



An
Bord
Pleanála

Inspector's Report

ABP-311133-21

Development	Raising in height of the boundary walls including provision of fitting a precast concrete capping on top and associated site works
Location	1B Fernhill, Glencar Irish, Letterkenny, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151153
Applicant(s)	Frank McManus.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	John Ferry.
Observer(s)	None.
Date of Site Inspection	3 rd February 2022
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.036ha and is located at 1B Fernhill, Letterkenny. Fernhill is located north-west of Letterkenny Town Centre and comprises a mature, low-density development of detached and semi-detached bungalows. The estate is set on rising ground, which rises in a south to north direction.
- 1.2. The subject site is located at the western end of the estate, near to the estate entrance. It contains a semi-detached bungalow that is of traditional design and which has been extended to the front, in the form of a porch extension. The rear garden incorporates a severe rise in ground level, as do neighbouring properties, and I estimate the rear-most part of the garden is c.2.5m higher than the rear of the house.
- 1.3. The site is enclosed by a block wall along the east site boundary, which varies in height, between 1.6m and 2.6m, by a dwarf wall and hedge to north and north-east elevated part of the garden, and by a c.2m block wall along the lower part of the east boundary. The wall along the east site boundary has been raised and is plastered on the applicant's side.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprised retention of raising height of boundary walls, provision of precast concrete capping on top and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 29th July 2021, subject to 3 No. conditions.
 - Condition No. 2 required that concrete copings shall be provided within 5 years of the date of permission.

- Condition No. 3 required that the wall should be plastered and painted on the west side and that an attempt should be made to reach an agreement with the east-adjointing occupier for plastering and painting the eastern side, for the extent of wall forward of the front building line.

3.2. **Planning Authority Reports**

- 3.2.1. A planning report dated 26th July 2021 has been provided. The report states that the development is acceptable in principle. Reference is made to the Board's decision to grant permission for alterations to front and side boundaries at another property in Letterkenny (12 Orchard Grove, ABP Ref. ABP-303028-18), as being material to the consideration of the current proposed development and, in the context of this separate grant of permission, the height and layout of the subject walls are stated to be acceptable. The report states that the appearance could be improved by rendering and capping and that this shall be a condition of a grant of permission. The report recommends that permission be granted, subject to 3 No. conditions, which are consistent with the Planning Authority's decision.

3.2.2. **Other Technical Reports**

Handwritten comments from the **Roads Office** have been provided, which express no objection to the development.

3.3. **Prescribed Bodies**

- 3.3.1. The planning report states that no referrals were issued.

3.4. **Third Party Observations**

- 3.4.1. One third party observation was received, the issues raised within which can be summarised as follows: -
- Permission was previously refused for the development, under Reg. Ref. 1851857.
 - The applicant was required under enforcement proceedings to reduce the height of the wall, but this has not happened. The Planning Authority has allowed the applicant to seek to regularise the development.

4.0 Planning History

1851857 – Permission refused on 8th February 2019 for retention of raising in height of boundary walls and associated site works. Permission was refused for 1 reason as follows: -

1. The subject site is located on lands zoned ‘established development’ within the settlement of Letterkenny in the County Development Plan, 2018-2024 (Part C, ‘Objectives and Policies for the Towns’, Chapter 12 refers). The objective of this zoning is ‘to conserve and enhance the quality and character of the area, to protect residential amenity and allow for development appropriate to the sustainable growth of the settlement’. Having regard to the overall design inclusive of exposed block work, form, scale and height of the boundary treatment to be regularised particularly forward of the building line it is considered that to permit the regularisation of same which: (i) fails to integrate successfully with the subject site and (ii) is contrary to the established character of the streetscape of the overall estate with typical low level wall / fence boundary treatment, would by itself, and by undesirable precedent be contrary to the aforementioned land use zoning objective and policy of the County Donegal Development Plan, 2018-2024 and would thereby be contrary to the proper planning and sustainable development of the area.

1080068 – Permission granted on 2nd December 2010 for retention of front porch to existing dwelling.

Relevant nearby planning history

1851368 - 12 Orchard Grove: (ABP Ref. ABP-303028-18) Permission granted on 28th March 2019 for alterations to boundary wall and pillars, timber boarded screen panels between pillars, relocation of existing access and lean-to covered area between existing dwelling and eastern boundary.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

- 5.1.1. Part C of the development plan contains objectives and policies for the towns within the county, including Letterkenny. It also includes land-use zoning maps for each of the towns, with Map 12.1B relating to Letterkenny.
- 5.1.2. The subject site is identified on the zoning map as subject to the 'Established Development' zoning, with an objective '*To conserve and enhance the quality and character of the area, to protect residential amenity and allow for development appropriate to the sustainable growth of the settlement subject to all relevant material planning considerations, all the policies of this Plan, relevant National/ regional policy/guidance including environmental designations and subject to the proper planning and sustainable development of the area.*'
- 5.1.3. Section 6.2 of the development plan contains policies and objectives in relation to urban housing. The following are relevant to the subject appeal: -

AB-P-12: It is the policy of the Council both to protect the residential amenity of existing residential units and to promote design concepts for new housing that ensures the establishment of reasonable levels of residential amenity.

UB-P-27: Proposals for extension to a dwelling shall be considered subject to the following criteria: (a) The development reflects and respects the scale and character of the dwelling to be extended and its wider settlement; (b) Provision is made for an adequate and safe vehicular access and parking; and (c) The proposal would not adversely affect the amenity of adjoining properties.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to a European site. The closest European sites are Lough Swilly SAC (Site Code 002287) and SPA (Site Code 004075), which are both approx. 2.5km south-east of the site.

5.3. EIA Screening

- 5.3.1. The subject development constitutes smallscale development, within the curtilage of house. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows: -

- Planning history
 - The development was previously refused, under Reg. Ref. 1851857, for reasons related to its height, shape and form, which were stated to not comply with the development plan.
- Enforcement history
 - The Planning Authority issued an enforcement notice on 8th October 2019, which required the height of the walls to be reduced to required levels and the applicant was given 8 weeks to carry out the specified works. The developer has not attempted to comply with the Notice.
 - The Planning Authority confirmed, via email, that it was preparing paper for court proceedings and then subsequently decided to allow the applicant 6 months, to allow the applicant apply to regularise the development. This approach is unjustified.
 - The current application does not seek to regularise the development.
- Conditions attached to the Planning Authority's decision are not time-specific so do not provide assurance regarding compliance.
- The development ignores the development plan and undermines enforcement proceedings.
- A CD containing email correspondence with the Planning Authority and photographs of the development have been provided.

- The Planning Authority's decision should be overturned.

6.2. Applicant Response

6.2.1. No submission received.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on 10th September 2021, the contents of which can be summarised as follows: -

- In making its decision on the application, consideration was given to exempted development rights under Class 5 of the Regulations and, although the subject wall exceeds the maximum allowable height under the regulations, the principle was accepted. Consideration was also given to the Board's decision on ABP-303028-18 (Reg. Ref. 1851368) for retention of a boundary wall at 12 Orchard Grove, Letterkenny.
- The development will not interfere with the residential amenities of neighbouring property.

6.4. Observations

6.4.1. None received.

6.5. Further Responses

6.5.1. None received.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Impact on east-adjointing property and the character of the area; and
- Appropriate assessment.

7.2. Principle of development

7.2.1. The proposed development is consistent with the 'Established Development' zoning objective, as set out in the Donegal County Development Plan 2018-2024.

7.3. Impact on east-adjoining property and the character of the area

- 7.3.1. The Planning Authority previously refused permission to retain the development in 2018, citing concerns with the development's failure to integrate with the subject site and its impact on the established character of the estate. In recommending that the subject development be granted in its assessment of the current application, the Planning Authority's Planning Report states that consideration was given to a grant of permission by the Board at 12 Orchard Grove, Letterkenny (ABP Ref. ABP-303028-18 refers) for development that included raised front and side boundaries of between 1.8m-2.4m in height. In the context of this decision, the height and layout of the subject development were deemed acceptable to the Planning Authority.
- 7.3.2. In recommending that permission be granted, the Planning Authority's Planning Report outlines that rendering and capping of the wall would provide for a more complete finish and would protect the wall from water ingress into the future. To this end, condition Nos. 2 and 3 were attached to the Planning Authority's decision. Condition No. 2 requires that concrete copings should be provided within 5 years of the grant of permission. Condition No. 3 requires that the wall should be plastered and painted on the west side and that an attempt should be made to reach an agreement with the east-adjoining occupier for plastering and painting the eastern side, for the extent of wall forward of the front building line.
- 7.3.3. The appellant argues that there is no basis for the Planning Authority's decision to grant permission for the development and states that the development ignores the development plan and ignores enforcement proceedings.
- 7.3.4. Regarding concerns over ongoing enforcement proceedings, I note the appellant's detailed concerns, but this is a matter for the Planning Authority, which has responsibility for planning enforcement. It is not a matter which can be taken into consideration by the Board in its assessment of this appeal.
- 7.3.5. The existing east site boundary wall is identified on drawing No. 5710/PL01'A' as having been raised in two areas, to the front and rear of the house, and it now has a

varied height of between 1.6m and c.2.6m. The applicant also proposes to cap the wall over its entire length, which would have the effect of increasing its overall height by c.100mm. The wall is plastered on the applicant's side and is unplastered on the appellant's side.

- 7.3.6. Regarding the raised wall section forward of the building line, I noted on my visit to the site that there are a variety of front boundary treatments in evidence in the estate. For example, the shared front boundary between 1A and AB comprises a plastered wall of c.1.5m height and the shared front boundary between 2A and 2B comprises a leylandii hedge c.2.5m in height. In this context, I do not consider the 1.6m high raised section has any material impact on the character of the area. The 2m high raised section forward of the building is however, in my view, an incongruous addition to the street and is out of character. It is not required from a residential amenity/privacy point of view and, as such, I consider that it should be reduced in height, to match the lower 1.6m height of the remaining section of the front boundary. Should the Board decide to grant permission, I recommend a condition be attached to this effect.
- 7.3.7. I note that as part of the photographs provided with the appeal, the appellant comments that his vision is impaired, when leaving his driveway in his car. The wall is set back c.2m from the nearside road edge and I am satisfied that there is adequate visibility in both directions.
- 7.3.8. Regarding the raised wall section to the rear of the house, this is located primarily to the rear of an existing shed within the appellant's property, which acts as a screening barrier for the tallest section of the wall. A small portion of this tallest section is visible from the appellant's rear garden but, in view of the improved privacy between gardens that the wall provides for, I consider it is acceptable. I do not consider that the raised wall to the rear of the house has a significant or undue impact on the appellant's residential amenity.
- 7.3.9. I note the Planning Authority's observations regarding improvements that would be brought about by plastering the wall on the appellant's side, where it extends forward of the building line, however condition No. 3 of the Planning Authority's decision, in my opinion, does not accord with advice provided by the Development Management Guidelines. Section 7.3 of the Guidelines advises that conditions should be 'precise'

and 'enforceable' and in this instance, the appellant's consent is clearly required to plaster their side of the wall. This option is available to the appellant, without further recourse to the applicant or Planning Authority, should they wish to pursue it.

7.4. Appropriate Assessment

- 7.4.1. The subject site is not within or adjacent to of any Natura 2000 site, the nearest designated sites being the Lough Swilly Special Area of Conservation (Site Code 002287), which is approx. 2.5km east, on the opposite side of Letterkenny town centre.
- 7.4.2. Having regard to the nature and scale of the development, which comprises retention of wall raising and proposed capping within the curtilage of a house, 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

- 8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and scale of the development to be retained and proposed and the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions below, the development is in keeping with the character of the area and would not seriously injure the amenities of the area or the amenities of properties in the vicinity. The 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, except as may otherwise be required in order to comply with the following conditions. Where such conditions
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	<p>require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity</p>
2.	<p>The boundary wall shall have a maximum height of 1.6m forward of the building line of the existing house and shall be capped and plastered on its western side.</p> <p>Reason: In the interest of visual amenity.</p>

Barry O'Donnell
Planning Inspector

18th February 2022