



**Question**

Whether the increase in height of a rear boundary wall by an additional 0.6 metres at No 8 An Rian, is or is not development or is or is not exempted development

**Location**

No 8 An Rian, Termonfeckin Road, Drogheda, Louth

**Declaration**

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5.2021/17

Applicant for Declaration

Tada Makauskas

Planning Authority Decision

Is not exempted development

**Referral**

**Referred by**

Tadas Makauskas

**Owner/ Occupier**

Tadas Makauskas

**Observer(s)**

None

**Date of Site Inspection**

07<sup>th</sup> of January 2022.

**Inspector**

Karen Hamilton

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## 1.0 Site Location and Description

1.1. The site contains a semi-detached dwelling located within a residential estate, No. 8 An Rian, along the Termofeckin Road, Drogheda, Co. Louth. The subject dwelling is one of 17 similar style dwellings within the residential estate. The rear of the site backs onto a new distributor road which radiates west from the main R166, Newfoundland Road. This road provides access into Termonabbey residential estate. The site has a large block wall at the rear of the site, which bounds the rear garden and fronts onto the public footpath along the northwest of the site.

## 2.0 The Question

2.1. The following is questioned by the referrer:

Whether the increase in height of a rear boundary wall by an additional 0.6 metres at No 8 An Rian, is or is not development or is or is not exempted development

## 3.0 Planning Authority Declaration

### 3.1. Declaration

On the 22<sup>nd</sup> of July 2021 an application for declaration on exempted development was received by Louth County Council from Tadas Makauskas. On the 12<sup>th</sup> of August 2021 the planning authority (PA) issued their declaration under Section 5 of the Planning Act 2000, as amended (referral reference S5/2021/17) setting out that the declaration to increase the height of the wall should be refused.

In considering this reference the PA had regard to:

- a) The definition of “development” in Section 3 of the Planning and Development Act (as amended)
- b) Article 9 (1), Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001 (as amended)
- c) The planning history of the subject site and conditions contained therein.

It was concluded that:

- a) The proposed increase in height of the rear boundary wall of No. An Rian, Termonfeckin Road, Drogheda, Co. Louth constitutes development,
- b) That the proposed increase in the height of the wall would contravene a condition of planning permission file ref. no. 10/510115

It was decided that the development is development and is not exempted development and the Declaration of Exemption should be refused.

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

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

The report of the area planner reflects the refusal of the Declaration of Exemption as summarised below:

- The boundary wall abuts a public road and forms part of a property that is visible from the public road.
- The current boundary wall at the rear of the property extended to an overall height of 1.4m and the applicant is seeking an increase in height to 2.12m on the dwelling side.
- The cross section submitted indicates a level distance between the rear of the property and the level of the footpath.
- The increase in the height of the wall will result in a height of 2.m on the public side and 1.8m on the homeowner's side.
- The increase in the height will be visually and aesthetically out of keeping with the adjacent homeowner's boundary.
- Condition No 9 of the original permission specifies that boundary treatment shall be replaced with Type C boundaries, which are 2.4m capped block walls.
- The increase in height is not exempt from the requirement to obtain planning permission.

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

No other technical reports.

- None received.

## 4.0 Planning History

### 4.1. Referral Site

#### **Reg Ref no. 10/510115**

Permission granted in 2011 for 17 no dwellings.

- Condition No. 9 requires that all type A boundaries are identified on Drawing No.001-19-002 and replaced with Type C boundaries (2.4m high capped block walls with a finish consistent with the external finished with the permitted dwellings.)

#### **Enforcement File UD 20U209**

The information contained on the file alleges that the rear boundary wall may have been increased above the authorised permitted height.

### 4.2. Relevant Referrals

#### **ABP 305105-19**

Whereas a question has arisen as to whether the construction of a block wall, rendered and capped, at a height not exceeding 1.2m at St Oran's Park, Buncrana, County Donegal is or is not development or is or is not exempted development, An Bord Pleanála concluded that the construction of the wall would involve the carrying out of works and would, therefore constitute development, and the development involving the construction of a front boundary wall bounding the curtilage of the house on site, would come within the scope of Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended and was exempted development.

## 5.0 Policy Context

### 5.1. Louth County Development Plan 2021-2027

The site is located on lands zoned as A1, Existing Residential, where it is an objective *“to protect and enhance the amenity and character of existing residential communities”*.

Chapter 13: Development Management Guidelines

13.8.9 Residential Amenity

13.8.11 Boundary Treatment

Boundary treatments in residential developments shall consist of the following:

- The rear boundary shall consist of a 2-metre-high block wall;
- Walls bounding any public areas shall be rendered and capped on both sides.

### 5.2. Natural Heritage Designations

None relevant

## 6.0 The Referral

### 6.1. Referrer's Case

The referrers submission received on the 07<sup>th</sup> of September 2021 can be summarised as follows:

- Planning permission was granted for Lorrac Developments for 17 no. dwellings under Planning Reference 1050115 (extension of time granted under planning reference 15575).
- The plans submitted as part of the application showed a section of the wall to the rear of the applicant's property as having a height of 2.2m. These plans did not indicate from which side this elevation is shown.
- The height of the wall as measured from the applicant's rear yard was only 1.5m approximately.

- There is a continuous and considerable fall from the rear of the applicant's dwelling to the wall which exasperates a privacy problem.
- The client and neighbour had to increase the height of the wall by c. 0.6m.
- The height of the wall, which measures 2.2m on the applicant's side, is in line with the permission.
- The cross section indicates that the wall is a retained wall in part.
- It would appear that the estate was possibly built at a higher level (0.6m) which has led to discrepancies on both side of the wall.
- No level appears to have been provided at the estate from Termon Abbey Road.
- Under Schedule 2, Part 1, Class 5 of the Regulations a wall can be constructed to a height of 2m without planning permission.
- The increase in the height of the wall does not contravene a condition of planning as the wall only measures 1.5m from the inside.
- The road which runs to the rear of the applicant's house is very busy.

## 6.2. Planning Authority Response

A response from the PA noted that the Planner had no further comment to make.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act 2000, as amended

#### 7.1.1. Section 2(1) of the Act states the following:

'development' has the meaning assigned to it by Section 3 of the Act;

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ....'

#### 7.1.2. Section 3(1) of the Act states that:

'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material



change in the use of any structures or over land’.

- 7.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act.
- 7.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.
- 7.1.5. The main regulations made under this provision are the Planning and Development Regulations 2001-2021.

## 7.2. Planning and Development Regulations 2001, as amended

- 7.2.1. Article 6(1) of the Planning and Development Regulations 2001, as amended, (hereinafter ‘the Regulations’) provide that ‘subject to article 9, development of a class specified in column 1 of Schedule 2 to Part 1 of the Regulations shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.
- 7.2.2. Schedule 2 to Part 1 of the Regulations sets out classes of exempted development comprising ‘general development within the curtilage of a house’ and ‘sundry works’, including Classes 5 and 11, which are considered relevant to this referral and state the following:

| <b>Column 1- Description of Development</b>   | <b>Column 2- Condition and Limitations</b>   |
|---|--|
| <b>Class 5</b> - The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone blocks with decorative finish, or other concrete blocks or mass concrete. | 1. The height of any such structure shall not exceed 2 metres or in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.<br><br>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and in the face of any wall of concrete or concrete block (other than blocks with decorative finish) which would be visible from any road, path |

|   |   |
|---|---|
|   | <p>or public area, including public open space shall be rendered or plastered.</p> <p>3. No such structure shall be metal, palisade or other security fence.</p>  |
| <p><b>Class 11</b> - The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p> | <p>1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.</p> <p>2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.</p> |

7.2.3. As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (ii) consist or comprise the formation, laying out or material widening of the means of access to a public road the surface carriageway of which exceeds 4 metres in width;.....

## 8.0 Assessment

### 8.1. Introduction

8.1.1. The purpose of the referral is to determine if an increase in the height of a boundary wall falls within the scope of exempted development within the relevant legislation.

8.1.2. An enforcement file (20U209) accompanied the documentation from the PA. The increase in the height of wall is questioned. I note the correspondence referred to alleged works. In addition, I note other correspondence on this file, between the PA and the applicant's agent, is reiterated in the documentation which accompanied the referral. I do not consider these enforcement proceedings have any relevance to my determination.

## 8.2. **Is or is not development**

8.2.1. The works include the retention of an increase in the height of c. 0.6m of a block boundary wall, to the rear of an existing dwelling, which has been capped and plastered. The initial question that arises is, whether the proposal would or would not constitute development.

8.2.2. Section 3 of the Act defines development as "the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land". In addition, Section 2(1) of the Act defines works to include "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal."

8.2.3. The development which has been undertaken includes the construction of an additional 0.6m onto an existing block wall. I consider this has materially altered the wall and those works undertaken include construction, extension and alteration. I consider these works come within the scope of the definition of development in both Section 3 and Section 2 of the Act. Consequently, I am satisfied that it can reasonably be concluded that the act of constructing the additional height of the wall involved works, and therefore constitutes development.

## 8.3. **Is or is not exempted development**

8.3.1. The boundary wall was constructed as part of a planning permission for 17 no. dwellings (Reg Ref 10/510115, as extended under Reg Ref 15/575). The documentation submitted with the referral includes drawing No. 001-19-002 (proposed site layout plan & boundary treatments). The boundary wall, which is the subject to this referral is illustrated as Type C (2.4m high wall).

- 8.3.2. The primary issue that arises is whether the development would or would not constitute exempt development. The referral includes a cross section drawing illustrating the height of the wall. The cross section highlights the area as previously constructed and the area which has been increased. The referral notes a ground difference between the applicant's rear garden and the public road along the north of the site. The height of the wall, fronting onto the public road measures c. 2.8m. The measurement of the wall from the applicant's rear garden is c. 2.2m.
- 8.3.3. The PA note the works which have been undertaken. As stated above, and further elaborated below, the PA consider the increase in the height of the wall cannot be considered exempt, having regard to condition No. 9 of parent permission (Reg Ref 10/510115, as extended under Reg Ref 15/575).
- 8.3.4. The boundary treatment for this site is detailed in the parent permission (Drawing No. 001-19-002) as Type C. Condition No. 9 of this grant of permission requires that all Type A boundaries as identified on Drawing No.001-19-002 are replaced with Type C boundaries (2.4m high capped block walls with a finish consistent with the external finished with the permitted dwellings.). I note the report of the planner for the PA makes reference to this condition, which they have considered relevant to the decision-making process. Having regard to the wording in Condition No. 9, which specifically references a change boundary Type A and not boundary Type C (the subject site), I do not consider Condition No.9 is relevant to the subject site and therefore, I do not consider the proposed development contravenes this condition.
- 8.3.5. In relation to the increase in height, Class 5 of the Regulations permit the construction of a wall bounding the curtilage of a house on the condition it does not exceed 2 m. Class 11 also includes exempted development rights for the alteration of a wall bounding the curtilage of a house, again subject to conditions and limitations including a restriction of 2m in height.
- 8.3.6. The wall, as constructed, measures c. 2.8m from the public road and c. 2.2m from the rear garden. It is my opinion that the height of the wall exceeds those conditions and limitations as set out in Class 5 and Class 11 of the Regulations for boundary walls (2m). I am satisfied that both Class 5 and Class 11 are the appropriate classes under which to consider whether the wall would or would not constitute exempt development.

8.3.7. The referrer notes the height of the wall from the rear garden now measures c 2.2m. It is considered that this height is in line with the height of the wall permitted in the parent permission (Reg Ref 10/510115, as extended under Reg Ref 15/575). The grounds of appeal consider the reference in the parent permission for a 2.4m high wall, should be taken from the ground level of the applicant's rear garden. I note the boundary treatment permitted included a 2.4m high block wall. Upon site inspection it was noted that the wall was constructed at this approximate height along this boundary, fronting onto the public road. The owner of the subject site, and the adjoining property, have increased the height of the walls after completion of the construction of the parent permission. I consider it reasonable that (as part of the parent permission) the construction of this boundary wall would not exceed 2.4m either along the public road, rather than from the rear gardens of the properties of An Rian. It is my opinion that the wall, as previously constructed, was in general compliance with the permission and the 2.4m height (as argued by the referral) was not intended to be measured from the rear garden of property No. 8 An Rian.

8.3.8. Therefore, having regard to the height of the wall permitted and constructed as part of the parent permission (Reg Ref 10/510115, as extended under Reg Ref 15/575), and those conditions and limitations for works for walls bounding the curtilage of houses (2m), I do not consider the increase in height of 0.6m is exempted development.

#### **8.4. Restrictions on exempted development**

8.4.1. I have concluded that the increase height of the wall would not constitute development. Under Article 9 of the regulations, further restrictions on exempted development can include, inter alia, a contravention of a planning condition. As stated above, I have provided a brief background on the planning history and those conditions attached. In this instance I do not consider the increase in height is precluded specifically from the granted of permission (Reg Ref 10/510115, as extended under Reg Ref 15/575). It is my opinion that the restrictions on exempted development under Article 9 (1) (a) (i) of the Regulations do not apply.

## 9.0 Environmental Impact Assessment - Preliminary Examination

9.1. Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 10.0 Appropriate Assessment

10.1. Having regard to the nature and scale of the proposed development within a serviced area and separation distance to the nearest European site, 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 the conservation objectives of any European site.

## 11.0 Recommendation

11.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the increase in height of a rear boundary wall by an additional 0.6 metres at No 8 An Rian is or is not development or is or is not exempted development:

**AND WHEREAS** Tadas Makauskas requested a declaration on this question from Louth County Council and the Council issued a declaration on the 12th day of August, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Tadas Makauskas referred this declaration for review to An Bord Pleanála on the 07th day of September 2021:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) article 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Parts 1 of Schedule 2, Class 5 and 11 of those Regulations,
- (d) the planning history of the site,
- (e) the location of the site and the boundary wall.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The construction of the additional wall would involve the carrying out of works and would, therefore, constitute development, and,
- (b) The development, involving the construction of a front boundary wall bounding the curtilage of the house on site, would not come within the scope of Class 5 or Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and would not be exempted development,

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the increase in height of a rear boundary wall by an additional 0.6 metres at No 8 An Rian is development and is not exempted development.

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Karen Hamilton  
Senior Planning Inspector

31<sup>st</sup> of January 2022