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## Inspector's Report ABP 309389-21

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<b>Development</b>	Retain timber fence in front and rear gardens.
<b>Location</b>	Westhorpe, Ballydowd, Lucan, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD20B/0414
<b>Applicant</b>	Madeleine McMahon
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	3 <sup>rd</sup> Party v. Grant
<b>Appellants</b>	John & Catherine Handibode
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	07/05/21
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

Westhorpe is a 2 storey, detached dwelling accessed from Lucan Road in Ballydowd, Lucan. It is bounded by a detached dwelling to the west (appellants' property) and by a high gated entrance to a dwelling which is setback from the road to the east. Dwellings within Ballydowd Gardens back onto the site to the south.

The rear garden of Westhorpe is delineated by a block wall approx. 1.8 metres in height. A timber fence on supports has been erected on top of the wall along the western boundary. The wall is backed with planting. A comparable timber fence is erected within the rear gardens of the properties in Ballydowd Gardens backing onto the site. The front boundary is delineated by a decorative stone wall along the roadside with a c.1.2 metre wall delineating the boundary to the appellants' property. A timber fence has been erected inside this wall along the western boundary and is backed with planting. The eastern boundary to the front is delineated by a 1.8 metre block wall.

## 2.0 Proposed Development

Retention permission is being sought for a timber fence comprising of timber panels above the existing boundary wall along the western boundary of the property.

The wall to the rear of the dwelling is between 1.7 and 1.9 metres high. The panels are fixed to the wall by supports and are 1.7 metres in height. The overall height of the wall and panels is stated to be 2.5 metres increasing to 2.7 metres adjoining the dwelling. To the front the timber panels inside the 1.2 metre boundary wall give an overall height of between 1.89 and 2.18 metres.

The fencing is required for security.

## 3.0 Planning Authority Decision

### 3.1. Decision

Split decision issued.

Grant retention permission for the fence located to the rear of the front building line subject to 1 condition requiring its completion in accordance with the plans and specifications within 6 months.

Refuse retention permission for the fence constructed forward of the front building line for 1 reason which can be summarised as follows:

Due to the height, scale, materials, location and extent the fence would be overbearing, would seriously injure the amenities of property in the vicinity and the streetscape and would contravene the zoning objective for the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The planner's report in the Record of Executive Business and Chief Executive's Orders can be summarised as follows:

- The height of the rear fence matches the rear boundaries of Nos. 43 and 44 Ballydowd Grove.
- The design and finish is considered acceptable. It is not considered that it contributes to overshadowing or result in an overbearing impact on neighbouring properties.
- Taking into consideration the owner's circumstances it is deemed appropriate to approve the rear portion only.

A split decision recommended.

#### **3.2.2. Other Technical Reports**

Roads Department has no objection subject to a condition.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

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

### **4.0 Planning History**

PL06S.229654 (SD08B/0202) – permission refused on appeal for retention and completion for the raising of the existing western rear party boundary wall for 2 reasons which can be summarised as follows:

1. The height and basic design detail of the wall would seriously injure the visual amenities of the adjoining garden.
2. Not satisfied on the basis of the submissions made as to the safety and long term stability of the raised wall and therefore it would be prejudicial to public health.

### **5.0 Policy Context**

#### **5.1. Development Plan**

South Dublin County Development Plan 2016-2021

The site is within an area zoned RES the objective for is to protect and or improve residential amenity.

#### **5.2. Natural Heritage Designations**

None in the vicinity.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The 3<sup>rd</sup> party appeal by John & Catherine Handibode, owners of Kinclare adjacent to the appeal site, can be summarised as follows:

- The fence exceeds the permitted heights set out in the Planning and Development Regulations, 2001.
- The fence consists of heavy timber and could render the wall unsafe.
- The height of the wall represents a safety hazard blocking exit of their respective properties in an emergency.
- The height of the fence blocks light to the window serving their downstairs toilet.
- The fence is ugly and impacts negatively on the visual amenities of their garden and property.
- It would adversely impact on the value of their property.
- The applicant previously raised the dividing wall without consulting them.

### 6.2. Applicant Response

The submission by William Doran on behalf of the applicant can be summarised as follows:

- The height of the fence was dictated by security and the vulnerability of the location. 2.4 metres along the rear garden where monitoring is possible was considered adequate. This increases to 2.7 metres along the side passage where no overlooking is possible. It decreases to between 1.89 and 2.18 metres in the front garden and is similar to the wall height along the eastern boundary.
- Sections 4 (1) (h) , 4(1)(j) and 4 (3)(b) of the Planning and Development Act, 2000 as amended. Article 6 and Part of Schedule 2, Class 3 of the regulations are brought to the Board's attention. Based on these it would be open to the applicant to erect a shade or awning to the rear of the front building line up to

3 metres in height with a floor area not exceeding 25 sq.m. for the full length of the western boundary.

- The fence is of sturdy construction with adequate independent foundations. It causes no new or greater impact on the boundary wall.
- It is not clear how the fence would or could impede safe egress from either property.
- The downstairs toilet is not a habitable room. The adjoining side passages of both houses have a combined width of c. 2.1 metres. It currently does not receive any skylight. The fence will cause no new or greater loss of skylight.
- The BRE Site Layout Planning for Daylight and Sunlight specifically exclude toilet windows.
- The previous raising of the wall was reversed on the refusal of permission.
- The fence does not detract from the visual amenities of the appellants' garden or property. The wall on their side is concrete render or exposed concrete block.
- Properties to the rear of the appellants' property have erected fencing to a comparable height.
- It will not impact on property value.
- There is precedent for permitting a wall higher than 1.2 metres to the front of the building line. The wall along the east side is 1.9 to 2.2 metres high and bounds a private laneway which serves a dwelling to the rear.

### **6.3. Planning Authority Response**

The issues raised in the appeal have been covered in the planner's report.

### **6.4. Observations**

None

## 7.0 Assessment

I consider that the issues arising in the case pertain to the suitability of the fence as erected and impact on amenities of adjoining property.

At the outset the reference made in the appellants' submission to permitted heights as set out in the Planning and Development Regulations, 2001, as amended, pertain to exempted development provisions. This does not preclude permission being sought for fencing/walling in excess of the stated heights. I also note reference by the applicant's agent to Sections 4 (1) (h) , 4(1)(j) and 4 (3)(b) of the Planning and Development Act, 2000 as amended, and Article 6 and Part of Schedule 2, Class 3 of the Planning and Development Regulations 2001, as amended, which pertain to exempted development provisions. Notwithstanding, the appeal before the Board for adjudication is for the retention of the fencing as erected on the site.

Both the applicant's and appellants' dwellings are served by large rear gardens which are south facing. The timber fence has been erected along the western boundary of the site, only. It comprises of timber panels secured to the wall by supports. There is nothing to indicate that the fencing would render the wall unsafe. The said wall to the rear garden and side of the dwelling is between 1.77 and 1.9 metres in height and is backed with planting. The fence, protruding over this wall, gives an overall height of between 2.5 and 2.7 metres. The fence is well maintained and is comparable in design and height to the fencing erected to the rear of Nos. 43 and 44 Ballydowd Gardens which back onto the site.

In such a suburban context such type fencing would not be uncommon. I submit that relative to the existing boundary wall the increase in height would not give rise to concerns in terms of overshadowing of the appellants' garden or adversely impact their visual amenities. It is reasonable to assume that the existing boundary wall which is 1.9 metres in height immediately to the side of the dwellings already impacts on light to the downstairs window in the appellants' property and the increase in height would not give rise to concerns in this regard. I note that the window does not serve a habitable room. I am unclear as to the appellants' concerns in terms of egress in an emergency in view of the existing wall.

I consider that the fence is not as successful to the front of the building line. I submit that coupled with the myriad of materials used in the front and side boundary walls

the fence, both in terms of its height and finish, detracts from the visual amenities of the area. I would concur with the planning authority's conclusion that its removal would be appropriate. I consider that this can be done by way of condition rather than a split decision as per the authority's notification of decision.

#### *Appropriate Assessment – Screening*

Having regard to the location of the site and the nature and scale of the proposed development it is concluded no appropriate assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

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

### **9.0 Reasons and Considerations**

Having regard to the residential zoning objective for the area, the pattern of development in the vicinity and the scale, nature and design of the development to be retained, it is considered that, subject to compliance with the conditions set out below the development to be retained would be acceptable in terms of scale and design and would not seriously injure the amenities of the area or of property in the vicinity. The development to be retained 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.

**Reason:** In the interest of clarity



2. The timber fence erected forward of the front building line of the dwelling shall be removed within 4 months from the date of the order.

**Reason:** In the interest of the visual amenities of the area

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**May, 2021**