to the boundary wall as delineated on drawing No.20835-Sk01 Rev. A received by the planning authority on the 18th day of November, 2019, shall be carried out within three months from the date of this order.

Reason: To protect the amenities of the adjoining residential property.

3. The enclosed storage area shall be used for purposes ancillary to the main dwelling house, only, and shall not be used for commercial or agricultural purposes.

Reason: In the interest of clarity to protect the amenities of the adjoining residential property.

Pauline Fitzpatrick
Senior Planning Inspector

February, 2020