



An
Bord
Pleanála

Inspector's Report ABP-310009-21

Development	Retention and completion of a retaining wall.
Location	Dun Gaoithe at Aikens Village, Village Road, Sandyford, Dublin 18
Planning Authority	Dún Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D20A/0698
Applicant(s)	Coshon Two Ltd.
Type of Application	Retention and Permission
Planning Authority Decision	Dún Laoghaire Rathdown County Council
Type of Appeal	Third Party
Appellant(s)	Clon Brugh Residents Committee
Observer(s)	
Date of Site Inspection	16 th July 2021
Inspector	Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is located in the Aiken's Village residential development in Sandford approximately 10km south of Dublin City Centre and 1.3km north-west of Stepside. Access to the site is off Enniskerry Road (R117) and Village Road. The surrounding area has undergone significant residential development in recent years and the appeal site is partially a construction site.
- 1.2. The site has a stated area of approximately 1.5 hectares and comprises an unfinished residential development of 56 dwellings which are either constructed and occupied, constructed and not yet occupied or not yet fully constructed. To the west of the site is the Clon Brugh residential development, which consists of apartment blocks up to six storeys in height.

2.0 Proposed Development

- 2.1. Planning permission is sought for the retention and completion of a retaining wall in the residential development permitted under Reg. Ref: D16A/0393, and subsequent permission Reg. Ref: D18A/0509, along the western part of the site, along with all associated site works.
- 2.2. The proposal will also include the adjustment of existing site contours to achieve vehicle and pedestrian compliant access to houses, resulting in earth moving works across the site and the construction of the retaining wall where ground levels have been raised.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Dún Laoghaire Rathdown County Council issued notification of decision to grant permission and retention permission. Two of the three conditions attached to the permission relate to the wellbeing of trees

3.2. Planning Authority Reports

3.2.1. The recommendation to grant retention permission/ permission in the final Planner's Report reflects the decision of the Planning Authority. The main points raised under the assessment of the proposal in the initial report are as follows:

- Residential development including works such as retaining walls are permitted in principle under the zoning objective.
- Whilst retaining wall is considered high along some points of its route, it is significantly lower than the residential units under construction.
- Materials and appearance of the retaining wall are generally considered acceptable. Proposal for the provision of earthen banks will soften the appearance of the development.
- Whilst a lower wall may appear less dominant, proposed height and scale of the wall is not considered unduly dominant.
- Wall will be set back from site boundaries.

3.3. Further information was sought from the applicant on matters relating to the description of the development, including reference to earth moving works; accuracy of drawings, in particular the as-built structure; and updating of the tree report; and justification for the height of the retaining wall. It is advised that only proposals relating to the retention and completion of the retaining wall are under consideration.

3.4. The subsequent Planner's Report assessed the further information as follows:

- Description is considered a more accurate reflection of the proposed works and is therefore acceptable.
- Drawings submitted show the extent of wall currently being constructed on site and the proposed wall upon completion.
- Arboricultural Assessment and Tree Protection Plan submitted – recommendations relating to pruning, cordoning of root zone and ground protection.

- Conditions should be attached regarding the carrying out of recommended tree works and tree health monitoring, as well as replacement of any trees within the site that are damaged or destroyed.
- As wall moves south, the height is reduced compared to previous, and this appears less dominant.
- Applicant has submitted sufficient details and it is considered that the proposal would not harm visual or neighbouring amenity. Works are considered to be consistent with Section 8.2.8.1 Landscape Plans, Section 8.2.8.3 Public/ Communal Open Space Quality, and Section 8.2.8.4 Private Open Space of the Development Plan.

3.4.1. The Drainage Division has no objection to the proposal stating that all drainage conditions from before would apply.

4.0 Planning History

Dún Laoghaire Rathdown County Council Reg. Ref: D16A/0393

4.1. Permission granted in January 2017 for 56 dwellings consisting of 39 three and four bedroom houses and 17 one, two and three bedroom apartments. The dwellings range from 2 to three storeys in height and the apartment block containing 17 no. units is a total of four storeys over ground level to the east and five storeys over ground level to the west, including the undercroft car parking area. There is a setback at the upper storey. The proposed development includes vehicular access from Village Road, all associated site and infrastructural works including foul and surface water drainage; surface and undercroft car parking; public open spaces; landscaping, boundary treatment, new internal roads, cycle paths and footpaths

Dún Laoghaire Rathdown County Council Reg. Ref: D18A/0509

4.2. Permission granted in October 2018 for modifications to the previously permitted residential development, permitted under planning Reg. Ref. D16A/0393, consisting of the division of the terrace of 6 houses located at units 39-44 into two terraces of three houses with a break introduced between units 41 and 42 and units 39, 40 and 41 relocated further north than their permitted location; for modifications to house Type C1, occurring at unit no. 28, resulting from reorientation of the unit in

compliance with Condition no. 2 of Reg. Ref. D16A/0393, including a redesign of the internal layout and all elevations; for modifications to house Type B, occurring at unit no. 22, consisting of additional 4.0 sqm gross floor area for the provision of a utility room at ground floor level and associated amendments to the rear elevation; for modifications to house Type F, occurring at units no. 26, 27, 31, 32, 33, 36, 37, 38, consisting of amendments to the rear elevation and roof pitch and arrangement in order to provide adequate head height to first floor rooms along the rear elevation.

5.0 Policy Context

5.1. Dún Laoghaire Rathdown County Development Plan, 2016-2022

- 5.1.1. The site is zoned 'A' with the stated objective *'to protect and/ or improve residential amenity.'* A section of the site to the south-west is zoned 'F' with the stated objective *'to preserve and provide for open space with ancillary active recreational amenities.'*

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal against the Council's decision was submitted by Clon Brugh Residents Committee. The grounds of appeal and main points raised in the appeal submission are summarised as follows:

Height of the wall and close proximity to mature trees

- Northern end of wall is in close proximity to mature trees and excavation has exposed tree routes. No obligation on developer to demonstrate compliance with Council.
- Works have re-commenced on the wall without tree protection measures recommended by the arborist.
- Height of wall is excessive and overbearing, especially adjacent to House C1/29. Height has increased from a 2m to 4.4m wall.

Decision made without floor levels of House C1/29 and duplex block resolved

- House C1/29 constructed 1m higher than permitted floor levels and this is not exempted development.
- Duplex Block 2 appears to be 400mm higher on planning compliance drawings than permitted levels.
- Both these buildings are directly associated with the retaining wall – grant permission for wall and adjacent footpath (including levels) without an outcome on the above is premature.

Screen planting adjacent to apartment block section 6-6 & 7-7

- Dense planting is required to avoid the headlights of cars shining into the upper floor apartments of Clon Brugh.

Boundary wall, footpath level and embankment concerns

- Boundary wall should not be raised – height should be 1.2m as shown on original drawings.
- Proposed footpath between boundary wall and retaining wall is at same level as top of boundary wall and will result in excessive overlooking into Clon Brugh.
- There are steep slopes on both sides of the footpath, without clear details on proposed planting and how this might be maintained. Footpath and steep embankment will be overbearing and unattractive features. Footpath level should be reduced, and landscaping should be attractive and maintained.
- Ditch does not have capacity to accommodate further run-off from hard surfaces without risk of flooding – all surface water should be contained within Dun Gaoithe development and boundary wall foundations should not affect function of the ditch.
- Arborist report requires soil piled up against Tree No. 1 to be removed – proposed footpath levels do not take account this reduction. Proposal affects the root protection area of a mature tree.
- Proposed retaining wall is excessive and overbearing and does not follow natural site levels at the northern end.

- Wall and footpath levels cannot be granted permission if it does not correspond with permitted levels for House C1/29 and Duplex Block 2 floor levels.
- Appellant requests that in the event that the Board grants permission, mitigation measures such as efficient screen planting on the boundary (trees of sufficient size rather than shrubs) should be required by way of condition.

6.2. Applicant's Response to Third Party Appeal

6.2.1. The applicant's agent responded to the third party appeal with the following comments:

- Applicant will ensure that the 2 no. conditions relating to trees in the subject site attached by the Planning Authority are adhered to – similar conditions attached by the Board would be welcomed.
- Requirement for retaining wall arose as a result of discussions with Building Control due to the disparity in levels across the site – retaining wall required to support the road to the front of House 29; to retain the ground along the western side of House 29 and Duplex Block 2; and to manage the level difference to the south-west of Dun Gaoithe Hall between the car park and open space.
- Issue of floor levels of dwellings was addressed in compliance submission to Council in relation to both permissions on site – requirement was for finished floor levels to be raised to comply with Condition 13 of the 2016 parent permission.
- Condition 13 required the redesign of the access road and the changes in road levels affected the finished floor levels of houses in order to ensure Part M access. FFL of House 29 increased from 123.00 under 2016 application to 124.00 in compliance submission and subsequent 2018 application.
- Requested that the Board conclude that all FFL issues have already been addressed.
- Arboricultural Assessment sets out a course of recommendations relating to Tree 1, which is closest to the retaining wall. Condition attached to

notification of decision by Planning Authority safeguards the wellbeing of existing trees.

- Series of conditions attached to parent permission require the developer to appoint an arborist – assessment will be submitted to Council for final sign off before developer's bond is returned.
- Proposal will not have a material impact on drainage on the subject site or adjoining lands. Drainage was comprehensively addressed in previous applications and Drainage Department have no objection to the proposed development.
- Scale of retaining wall is fully reasonable and quantified in terms of function to safeguard residential properties in the vicinity and users of open space and pathways.
- Overall height of retaining wall has been mitigated at further information stage and this has been welcomed by the Planning Authority.
- Retaining wall ranges in height from 1.5m adjacent to No. 42 to a height that ranges from 2.17 - 2.82m adjacent to No. 29. On the housing side of the wall, it will range from 1.1 - 1.8m.
- Height of wall in the vicinity of the main entrance to No. 29 is determined by the requirement to provide a guardrail against falls in this zone.
- Retaining wall when complete will not be overbearing or give rise to overshadowing in relation to adjacent properties.
- Retaining wall will be set back and significantly softened by the gently sloped landscaped embankment. Applicant will ensure landscaping is appropriately maintained and that retaining wall will utilise similar materials of the overall residential development.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority consider that the grounds of appeal do not raise any new matter which would justify a change of attitude to the proposed development.

7.0 Assessment

7.1. I consider that the key issues in determining this appeal are as follows:

- Development principle;
- Visual Impact on and impact on residential amenity;
- Impact on mature trees; and
- Drainage impacts;
- Appropriate Assessment.

7.2. Development Principle

7.2.1. The main part of the appeal site affected by the proposed development is zoned 'A' with the stated objective *"to protect and/ or improve residential amenity."* The provision of a retaining wall as an ancillary element that will enable the construction of a new residential development would therefore be acceptable in principle subject to an assessment of the impact of the proposal on residential amenity and compliance with other relevant Development Plan policies and objectives.

7.2.2. A section of the site is also zoned 'F' with the stated objective *'to preserve and provide for open space with ancillary active recreational amenities.'* The proposed retaining wall acting as a boundary to open space would also be consistent with this zoning objective.

7.3. Visual Impact and Impact on Residential Amenity

7.3.1. A third party appeal has been lodged against the Council's notification of decision to grant permission for the retention and completion of the retaining wall by the residents association of the adjoining Clon Brugh development to the west. The main grounds for appeal from a residential amenity viewpoint are that the retaining wall is excessively high and overbearing, and that the proposed footpath will result in overlooking into Clon Brugh.

7.3.2. The applicant's agent has set out in detail in the response to the third party appeal the valid reasons for the retaining wall. It appears that the retaining wall has come about due to conditions attached to the parent permission (Reg. Ref: D16A/0393),

and the subsequent permission to modify the scheme (Reg. Ref: D18A/0509). Condition 2 of Reg. Ref: D16A/0393 required the reorientation of Houses 28 & 29 and Block 2. Houses 28 and 29 adjoin the retaining wall, which is required to support the road and ground around these houses and the houses themselves.

- 7.3.3. In addition, Condition 13 of the parent permission required the redesign of the access road and these changes affected finished floor levels in order to comply with Part M access requirements. The finished floor level of House 29 therefore increased by 1m. The applicant's agent makes the point that the issue of finished floor levels has already been addressed through compliance with the conditions of the parent permission.
- 7.3.4. Notwithstanding the fact that finished floor levels are intrinsically linked to the requirement for the retaining wall as proposed, I would be satisfied that the purpose of this application is not to revisit the dwelling levels but rather to assess the retaining wall itself. The retaining wall is structurally essential to support the houses and surrounding ground and it should be highlighted that the height of the wall has been reduced at further information stage. I note also that the retaining wall is set back from the boundary, and this allows for slope and landscaping works on its western side to soften its appearance and integrate the structure with the surrounding. Having inspected the site and viewed the as-built section of the retaining wall, I consider that the structure will not be unduly overbearing and that there are no properties that will be adversely affected by overlooking.
- 7.3.5. The third party appellant requests that in the event of a grant of permission, the Board attach a condition requiring the use of efficient screen planting on the boundary in the form of trees of sufficient size. I propose that the applicant should agree a landscaping plan for the western side of the retaining wall with the Planning Authority within 3 months of the date of the Board's Order.

7.4. **Impact on mature trees**

- 7.4.1. The third party appellant also has concerns regarding the potential impact of the retaining wall on existing trees along the boundary. It is submitted that excavations have exposed tree routes and that works have taken place without the tree protection measures recommended by the Arborist.

- 7.4.2. The Planning Authority has attached two conditions to its notification of decision to grant permission relating to the trees in question. Condition 2 states that works in relation to tree protection zones, pruning and tree health monitoring shall be in accordance with the intervals carried out in the Arboricultural Assessment and shall be carried out by a competent expert. It is a requirement under Condition 3 that any trees identified for retention, which die or become severely damaged or seriously diseased within five years of the completion of the development, shall be replaced with trees of similar size and species or as otherwise approved by the Planning Authority.
- 7.4.3. In my opinion, these conditions are sufficient to afford the necessary protection for trees in proximity to the retaining wall. The applicant has provided an arboricultural assessment, suitable recommendations have been made and this is reflected in the above conditions.

7.5. Drainage

- 7.5.1. The appellant submits that ditch along the Clon Brugh side of the boundary does not have capacity to accommodate further run-off from hard surfaces within the appeal site without risk of flooding. It is considered that all surface water should be contained within the Dun Gaoithe development and boundary wall foundations should not affect the function of the ditch.
- 7.5.2. As noted by the applicant, the issue of drainage was addressed in previous applications and the Drainage Department of the Local Authority had no objection to the proposed development. I would therefore be in agreement that the proposal will not have a material impact on drainage on the subject site or adjoining lands.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, namely a suburban and fully serviced location, no appropriate assessment issues arise.

8.0 Recommendation

- 8.1. I recommend permission/ retention permission for the proposed development should be granted for the reasons and considerations hereunder and subject to the conditions below.

9.0 Reasons and Considerations

Having regard to the zoning objective for the site and pattern of development in the area, together with the design, scale, layout and appearance, it is considered that, subject to compliance with conditions below, the proposed development/ development to be retained would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity and would provide for the safe completion of the adjoining residential development. 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, carried out and completed in accordance with the plans and particulars lodged with the application, as amended further plans and particulars submitted on the 3rd day of March 2021, 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 within three months of the date of this order and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permissions granted on under Reg. Refs: D16A/0393 and D18A/0509 and any agreements entered into thereunder.

Reason: In the interests of clarity.

3. The area to the west of the retaining wall shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority within three months of the date of this order. This scheme shall include the following:

- (a) A plan to scale of not less than [1:500] showing –

- (i) The species, variety, number, size and locations of all proposed trees and shrubs;
- (ii) Hard landscaping works, specifying surfacing materials, furniture and finished levels.

- (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment

- (c) A timescale for implementation.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development or until the development is taken in charge by the local authority, whichever is the sooner, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of residential and visual amenity.

4. Works in relation to tree protection zones, pruning and tree health monitoring shall be carried out in accordance with the Arboricultural Assessment and accompanying Tree Protection Plan submitted with to the Planning Authority on 3rd March 2021.

Reason: In the interests of residential and visual amenity and the protection of trees.

5. Any trees identified for retention which die or become severely damaged or diseased within five years from completion of the development hereby

permitted shall be replaced with trees of similar size and species or as otherwise approved by the Local Authority.

Reason: In the interests of residential and visual amenity and the protection of trees.

Donal Donnelly
Planning Inspector

19th July 2021