



An
Bord
Pleanála

Inspector's Report

ABP-306452-20

Development

Retention Permission for (1) a first-floor extension to the rear of the dwelling and all associated works and (2) the erection of rear garden walls. Planning Permission to (3) construct a rear window skylight to the existing first floor rear elevation. The works as listed above are located within the curtilage of Record of Protected Structures (RPS) Cashel Town Walls RPS No. 7

Location

John Street, Cashel, Co. Tipperary

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

19/600296

Applicants

John & Anne Maher

Type of Application

Permission for Retention and Permission

Planning Authority Decision

Refuse Permission for Retention and Permission

Type of Appeal

First Party v Refusal

Appellants

John & Anne Maher

Observers

(1) Dept. of Culture, Heritage and the
Gaeltacht

(2) Aidan McCarthy

(3) Dr. Eoin Gerard McCarthy

(4) John W. McCarthy

(5) Caitriona Buckley

(6) Dr. Sean J. McCarthy

(7) Maria J. McCarthy

Date of Site Inspection

28.04.2020

Inspector

Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located in the centre of Cashel, on John Street opposite the grounds of St. John's Cathedral.
- 1.2. The site is occupied by a two-storey semi-detached house with a building line onto the public footpath. The building line matches the adjoining semi-detached house to the north west which the applicants also own. There is a courtyard approx. 35sqm in area immediately to the rear of the house which is enclosed by the house itself, the two-storey detached house set back from the public road adjacent to the south, Wall 'B' subject of the application and a garage to the north west and Wall A, also subject of the application, to the south west. The area outside Wall A is an area shared with the adjoining house to the north west and comprises a gravel surfaced area and a grassed area with no physical boundaries. There is a high stone wall along the south western boundary of the site which is the Cashel City Wall.
- 1.3. The site has a stated area of 0.027 hectares.

2.0 Development Description

- 2.1. The application is for:
 - Permission for retention of a first-floor rear extension to the house.
 - Permission for retention of rear garden walls.
 - Permission for a rear window skylight to the first-floor rear extension.
- 2.2. The stated floor area of the existing building is 111.16sqm, including 23.36sqm to be retained. The house and rear extension have an indicated height of 6.5 metres.
- 2.3. An 'Archaeological Impact Assessment' (AIA) was submitted in response to a further information request.
- 2.4. Unsolicited further information was also submitted on foot of third-party submissions to the further information response comprising a cover letter and a brief rebuttal of the submissions from the consultant archaeologist who prepared the AIA submitted as further information.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority decided to refuse permission for retention and permission for the following reason:

1. The development for which retention is sought is located immediately adjacent to, and may include, upstanding and subsurface sections of the Cashel City Walls (a Recorded Monument Ref TS061-025023 and Protected Structures Reference No. 7).

Policy ENV 3 (Archaeology) of the Cashel and Environs Development Plan 2009 (CEDP), as varied, states it is the policy of the Council to safeguard sites, features and objects of archaeological interest generally and will protect (in-situ where practical or as a minimum, preservation by record) all monuments included in the Record of Monuments and Places and sites, features and objects of archaeological and historic interest generally.

Policy ENV 1 (Protected Structures) of the CEDP states that it is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures that are of special interest and when considering proposals will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities and Relevant Conservation and Management Plans where applicable.

The Planning Authority is not satisfied, based on the information submitted, that the development for which retention is sought does not have a negative impact on the Cashel City Walls, in particular sections of the medieval town wall incorporated into and to the rear of the gable end of the existing dwelling.

Therefore, the development for which retention is sought is considered contrary to Policy ENV 3 (Archaeology) and ENV 1 (Protected Structures) of the CEDP 2009, as varied, and the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

3.2.1. The Planning Officer's reports of 20.05.2019 and 15.12.2019 formed the basis of the planning authority's decision. Having regard to the plans and particulars submitted with the application a refusal was recommended for the reason as set out above.

3.2.2. **Other Technical Reports**

Area Engineer – No objection.

3.3. **Prescribed Bodies**

Dept. of Culture, Heritage and the Gaeltacht – A refusal was recommended based on the initial planning application documentation. The development affects a portion of the medieval town defences; Record of Monuments and Places (RMP) Ref. No. TS061-025. The development was constructed without permission, is the subject of enforcement proceedings and the Department did not receive notification of the works as required. The development for retention has comprised extensive works to a structure that incorporates a portion of the medieval town defences. The works may have directly impacted upon extant architectural features associated with the medieval town defences and the ground works required for the extension may have also directly impacted upon subsurface archaeological remains associated with the early settlement of Cashel. The Department draws attention to its published policy regarding Medieval Town Walls and their Defences. The Department recommended that the unauthorised structures be removed by way of an outlined procedure.

On foot of the further information response the Department states that a full assessment of the internal works carried out, and the effect of same on the medieval town wall incorporated into the gable end of the building, has not been supplied. No structural assessment of the town wall within the gable end and to the rear of the property appears to have been carried out. The previous recommendation to refuse permission remains.

An Taisce – The report references, inter alia, the absence of an AIA, poor design standard for an Architectural Conservation Area (ACA) location and adverse impact on the character and amenity of the curtilage of adjacent properties. Further

information recommended. (No report received in relation to the further information response).

3.4. **Third Party Observations**

- 3.4.1. Six submissions were received on the initial planning application from Dr. Sean J. McCarthy, John Street, Cashel (who resides in the property to the south), and five of his children with addresses in John Street, Co. Kildare, Co. Dublin (two) and Australia. The issues raised can be summarised as follows:

Built Heritage

- Concern is expressed about the lack of accurate information submitted given the proximity to the town wall.
- The development abuts and materially impacts the town wall.
- Granting permission would be contrary to the greater good and purpose of the town walls preservation and protection. The preservation of same is imperative in accordance with European law.
- John Street is one of the only streets in Cashel with continued preservation of the original buildings which needs to be protected.
- The development should not be permitted due to continued impact and lack of consideration of impact on the archaeologically sensitive area of the town wall and St. John's Gate.
- By applying to retain the unauthorised development the requirement for Ministerial consent under Section 14 of the National Monuments Act, 2014 as set out in the National Policy on Town Defences document, has been bypassed/the development does not comply with National Monuments Legislation 1930-2014.
- No AIA was carried out prior to development.
- Topsoil excavations of the existing garden have taken place along the entire length of the former garden and a hardcore base has been installed. Along this length is the exposed Cashel Wall, the southern section being one of the most intact and longer sections of the town's former defences.

- The construction of the garden wall in close proximity to the Cashel Wall threatens to undermine its integrity and foundations/a previous divide was in existence but was removed/some form of foundation work must have been carried out.
- One submission was accompanied by copies of an 'Archaeological Assessment of Application for Retention of Development' (prepared specifically for the submission), an 'Assessment of Section I of Cashel City Wall' (prepared on behalf of the County Council in November 2016), a 'Cashel City Walls Management Plan Final Draft' (prepared for Cashel Borough Council and The Heritage Council in March 2008), a 'Framework and Principles for the Protection of the Archaeological Heritage' document prepared by the Dept. of Arts, Heritage, Gaeltacht and the Islands in 1999 and a 'National Policy on Town Defences' prepared by the Dept. of the Environment, Heritage and Local Government in 2008.
- The development in the ACA of Cashel was carried out without professional conservationists or archaeologists, is located within a Zone of Archaeological Potential (ZAP), adjacent to the Medieval town wall and the location of the Medieval St. John's Gate, in a zone of Urban Sensitivity and is not exempt development.

Subject House

- Alterations have been carried out to the original two-storey house e.g. removal of a central chimney stack and walls, increase in height of the roof, installation of 2 no. velux rooflights to the rear, possible excavation of the ground floor to level the floors change in gradient, construction of a path to the rear of the ground floor extension, alteration to the front façade, alteration of the single-storey rear extension
- Concern is expressed about surface water discharge from the development and its impact on the adjoining house and the town wall.
- The capability of the ground floor extension to support the upper extension is unknown.

- Adverse visual impact that can be seen from the top of John Street looking north.

Impact on Adjacent Residential Amenity

- Impact of the proposed development on adjoining long established properties and the character of these properties.
- Additional height will impact on natural light to the house to the south and the adjoining side window.
- Adverse impact on the valuation of all existing properties in the area.
- Overlooking impact/invasion of privacy from the proposed rear window.
- Impact on property rights.

General/Miscellaneous

- Contrary to the Cashel & Environs Development Plan 2009-2015.
- The property is not the applicants' primary residence.
- An additional bedroom will increase building occupancy creating a greater demand for car parking facilities in the already cramped John Street.
- Not compliant with Building Regulations/the Council has established a precedent in not allowing permission for developments which do not comply with the Building Regulations.
- The application for retention attempts to undermine national laws, controls and checks.
- The 2008 Cashel Town wall survey found that bats use the wall for roosting.
- The application should be invalid as, apart from the areas subject of the application, other phased developments to the site have been withheld/the application does not include the extent of all works carried out/other unauthorised works are included under 'all associated works' and, if permitted, there would be no recourse once the true nature of violations are shown.

3.4.2. On foot of the further information response additional submissions were received. (The Planning Report states 6 no. were received. However, only 5 no. are on file and scanned on the planning authority's website. Notwithstanding, all relevant issues cited

in the Planning Report based on the submissions received on foot of the further information response are noted). The issues raised are largely covered by the original submissions with the exception of the following:

- Ground works within a constraints zone of a recorded monument requires appropriate archaeological mitigations and this remains inadequately addressed as the foundation depth excavated falls within depths at which archaeological deposits are known to reside. No subsequent adjacent archaeological test excavation has occurred.
- No archaeological excavation number is referenced in the AIA which indicates no investigative excavation work was carried out.
- It appears insufficient information was provided to the applicants' consultant archaeologist to carry out a comprehensive assessment and a number of other issues in relation to the submitted Assessment are referenced e.g. potential for rainwater ingress into the town wall at first floor level, extent of negative impacts on archaeological deposits in the construction of the walls, no consideration to an adequate development buffer, no reference to internal or external works to the house, the impact on substrata as a result of the installation of a concrete courtyard or hardcore to the rear of the site, removal of a shed formerly constructed onto the wall, load bearing onto the wall.
- The kitchen window in the McCarthy house in the town wall has been in situ since before the late 1960's.
- One of the submissions on the further information response was accompanied by an archaeological assessment which made observations on the AIA submitted by the applicants as further information.
- The applicants were aware of the important archaeological and historical monument in their property.

4.0 Planning History

4.1. There is no relevant planning history on site.

- 4.2. Enforcement reference TUD-17-026 relates to a first-floor extension to the rear of a two-storey house and construction of a rear partition wall involving excavation works within a ZAP without prior planning permission.

5.0 Policy Context

5.1. South Tipperary County Development Plan 2009-2015 (as varied)

- 5.1.1. Section 1.6 (Relationship with Town Development Plans) of the 2017 update of the 2009 Plan states that Town Development Plans (including the Cashel Town and Environs Development Plan 2009-2015) will remain the statutory plans for these areas until a review and preparation of Local Area Plans for these towns take place.
- 5.1.2. Section 7.5 (Built Heritage) and Section 10.11.7 (Domestic Extensions) of the Plan are relevant. The medieval walls of Cashel are referenced in Section 7.5.4 (Archaeological and Cultural Heritage). Policy LH16 (Archaeology and Cultural Heritage) states that it is the policy of the Council to safeguard sites, features and objects of archaeological interest, including monuments on the Record of Monuments and Places and archaeological remains found within ZAPs located in historic towns. In safeguarding such features, the Council will seek to secure their preservation in situ or by record. Where developments may have implications for archaeological heritage, the Council may require archaeological assessment to be carried out. Such developments include those that are located at or close to an archaeological monument.

5.2. Cashel and Environs Development Plan 2009-2015

- 5.2.1. The site is in an area zoned 'Town Centre'. The zoning objective is to preserve, enhance and/or provide for town centre facilities.
- 5.2.2. The site is within the ACA of the town. The ACA boundary runs north west – south east through the rear area of the site (Map 3). The ACA is a place and townscape that is of special architectural, historic, archaeological, cultural and social character. Policy ENV 2 includes provision to ensure the enhancement and management of the ACA having regard to the impact of development on, inter alia, its character and heritage. The site is located within the sites and monuments buffer in the Zone of Archaeological

Potential and Archaeological Assets (Map 4). Cashel Town Walls is identified as RPS No. 7 in the Plan. It is also located within the 'urban visual sensitivity' zone of Map 5 (Zones of Visual Sensitivity).

5.2.3. Sections 4.1 (Architectural Heritage) and 4.2 (Archaeological Heritage) of the Plan are relevant. Section 4.2.2 refers specifically to the Cashel City Walls. It includes a brief description, a map of the walls location and Policy ENV 5 (Cashel City Walls) which states that it is the policy of the Council to protect the Cashel City Walls, both upstanding and subsurface remains. Domestic extensions are addressed in Section 9.9 (Extensions to Dwellings).

5.2.4. The two policies of the Plan referenced in the planning authority reason for refusal are: Policy ENV 1 (Protected Structures) – It is the policy of the Council to conserve and protect buildings, structures and sites contained in the Record of Protected Structures that are of special interest and when considering proposals will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities and relevant Conservation and Management Plans where applicable, The Council, will proactively work with developers/applicants to facilitate the appropriate reuse/redevelopment of Protected Structures.

Policy ENV 3 (Archaeology) – It is the policy of the Council to safeguard sites, features and objects of archaeological interest generally and will protect (in-situ where practicable or as a minimum, preservation by record) all monuments included in the Record of Monuments and Places and sites, features and objects of archaeological and historical interest generally.

5.3. **Architectural Heritage Protection Guidelines for Planning Authorities (2011)**

5.3.1. Town/city walls are referenced in Section 3.3.4 (Architectural Conservation Areas – Identifying the Character of the Area – Historical interest) and Section 6.8.6 (Development Control – General Types of Development – Extensions).

5.4. **Natural Heritage Designations**

5.4.1. The closest heritage area is Lower River Suir SAC approx. 3.6km to the west.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal, submitted by the applicants John and Anne Maher, can be summarised as follows:

- The interior layout of the house as inspected in 2013 is outlined which differed from the interior of the structure as set out in an earlier 2010 planning application; primarily there was no main-structure centre wall or chimney breast. The internal façade of the party wall/town wall was dry lined at ground and first floor levels. The property was suffering from some water egress mainly due to a fire damaged main roof and inadequate flashing where the single storey rear flat roof abutted the town wall.
- The applicants purchased the property in 2013. A warning letter was received by them in 2017 from the local authority in relation to a first-floor rear pitched roof extension. This construction was intended to address water egress issues from the flat roof. The issue was discussed with a planner who was of the opinion that the construction of the structure away from the town wall would ensure the wall was not affected and planning permission was not required. Reference is made to political pressure in relation to this issue. It is stated that a revised proposal was agreed with a Senior Executive Planner whereby the offending blockwork was to be removed and a revised pitch roof over the flat roof extension could proceed and did not require planning permission. A drawing illustrating the approved work is enclosed with the grounds of appeal. Work proceeded and the file was closed.
- A further warning letter was received by the applicants in January 2019 relating to a first-floor extension to the rear and a partition wall in the rear garden. The applicants' agent inspected the property and noted that the structure had been constructed in substantial compliance with the instructions issued by the local authority. The structure was somewhat higher but given the walls did not surpass the rear wall of the house and the roof did not surpass the roof height the works were compliant with the spirit of the previously approved drawing and Planning Department advice. The attic space had been converted into a

bedroom and, given the floor area of the room, planning permission was warranted. Though the roof lights may be exempt, as a matter of thoroughness, the entire structure should be retained. Although the garden walls marginally exceeded 2 metres, again as a matter of thoroughness, the applicants' agent's advice was these should also be retained. It is stated that the planner dealing with the application agreed that the inclusion of these elements would address all offending structures on the property. It is stated elsewhere in the grounds of appeal that retention permission is not being sought for works other than those identified in the planning application. It is also stated that, because the planning authority did not invalidate or seek the inclusion of other elements of the property, they are satisfied that no other unauthorised works have taken place.

- The applicants feel that pressure remains in relation to this development given that, while the planning process was underway, the applicants were issued with a Demolition Notice and have been in court twice in relation to this. While satisfied that the Enforcement Office were entitled to proceed, in the experience of the applicants' agent, the Enforcement Office would always await the outcome of a retention planning application before taking any further action.
- An Taisce's finding that the structure should be removed, without any inspection by an approved authority or any AIA is alarming, unfounded and concerning.
- No substrata of the floor was removed. Floors are pre-existing.
- Other than the minor excavation for the rear garden wall, works occurred at first floor level only. The extension wall is parallel to the town wall, not perpendicular, and is supported by a beam seated on the rear extension wall of the house and original rear wall and in no way affects the town wall. No other works or excavations have been carried out that might affect the town wall or the existing grounds.
- With reference to car parking requirements there has been no increase in the number of bedrooms.
- Concern is expressed that a further information request was not issued concerning matters which are now of issue.

- The applicants now acknowledge, only by witnessing the term ZAP in the Planners Report, that planning permission was required for works previously agreed with the planning authority in error. The applicants were never notified of the term ZAP and its consequence from any planner. It was previously understood that retention was required because of the change of the attic to a bedroom.
- An oral hearing is requested.
- An accompanying document prepared by the applicants' consultant archaeologist was submitted with the grounds of appeal. This states, inter alia:
 - An internal wall at ground and first floor level was removed at some stage prior to construction of the first-floor rear extension. It was approx. 2.8 metres from the town wall and not connected or tied into it in any way. It is unrelated to the development in question.
 - There is no evidence to suggest works carried out to date destabilised the remains of the medieval town defences within the gable. The gable of the original part of the house is, in effect, a portion of the town wall. Works were largely confined to the existing rear extension which did not impact on the gable of the older part of the building. The AIA clearly states the town wall, including the gable, was not negatively impacted. No groundworks were required to construct a room and a pitched roof over. Some groundworks were required to re-order the yard area to the rear of the property and to construct two walls to enclose the yard and it is unclear if these works had a negative impact on underlying archaeological strata. Any impact was likely limited. It is almost impossible to retrospectively assess potential impact.
 - The AIA constitutes a full assessment of the impact of unauthorised work on the town wall. It is not appropriate in cases such as this to conduct an intrusive analysis e.g. remove kitchen fittings, strip internal render, excavate the yard, remove waterproof membranes from roofs and valleys etc.
 - No structural survey of the town wall within the gable end and to the rear of the property was sought in the further information request.

- The AIA found no features of architectural or archaeological significance within the house other than the town wall itself. The town wall cannot be specifically identified and distinguished from other elements with any certainty without stripping render from both sides and this is not possible, advisable or necessary. It is more appropriate to assume that all parts of the gable wall and all parts of the old wall forming the boundary beside the extension and the yard are elements of the town wall. This may not be the case but errs on the side of caution.
- The AIA adequately assesses the impact of works, including sub-surface, on the town walls. The further information request did not stipulate test excavations were required. Their usefulness in assessing the impact of previously undertaken works is highly questionable.
- The AIA clearly shows the new room and pitched roof over the extension and the two walls in the rear yard did not have a direct negative impact on the town wall.
- Excavations to the rear of the building to re-order the yard and construct new walls may have had a negative impact upon underlying archaeological strata but any impact is likely to have been limited.
- If the works are demolished archaeological and architectural heritage will again be at risk. The impact of what has been done to date must be weighed against the potential impact of what may be to come. From an archaeological point of view, the 'least worst' outcome in this case is to retain the development in situ, since removing it would generate much greater risk than permitting it to remain.

6.2. Planning Authority Response

The response can be synthesised as follows:

- Notwithstanding the recommendation to refuse permission in the initial report received from the Department of Culture, Heritage and the Gaeltacht, the applicants were afforded an opportunity to address the archaeological related concerns by way of a further information request.

- The planning authority and the Department considered the AIA submitted did not adequately address the concerns identified in the further information request and permission was refused.
- There is no new information contained within the appeal that would alter the planning authority's decision.
- While the status of the current Enforcement file did not have a bearing on the assessment of the application the planning authority wishes to respond to a number of statements contained in the grounds of appeal:
 - Following an initial complaint that blockwork had been constructed on top of a pre-existing flat roof extension/return and against an upstanding section of the City Walls, a warning letter issued.
 - The applicants were advised to cease works and submit a methodology to remove the blockwork. This was subsequently agreed, and the blockwork was removed.
 - Following a request from the applicant, the planning authority advised a pitched roof in lieu of the flat roof may avail of an exemption and was advised to apply for a section 5 declaration for full assessment. No application for a declaration was received.
 - The constructed development does not avail of any exemption. Enforcement proceedings were carried out.
 - The planning authority refutes any allegation that it released detail of a complainant on an enforcement file.
 - The applicants state they were not advised the site was located within a ZAP. The location adjoining the city walls and within the ZAP is referred to in all reports on enforcement and planning files and in notes of phone calls with the applicants in 2017.

6.3. Observations

7 no. observations have been received from:

- Dept. of Culture, Heritage and the Gaeltacht

- Aidan McCarthy, Willbrook Lawn, Rathfarnham, Dublin 14
- Eoin Gerard McCarthy, Woodridge Close, Redlynch, Queensland, Australia
- John W. McCarthy, John Street, Cashel
- Caitriona Buckley, Newtown Donore, Naas, Co. Kildare
- Dr. Sean J. McCarthy, John Street, Cashel
- Maria J. McCarthy, Roebuck Castle, Clonskeagh, Dublin 14

The issues raised are generally similar to those referenced in the submissions received by the planning authority but also include:

- The Dept. of Culture, Heritage and the Gaeltacht observation notes that, while the AIA confirms that the unauthorised structures did not directly impact upon the medieval town wall of Cashel, there now appear to be possible indirect impacts arising from water ingress/egress between the subject site and an adjoining property, and this now needs to be assessed. The flow of water between the two properties appears to be causing lime-mortar to wash out from the medieval town wall, which in turn may lead to the destabilisation of the wall itself. The Department recommends that a structural assessment be carried out in relation to the works completed to date and any resulting water damage to the town wall. It is recommended this assessment is carried out by way of further information in advance of a decision. The internal works carried out, and the effect of same on the medieval town wall incorporated into the gable end of the building needs to be included and carried out by a suitably qualified and experienced professional. If considered necessary, the assessment may necessitate limited removal of some plasterboard within the building to gain access to the gable wall.
- Ignorance of the law is not a valid form of defence.
- Concern is expressed about the positioning, length and utilisation of the steel girder I bar in the drawing submitted in the grounds of appeal.
- One observation is accompanied by an archaeological consultant's detailed opinion which, inter alia, makes a number of comments relating to the grounds of appeal and refutes the opinion expressed in the grounds of appeal that the

development should not be removed as this would cause more damage to the town wall.

- Permitting the appeal would create a dangerous precedent for the future protection of the town wall.
- No structural work had been carried out prior to the applicants purchase of the property.

7.0 **Assessment**

Having examined the application details and all other documentation on file, including all of the submissions and observations received in relation to the appeal, and inspected the site, and having regard to relevant local and national policies and guidance, I consider that the main issues in this appeal are as follows:

- Scope of the Assessment
- First-Floor Rear Extension
- Garden Walls
- Appropriate Assessment

7.1. **Scope of the Assessment**

- 7.1.1. Throughout the submissions and observations on file, reference is made to a number of works carried out to the interior and exterior of the house, removal of a shed, construction of a footpath, re-surfacing of the ground etc. Concern is also expressed about what works are contained within the 'and all associated works' term in the application.
- 7.1.2. The planning application specifically refers to retention of the first-floor extension to the rear of the house and all associated works, retention of the rear garden walls and permission for a rear window skylight to the extension. Consideration of a planning application is restricted to the elements that comprise the application. For clarity, I consider that 'associated works' to the first-floor rear extension would generally comprise works internal to the house that are necessary to provide access to the

extension area and surface water discharge from the extension area. Issues such as works to the gable wall of the house, wider alterations to the interior and exterior of the house, removal of a shed in the rear courtyard or gravel re-surfacing of the ground are not considered to be contained within the meaning of 'all associated works' and are not considered in this assessment. Investigation of any unauthorised development that may have taken place is a matter for the local authority to ascertain. Assessment of this planning application is restricted to those elements which are specifically referenced in the application.

7.2. First-Floor Rear Extension

- 7.2.1. Permission for retention of the first-floor extension was refused by the planning authority because the planning authority was not satisfied that the development does not have a negative impact on the Cashel City Walls and considered that the development is contrary to Policies ENV 1 and ENV 3 of the Cashel and Environs Development Plan 2009-2015. The town wall is both a Recorded Monument and a Protected Structure. The structures specifically subject of the application are within the towns ACA and the site is within the sites and monuments buffer of the ZAP.
- 7.2.2. Initially, I note that I do not consider that the extension results in undue adverse impact to any adjoining property as a result of overbearing or shadowing impact. The proposed rear window skylight would not result in undue overlooking impact as it is facing the rear of the site.
- 7.2.3. The first-floor rear extension is not exempt because it is in excess of 12sqm in floor area and it is located within 2 metres of a party boundary, thereby contravening Conditions and Limitations of Schedule 2 Part 1 Class 1 of the Planning & Development Regulations, 2001 (as amended). Further, and notwithstanding Schedule 2, it appears that the first-floor rear extension would be contrary to the provisions of article 9(1)(a)(vii) of the Regulations which restricts any exemption where the subject development would consist of the alteration of a feature of archaeological or historical interest, the preservation, conservation or protection of which is an objective in a development plan. In this regard Specific Objective SO7-4 of the South Tipperary County Development Plan 2009-2015 states that it is an objective of the Council, through the ongoing participation and support of the Irish Walled Towns

Network, to ensure the conservation, management and promotion of the medieval walled towns in the county, as appropriate.

- 7.2.4. There are a number of policy documents that are relevant to the Cashel City Walls and their protection. Figure 4.3 of the Cashel and Environs Development Plan 2009-2015 shows the location of the wall within the town and the 'key' indicates an upstanding section of the wall along the party boundary between the site and the adjacent McCarthy property. Policies ENV 1 and 3, as referenced in the planning authority reason for refusal, are more general policies relating to historic structures and features. Policy ENV 5 is more specific to the development subject of the application. It states, inter alia, that it is the policy of the Council to protect the Cashel City Walls, both upstanding and subsurface remains. The ACA designation requires appropriate management and enhancement of the character and heritage of the area (Policy ENV 2). The 'Cashel City Walls Management Plan Final Draft' (March 2008) was prepared for Cashel Borough Council and the site was referenced in 'Assessment of Section I of Cashel City Wall' for Tipperary County Council' (November 2016). It is referenced as Section I-I04 and recommendations are included for works to conserve the monument.
- 7.2.5. The Department of Environment, Heritage and Local Government published a 'National Policy on Town Defences' in November 2008. It states that there should be a presumption in favour of preservation in situ of archaeological remains and preservation of their character, setting and amenity. While there is recognition that urban settlements must continue to change and develop the preservation of the character, setting and amenity of defences must be recognised and preserved. Urban defences are to be considered of primary importance where they are found, and it is difficult to overestimate the importance and significance of these major monuments.
- 7.2.6. Having regard to the foregoing local and national documents the conservation and protection of the wall is a significant policy objective. The town wall forms the gable boundary of both the house subject of the application and the adjacent McCarthy house. Had planning permission been sought for the first-floor rear extension in the first instance it is likely that extensive relevant detail would have been required to have been submitted for assessment by both the planning authority and the Department of Heritage, Culture and the Gaeltacht. However, as the development was constructed without permission being sought and without any appropriate professional input it is

unclear as to what damage, if any, has been caused. While the extension has been set back from the wall itself, this does not mean that the construction of the extension did not affect the wall. The area immediately between the side of the extension and the town wall is used for surface water discharge. The Department's observation on the grounds of appeal refers to possible indirect impacts arising from water ingress/egress between the site and the adjoining property which appears to be causing lime mortar to wash out from the medieval town wall which may lead to destabilisation of the wall itself. In addition, the construction of the unauthorised extension has reduced the extent of the town wall that is visible, albeit largely from a private area.

7.2.7. The conclusion of the archaeological consultant's report submitted with the grounds of appeal effectively concludes that, since the development is in situ, the 'least worst' option is for it to remain in situ. Permitting a retention application immediately adjacent to a Recorded Monument or Protected Structure because it is the 'least worst' option would be undesirable and I do not consider it an appropriate reason to grant permission for retention. In this regard, I note that the Department's first submission set out six steps to remove the unauthorised structures. I also note the Department's further information recommendation, based on the grounds of appeal, for a structural assessment in relation to the works completed to date and any resulting damage to the town wall. This recommendation includes for assessment of areas that are outside the scope of this specific planning application as referenced in Section 7.1, e.g. works to the gable wall including the possible limited removal of plasterboard. Notwithstanding, I consider that the overall development is fundamentally not acceptable as constructed and a decision can be made at this stage.

7.2.8. The unauthorised construction of the first-floor rear extension disregarded local and national policies and objectives aimed at conserving and protecting the town wall. In the absence of any suitable professional oversight the impact on the setting, character and physical integrity of the town wall was put at risk and the full impact of this is unclear. On this basis, to permit its retention would be contrary to local and national policy and objectives, would erode the character and setting of the town wall at this location and would not be in the interest of the proper planning and sustainable development of the area.

7.3. Garden Walls

- 7.3.1. Permission for the retention of the two garden walls, identified as Walls A and B on the Site Layout Plan, was refused for the same reason as the retention of the extension. Wall A is identified as the wall across the rear boundary of the courtyard and Wall B is along the northern site boundary forming part of the boundary with the house adjacent to the north, which appears to be the house occupied by the applicants. Both walls are unpainted block walls. A gap of approx. 8cm was left between the end of Wall A and the town wall.
- 7.3.2. The boundary walls are not exempt because they are higher, 2.4 metres (Wall A) and 2.3 metres (Wall B), than the 2 metres cited in Schedule 2 Part 1 Class 5 of the Planning & Development Regulations, 2001 (as amended). Further, and notwithstanding Schedule 2, construction of the walls was contrary to article 9(1)(a)(vii) and (viiA) because they comprised excavation of an object of archaeological and historical interest, the preservation, conservation or protection of which is an objective in a development plan (Specific Objective SO7-4 of the South Tipperary County Development Plan 2009-2015 applies) and consisted of the excavation of an archaeological monument included in the Record of Monuments and Places where no appropriate licence had been granted.
- 7.3.3. It is acknowledged in Sections 2.3.3 and 2.4.2 of the AIA received as part of the applicants further information response to the planning authority that the foundation trenches for both walls were dug without archaeological supervision and so it cannot be determined if they had a negative impact upon any underlying archaeological strata. No photographs of the foundation trench were found. Section 3.2.2 of the AIA considers that, given the relatively small extent and depth involved of the foundation trenches, any negative impact upon underlying archaeological strata is likely to have been limited. The archaeological consultant's report submitted with the grounds of appeal states that the planning authority's further information request did not stipulate that test excavations should be undertaken and, notwithstanding, its usefulness in assessing the impact of previously undertaken works is highly questionable. The conclusion of this report in the grounds of appeal states that the construction of these walls may have had a negative impact upon underlying archaeological strata but any impact was likely to have been quite limited.

- 7.3.4. I do not consider it appropriate to accept the archaeological consultant's conclusion that, effectively, as the work has been carried out it should be permitted to be retained as it is the 'least worst' outcome. As noted under Section 7.2.7 of this assessment the Department's first submission set out six steps to remove the unauthorised structures and therefore I consider it reasonable to consider the structures can be removed as recommended.
- 7.3.5. The setting of the town wall is also adversely affected by the construction of these high block walls. Although only visible from a private area, the setting and character of the town wall, and extent of the town wall visible from a wider area, is reduced as a result of these garden walls.
- 7.3.6. I consider that to permit the retention of the garden walls would be contrary to local and national policy, would erode the character and setting of the town wall at this location, would be inappropriate where no attempt has been made to ascertain the impact on subsurface archaeological material and, in immediate proximity to a Recorded Monument where excavation works were carried out without any appropriate professional supervision, would not be in the interest of the proper planning and sustainable development of the area.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the nature and scale of the development and to the nature of the receiving environment, namely an urban and fully serviced location remote from and with no hydrological pathway to any European site, 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.

8.0 Recommendation

- 8.1. I recommend that planning permission for retention and permission be refused for the following reason and consideration.

9.0 Reasons and Considerations

1. The development for which retention is sought is located immediately adjacent to, and may include, upstanding and subsurface sections of the Cashel City Walls (Recorded Monument Ref. TS061-025023 and Protected Structure Ref. No. 7). The policies and objectives of the South Tipperary County Development Plan 2009-2015 (Policy LH16 and Specific Objective S07-4) and the Cashel and Environs Development Plan 2009-2015 (Policies ENV 1, ENV 2, ENV 3 and ENV 5) seek to preserve, conserve and safeguard features of archaeological and special interest, including medieval walled towns. The 'National Policy on Town Defences (November 2008)' similarly seeks to preserve their character and setting.

It has not been satisfactorily demonstrated that the development for which retention permission is sought does not have a negative impact on the Cashel City Walls. The development would injure or interfere with a historic monument of significant archaeological interest, would adversely affect the character and setting of the Protected Structure, would adversely affect the architectural conservation area and would be contrary to local and national policies and objectives and to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

14.05.2020