



An
Bord
Pleanála

Inspector's Report ABP-311635-21

Development	Retention planning permission is sought for the retention of the timber fencing boundary treatment to the rear of dwelling house.
Location	No. 2, Marine Parade, Sandycove, Dun Laoghaire, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D21B/0383.
Applicants	Malcolm & Colma Hughes.
Type of Application	Retention Permission.
Planning Authority Decision	Refused.
Type of Appeal	First Party.
Appellants	Malcolm & Colma Hughes.
Observer	Denise Farrell.
Date of Site Inspection	14 th day of January, 2021.
Inspector	Patricia-Marie Young.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.4. Prescribed Bodies	5
3.5. Third Party Observations	5
4.0 Planning History.....	5
4.2. Vicinity.....	7
5.0 Policy & Context	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	8
5.3. EIA Screening	8
6.0 The Appeal	8
6.1. Grounds of Appeal	8
6.2. Planning Authority Response	9
6.3. Observations	9
7.0 Assessment.....	10
8.0 Conclusion and Recommendation	14
9.0 Reasons and Considerations.....	14

1.0 Site Location and Description

- 1.1. The irregular L-shaped appeal site is located at No. 2 Marine Parade (Monread), Sandycove, Dun Laoghaire, Co. Dublin. The site has a stated 0.067ha contains a much modified and extended two storey semi-detached dwelling with its principal façade setback from the southern side of Marine Parade c17m to the east of its junction with Link Road and c185 to the west of its junction with Marine Avenue. The rear of the site extends in southerly direction to where it meets the rear site boundaries of No.s 58 to 64 Glasthule Road. The rear portion of the site extends by way of a gravel gated driveway behind the rear of the adjoining semi-detached pair (No. 1 Marine Parade (Romanesca)) to where it terminates at vehicle entrance that opens onto the Link Road. This driveway is shared driveway accommodating vehicle access to the rears of No.s 1 and 2 Marine Parade. In the south eastern corner of the site is a semi-detached pair of garages.
- 1.2. Marine Parade is a restricted in width coastal road that accommodates passive and recreational pathways and open space on its northern side. There are panoramic views over Dublin Bay and the surrounding area has a mature residential character.

2.0 Proposed Development

- 2.1. Retention permission is sought for a timber boundary treatment to the rear of No. 2 Marine Parade. This boundary treatment is attached to and projects above the existing stone boundary wall that demarcates the southern perimeter of the site.

3.0 Planning Authority Decision

3.1. Decision

On the 15th day of September, 2021, the Planning Authority issued a notification of a decision to refuse retention permission for the development sought under this application for the following stated single reason:

- “1. *The development proposed to be retained to the rear of No. 2 Marine Parade is located on ‘NC’ zoned lands, which seeks ‘to protect, provide for and / or*

improve mixed-se neighbourhood centre facilities, and is also in close proximity to lands zoned 'A'; "to protect and/or improve residential amenity", as set out under Dún Laoghaire-Rathdown County Development Plan 2016-2022. The development proposed to be retained is therefore located in a Transitional Zone, as set out under Section 8.3.2 of the current Development Plan. Having regard to the overall scale of the structure proposed to be retained, the subject fencing would represent an abrupt transition in scale, and would not be in accordance with Section 8.3.2 of the Dún Laoghaire Rathdown County Development Plan 2016-2022. Furthermore, the timber fencing boundary treatment proposed to be retained, by reason of its overall scale, detailing and its rudimentary appearance as viewed from the south (rear) elevation in particular, is out of character with the area and is visually injurious to the amenities of the area. The development proposed to retained is, therefore, contrary to the proper planning and sustainable development of the area."

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Authority's report is the basis of the Planning Authority's decision, and it concludes with a recommendation for a refusal of retention permission for the reason stated above. The report includes the following comments:

- The general principle of the development is deemed to be acceptable.
- The transitional land use zoning of the site and its setting is noted.
- This development by way of its nature and scale would represent an abrupt transition in scale within this transitional location.
- The works carried out to the boundary date to 2020 when other substantial works were undertaken to the subject property.
- It is not considered that the development would adversely impact residential amenity by way of overshadowing.
- The development does negatively impact on the visual amenity of the area by way of its overall scale, rudimentary appearance through to detailing. Particularly as viewed from the Link Road.

- Third Party landownership concerns are noted.
- No Appropriate Assessment issues arise.
- Having regard to the nature and scale of the development is concluded that the need for environmental impact assessment can be excluded at preliminary examination and no screening determination is required.

3.3. Other Technical Reports

3.3.1. None.

3.4. Prescribed Bodies

3.4.1. None.

3.5. Third Party Observations

3.5.1. A total of 2 no. submissions were received from interested Third Parties and the principal concerns can be summarised as follows:

- No legal consent to carry out the development.
- The hoarding erected is unsightly.
- These works have diminished the value of adjoining properties.
- The hoarding is affixed to a rubble wall which in itself is an important feature and one which is commonly preserved where possible by the Planning Authority.
- Concerns raised in relation to the structural impact of these works on the wall.
- The hoarding has diminished the amenity value of their adjoining private amenity spaces by way of its overall scale through to claustrophobic visual impact.

4.0 Planning History

4.1. Site

- **ABP-305824-19 / P.A. Ref. No. D19B/0380:** Planning permission was **granted** subject to conditions for alterations and additions for the subject dwelling, comprising the construction of:

- 1) a projecting window seat where the existing front door is located,
- 2) a large bay window where the former family room window is located,
- 3) adjustments in relation to the existing bay windows at ground and first floor level and
- 4) attic conversion to a habitable space to include a triangular dormer window to the front.

This application was subject to s139 appeal which omitted Condition No. 2 from the Planning Authority's notification to grant permission.

P.A. Ref. No. D19B/0136: The Planning Authority granted a split decision as follows:

- **Grant** – Extension to the site and rear of the dwelling, velux roof lights, solar panels, relation of the rear boundary wall and alterations to the front boundary, and landscaping works subject to 10 no conditions. Condition No 2 and 3 set out the following:

1) Permission hereby granted only relates to the proposed extensions to the side and rear of the dwelling, velux roof lights, solar panels, relocation of the rear boundary wall and alterations to the front boundary including a relocated pedestrian access, and landscaping works.

Reason: In the interest of clarity.

2) Prior to the commencement of development, the Applicant shall submit, for the written agreement of the Planning Authority, revised floor plans and elevations showing the retention of the existing front elevation, save for the permitted extension to the side.

Reason: In the interest of clarity.

- **Refuse** – Single storey extension with roof terrace to the front, an extended and modified bay window to the front and all other modifications to the front elevation for the following reason:

Having regard to the existing context and the design of the proposed extensions and alterations to the front elevations, it is considered that the proposed development at the front of the existing dwelling would significantly alter the existing balance and composition of an existing pair of semi-detached dwellings. It is considered that the

proposed extensions and alterations to the front elevation fails to take account of the site context and would be visually prominent and discordant within the existing streetscape. The proposed extensions and alterations to the front of the dwelling do not, therefore, accord with the provisions of Policy UD1: Urban Design Principles in the County Development Plan 2016-2022, and would set an undesirable precedent for future development. It is therefore considered that this element of the proposed development would be contrary with the proper planning and sustainable development of the area.

4.2. Vicinity

- 4.2.1. No recent and/or relevant planning history in the vicinity of the site.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The Dun Laoghaire Rathdown County Development Plan 2016-2022 is applicable. The main site area is zoned Objective A where the land use zoning objective is: “*to protect and/or improve residential amenity*”. The rear portion of the site is zoned Objective NC where the land use zoning objective is: “*to protect, provide for and-or improve mixed-use neighbourhood centre facilities*”.
- 5.1.2. Section 8.2 of the Development Plan sets out that appropriate boundary treatments should be provided around sites and between existing as well as proposed dwellings. It also sets out that existing boundary treatments should be retained where possible; that boundary walls may be required to reflect the scale, height, materials and finishes of existing walls and buildings; and that impact features like boundary walls shall normally be finished to harmonise in colour texture, height, and size to its setting.
- 5.1.3. In addition, Section 8.2.8.4 sets out that: “*boundary treatments located to the rear of dwellings should be capable of providing adequate privacy between properties*”.

5.2. Natural Heritage Designations

- 5.2.1. The nearest European site is Dalkey Island SPA (Site Code: 004172), which is situated c.2.1km to the south east of the site.

5.3. EIA Screening

- 5.3.1. Having regard to the minor nature and scale of the development proposed, the site location in an established built-up area outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The First Party grounds of appeal was received by the Board on the 12th day of October, 2021, and can be summarised as follows:
- The subject laneway accesses off Link Road and serves the appellants and the neighbouring property of No. 1 Marine Parade to use to access their properties.
 - Historically it contained two very large mature trees which grew adjacent to the boundary wall. These trees were directly behind No. 61 and 63 Glasthule Road.
 - These trees had grown into the stone boundary wall, had become diseased and were unhealthy. After consultation with an arborist, they were removed.
 - Upon their removal the privacy these trees provided from the elevated terrace of properties that address Glasthule Road was now removed and the fencing was introduced to mitigate against this loss.
 - The scale of the fence was kept reduced to ensure no adverse impact arose for adjoining properties.

- The fence has had minimal impact on the amenity of properties in its vicinity.
- The fence is only partially visible from neighbouring properties and therefore cannot be said to impact these properties.
- The shadow studies carried out show no adverse impact has occurred by way of loss of daylight and/or additional overshadowing.
- The fencing was required to provide privacy.
- If acceptable to the Board the appellants are willing to install cedar cladding to the south facing elevation of the timber treatment to tidy up this elevation and this would provide a visually completed installation.
- It is sought that the Board overturn the Planning Authority's decision in this case.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority in their response to the grounds of appeal submission, received by the Board on the 5th day of November, 2021, considers that no new matters are raised that would justify a change of attitude to the development sought under this application.

6.3. Observations

- 6.3.1. On the 8th day of November, 2021, the Board received an observation from Denise Farrell, the owner of No. 61 Glashule Road, which bounds part of the southern boundary of No. 2 Marine Parade. It can be summarised as follows:
- A hoarding has been erected and is affixed to the top of the rear boundary wall dividing in the absence of the observer's consent. In this regard, the observer puts forward in their submission that the boundary is a party boundary with their property and with this development not having their landowner consent.
 - The hoarding is unsightly and visually diminishes the amenity of their property.
 - The hoarding reduces light to the rear private amenity space of the observer's property and in doing so reduces the amenity value of this space.
 - This development devalues the observer's property.

- This development has impacted the structural stability of the shared party boundary and historic wall. Concern is raised that it could cause its collapse.
- The hoarding is unnecessary in addition to the privacy provided by the historic wall given the distance between the two properties.
- The presence of the hoarding renders the observers garden space claustrophobic.
- The trees were an acceptable means of ensuring privacy and the observer would be amenable to the hoarding removed and replaced with similar trees if that would facilitate matters.

7.0 Assessment

7.1. Preliminary Comments

7.1.1. Having examined the application details and all other documentation on file, all submissions and responses received by the Board, inspected the site and having regard to relevant planning provisions, I consider that the main issues in this appeal relate to the two reasons given by the Planning Authority in their notification decision for the refusal of retention permission for the timber fencing boundary to the rear of No. 2 Marine Parade and the matter of consent to carry out these works. I therefore propose to deal with the issues in this appeal case under the following broad headings:

- Consent to Carry Out the Development Sought
- Principle of Development
- Amenity Impact
- Appropriate Assessment

7.1.2. In relation to this application, I also consider it incumbent to note in relation to applications for retention the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered “*as with any other application*”. This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed.

7.1.3. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

7.1.4. Further, like any other development they should be assessed in terms of their contribution towards the achievement of the applicable zoning objective, the vision for the zoning objective and its compliance as well as consistency with the policies and objectives it contains.

7.2. Consent to Carry out the Development Sought

7.2.1. The Observer in this appeal argues that the applicant does not have the consent of all relevant parties to have carried out the works for which retention permission is now sought under this application. With the boundary wall being in shared ownership with them and with this concern being similarly raised by another Third Party during the Planning Authority's determination of this application.

7.2.2. The appellant by way of their application and by way of the documentation submitted with this appeal has not provided evidentiary proof that they are the full legal owners of the boundary wall along the southern perimeter of No. 2 Marine Parade. They have also not demonstrated in a manner consistent with the requirements of Section 22 of the Planning and Development Regulations, 2001 (as amended), that they have the written consent of the other legal owners of the boundary wall to have carried out these works either at the time the works are contended to have been undertaken or their current consent.

7.2.3. Whilst the appellant does suggest a willingness to reach an agreement with other parties in relation to the subject development for which retention is sought on the basis of the information provided, I am not satisfied that the appellant has demonstrated sufficient legal interest in the land to have carried out, to retain the works carried out and/or to carry out any alterations and/or additions to the subject boundary wall.

7.3. Principle of the Proposed Development

7.3.1. This appeal site is subject to two separate land use zoning objectives under the Dun Laoghaire Rathdown County Development Plan, 2016-2022, with the main site area which contains part of the rear private amenity space, the dwelling, and the setback area between the principal façade of No. 2 Marine Parade zoned Objective A. The stated land use objective for lands subject to this zoning is: "*to protect and/or improve*

residential amenity". The rear portion of the site which includes the laneway access serving No.s 1 and 2 Marine Parade, the rear boundary wall of No. 2 Marine Parade, the land to the immediate south of the said rear boundary wall is zoned Objective NC. The stated land use objective for lands subject to this zoning is: "*to protect, provide for and-or improve mixed-use neighbourhood centre facilities*".

- 7.3.2. The Development Plan provides for Transitional Zonal Areas like this under Section 8.3.2. This section of the Development Plan sets out it is important to avoid abrupt transitions in scale and use in the boundary areas of adjoining land uses. It states: "*in dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. For instance, in zones abutting 'residential areas' or abutting residential developments within mixed-use zones, particular attention must be paid to the use, scale and density of development proposals in order to protect the amenities of these residential properties*".
- 7.3.3. In terms of permitted, open for consideration and not permissible development the development sought under this application, i.e., boundary treatments are not specifically listed. Section 8.3.7 of the Development sets out that in these cases these will be considered on a case-by-case basis in relation to the general policies of the Plan and to the zoning objectives for the area in question.
- 7.3.4. I am cognisant that boundary treatments are important features in defining properties and are a type of development deemed to be generally acceptable subject to safeguards which in this case that they do not conflict with the protection of the residential and neighbourhood centre amenities.

7.4. Amenity Impact

- 7.4.1. The observers in this appeal cases argue that the subject development has by way of the design, scale and finishes of the works carried out diminished the residential amenity of their property. Similar concerns have been raised by another Third Party whose property bounds the subject wall during the course of its determination by the Planning Authority. Whilst I concur with the Planning Authority and with this further supported by the shadow study carried out that the development does not give rise to any additional overshadowing of the adjoining and neighbouring properties particularly

to the south when compared to the context previous where two mature trees were present along this boundary.

- 7.4.2. Notwithstanding, I am of the view that the significant additional height of the fence added to the top of what is an attractive historic stone and rubble stone wall is not only visually overbearing, obtrusive, and incongruous addition to this boundary wall that bounds residential in use buildings as well as spaces.
- 7.4.3. This further added to by the disparity in the manner in which the additional fence structure has been finished facing into adjoining properties to the south. While the materials as used are unsympathetic to the character as well as to safeguarding the historic boundary wall structure. They are finished in a manner that has an industrial character, scale and finish that is out of character with a residential boundary or one that has been designed with a view of harmonising as well as respecting the character of their immediate setting.
- 7.4.4. Of particular concern is the height which raises from c2.8m to c3.9m and its length extending for c19.5m. But also, the rough finish and bracing of the boundary treatments finish facing out of the property.
- 7.4.5. While I accept this structure may provide additional privacy to the appellants property following the removal of the two mature trees along the southern boundary, the height, the scale, the design, finish through to is an abrupt transition in boundary treatment is an inappropriate new feature that is visually out of character and diminishing to the visual amenities of its setting.
- 7.4.6. In relation to the visual impact on the public domain, I consider that this proposal is out of character, visually overbearing and fails to harmonise in a respectful manner with the streetscape scene of Link Road it forms part of.
- 7.4.7. On the matter of depreciation of residential value of adjoining properties, I consider that the observer has not demonstrated this in the information provided by them and in the absence of any professional evaluation of this matter I can not assess whether or not this concern is with basis.
- 7.4.8. Based on the above considerations I concur with the Planning Authority that to permit the development sought under this application would result in visual diminishment of the site's setting in a materially adverse manner. I also consider to permit the

development sought under this application would be contrary to the Development Management guidance provided under Section 8.2 of the Development Plan which sets out that such built features should reflect the scale, height, materials and finishes of existing walls and buildings. It also sets out that they should normally be finished to harmonise in colour texture, height, and size to its setting.

7.5. Other Matters Arising

- 7.5.1. **Structural Stability of the Historic Boundary Wall:** Based on the information on file and the absence of any professional evaluation of the stability of this wall and assessment impact of the development for which retention is sought on this historic wall I can not make an informed decision on this matter.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing built-up area outside of any protected site, the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Conclusion and Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that retention permission be refused for the development sought under this application for the reasons and considerations. I also consider that a second reason and consideration for refusal is necessary in this case where there is a lack of legal interest has been demonstrated to carry out the development sought.

9.0 Reasons and Considerations

1. *The development proposed to be retained to the rear of No. 2 Marine Parade is located on 'NC' zoned lands, which seeks 'to protect, provide for and / or improve mixed-se neighbourhood centre facilities, and is also in close proximity*

to lands zoned 'A'; "to protect and/or improve residential amenity', as set out under Dún Laoghaire-Rathdown County Development Plan 2016-2022. The development proposed to be retained is therefore located in a Transitional Zone, as set out under Section 8.3.2 of the current Development Plan. Having regard to the overall scale of the structure proposed to be retained, the subject fencing would represent an abrupt transition in scale, and would not be in accordance with Section 8.3.2 of the Dún Laoghaire Rathdown County Development Plan 2016-2022. Furthermore, the timber fencing boundary treatment proposed to be retained, by reason of its overall scale, detailing and its rudimentary appearance as viewed from the south (rear) elevation in particular, is out of character with the area and is visually injurious to the amenities of the area. The development proposed to be retained is, therefore, contrary to the proper planning and sustainable development of the area.

2. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has:

(a) Sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or

(b) The approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

Patricia-Marie Young
Planning Inspector

17th day of January, 2022.