



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312389-22

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<b>Development</b>	Retention of security fencing, permission to reduce the height of the security fencing and all associated site works.
<b>Location</b>	Ennis Road, Leagard North, Miltown Malbay, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	211100
<b>Applicant(s)</b>	Derek Considine
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Grant, subject to conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Anthony Kerley & others
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	24 <sup>th</sup> March 2022
<b>Inspector</b>	Liam Bowe

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## 1.0 Site Location and Description

- 1.1. The subject site is located on the south-eastern environs of the town of Miltown Malbay in West Clare. The site is located on the southern side of the R474, Ennis Road approximately 400 metres south-east of Main Street (N67) which runs through the centre of the town. The car sales facility which is the subject of the current application occupies the site of a former petrol station. It accommodates a car sales building (former petrol station shop) and surface car parking which is used for the display of cars for sale. The entire site is surrounded by green metal mesh fencing which is mounted on existing walls and plinths which run around the boundary of the site.
- 1.2. A local access road leading to a residential area runs along the north-western boundary of the site. It serves the Meadowlands Drive residential estate which includes the appellants' houses that back onto the rear of the appeal site. A doctor's surgery is located on adjacent land to the south-east of the subject site. There is no development directly opposite the site on the northern side of the Ennis Road. The Ennis Road in the vicinity of the site is a two-lane carriageway approximately 6.5 metres in width and does not accommodate any footpaths on either side of the road. There is a footpath adjacent to the north-western boundary of the site serving Meadowlands Drive residential estate. The total height of fencing (fencing plus plinth/boundary walls) along the rear boundary ranges between 2.5 and 2.6 metres in height.

## 2.0 Proposed Development

- 2.1. Retention of planning permission is sought for the rear boundary fence and permission is sought to reduce the height of this fence to 2 metres.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 13<sup>th</sup> December 2021 Clare County Council issued a notification of decision to Grant Permission, subject to two conditions. The Conditions include inter alia the following:

Condition No.2: Requires the works proposed to reduce the height of the fence to 2m in height to be carried out within 3 months.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The Planning Officer stated that the location of the site is located in an area zoned as commercial under the Milltown Malbay settlement plan within a designated Small Town, noted the contents of the third party submission, recommended that the proposal to reduce the height of the fence was acceptable and could be granted permission, which is reflected in the decision of the Planning Authority.

Appropriate Assessment Screening was carried out and concluded that there is no likely potential for significant effects to any Natura 2000 site.

#### 3.2.2. Other Technical Reports

Area Office – No observations to make.

Roads – Request information regarding drainage, footpaths and landscaping.

### 3.3. Prescribed Bodies

Irish Water – No objection. Conditions recommended.

### 3.4. Third Party Observations

- 3.4.1. Submissions were received from Anthony Kerley, Mary Shannon and Aileen Domican. The issues raised are generally similar to those referenced in the grounds of appeal. These include concerns regarding the precise position of the fence, the reduction in height of the fence, the provision of a non-transparent green screen to

prevent overlooking of their gardens, and the control of the lighting on the site per a condition attached to P.A. Ref. No. 18/158.

## 4.0 Planning History

### 4.1. Appeal site:

**P.A. Ref. No. 21/627:** Permission granted to remove the existing low wall to the front of the property and to provide a footpath along the front boundary in the area between the existing security fencing and the road edge, and all associated site and ancillary works, subject to two standard conditions.

**PL 03.306186 (P.A. Ref. No. 19/510):** Permission granted for retention of planning permission for the following: (1) New advertising signage on the existing totem structure in the North-East Corner of the site. (2) The increase in car sales parking spaces within the site. (3) The realigned and altered sections of security fencing along boundaries together with ancillary site works, subject to conditions including:

**Condition No.4:** The security fence along the rear boundary of the site along the common boundary of No. 2 Meadowlands Drive and No. 3 Meadowlands Drive shall be omitted in its entirety. The said boundary fencing shall be removed within three months of the date of this order.

Reason: To protect the visual amenities of residents in the vicinity of the subject site.

**P.A. Ref. No. 18/158:** Permission granted for a change of use of shop/yard to car showroom and car parking area and permission was refused to retain the boundary fence at the subject site subject to 8 conditions (decision dated 27<sup>th</sup> July 2018). Permission was granted to provide for a car parking sales area of 39 cars only. Planning permission was refused for retention of the boundary fencing. Permission was refused on the basis that its location on the existing boundary wall would constitute an unacceptable and unsatisfactory form of development in the context of surrounding residential properties and would have an overbearing effect on residential properties. The second reason stated that the fence by reason of its form and height and proximity to the adjoining road network represents a prominent and

obtrusive feature that would impact on the visual amenities of the area. And thirdly that the positioning of the fence on the boundary of the R474 obstructs sight distances at the access.

**P.A. Enforcement Ref. No. UD18 019:** A warning letter was issued on 28<sup>th</sup> September 2018 and an Enforcement Notice issued on 16<sup>th</sup> November 2018 in relation to alleged non-compliance with conditions attached to P.A. Ref. No. 18/158. Proceedings have been adjourned to date in Ennis District Court.

## 5.0 Policy Context

### 5.1. Clare County Development Plan 2017-2023

- 5.1.1. Miltown Malbay is designated as a small town in the Development Plan. The appeal site is zoned commercial. The plan states that the use of land for commercial purposes shall be taken to include the use of the lands for commercial and business uses including offices, service industries, warehousing and the facilitation of enterprise/retail park/office type uses as appropriate.
- 5.1.2. Section 3.4 of the Development Plan states that small towns should continue to act as important local service centres that maintain sustainable communities, help ensure a good quality environment, provide public transport to the main centres ensuring a high quality of life for those who live in the vicinity.

### 5.2. Natural Heritage Designations

The nearest designated European sites are located approximately 2.8 kilometres to the south-west of the appeal site. These are the Carrowmore Point to Spanish Point and Island's SAC (Site Code: 001021) and the Mid-Clare Coast SPA (Site Code: 004182).

### 5.3. EIA Screening

The development is not a class of development for which an EIA is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The grounds of appeal are submitted by Anthony Kerley & others, 3 Meadowlands Drive, Ennis Road, Miltown Malbay, Co. Clare and the main points made can be summarised as follows:

- Owners of 1, 2 and 3 Meadowlands Drive strongly object to the retention of the fence on their shared boundary.
- State that An Bord Pleanála ruled previously that the fence on the rear boundaries of No.'s 2 and 3 Meadowlands Drive be omitted in its entirety (PL 03.306186 refers).
- Raise concerns about alleged non-compliance with condition no.6 of P.A. Ref. No. 18/158 regarding light spillage into their gardens.
- Highlight that the fence for retention sits flush with the capping of No.1 Meadowlands Drive and consent has not been given for this.
- State that they have corresponded with Clare County Council requesting that:
  - i) The fence be removed from the top of the wall and located inside of the First Party's boundary,
  - ii) The fence be a maximum of 2m in height,
  - iii) The fence be a non-transparent green screen, and
  - iv) All lighting be switched off after work hours per condition no.6 of P.A. Ref. No. 18/158.
- State that Clare County Council have requested the First Party to carry out landscaping along the inside of the fence but contend that this will not happen as the site is too restricted and it would affect car parking on the appeal site.

The appeal was accompanied by photographs of the site.

### 6.2. Applicant Response

None.

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

The Planning Authority considers that the development as proposed would be acceptable and would not significantly impact the amenities of the area. The Planning Authority noted the proposal by the third parties to change the materials of the fence but considered this to be outside of the scope of the application as applied for.

## 7.0 **Assessment**

I consider that the main issues in the assessment of this appeal are as follows:

- Visual and residential amenities
- Other issues
- Appropriate Assessment

### 7.1. **Visual and residential amenities**

- 7.1.1. The appellants express concerns in relation to the height and type of rear boundary fence that has been constructed between the appeal site and their rear gardens. Under this current application / appeal, the Frist Party is seeking to retain the boundary fence and proposing to reduce the height of the fence by between 0.5m and 0.6m along the entire length of the rear boundary. The appellants accede that the reduced height is acceptable but request that the fence be non-transparent.
- 7.1.2. I note that Clare County Council in its decision under P.A. Ref. No. 18/158 refused permission for retention of the boundary fence for three reasons (please refer to Planning History earlier in this report). The reasons for the previous refusal of the fence along this boundary and the subsequent requirement to omit the fence by means of a condition attached to the Board's previous decision on the appeal site, made reference to the relationship between the fence and the residential properties adjoining the site which would have an overbearing effect on the said properties and would impact on their residential amenities. The Board's decision issued under PL 03.306186 with a condition attached required the fence be removed from the rear of No.'s 2 and 3 Meadowlands – these works have not been carried out.



- 7.1.3. The impact of the fence is exacerbated by the fact that the appellants' rear gardens are at a lower level than the appeal site. I refer the Board to the photographs attached to the Planning Officer's report dated 8<sup>th</sup> December 2021. Following my observations on the day of my site inspection, I consider that the fencing has a significant and profound impact from a visual perspective when viewed from the appellants' rear gardens.
- 7.1.4. Although the First Party is proposing to reduce the height of the fence, I do not consider that this would have any significant impact in terms of the reducing the visual impact on the neighbouring properties. It is understandable that the First Party is attempting to provide appropriate security for the cars on site however, I also consider that this impact must be balanced against residential amenity impacts arising from the boundary fence.
- 7.1.5. I consider that the boundary fence when reduced in height would still be excessive in height and would have an overbearing and negative impact on the amenity of the appellants' rear gardens. Further to this, I consider that its retention would contravene condition no.4 of the permission issued under PL 03.306186 which required its removal from the rear of No.'s 2 and 3 Meadowlands. On this basis, I recommend that the Board refuse permission for the development.

## 7.2. **Other issues**

### 7.2.1. Legal interest / ownership

The appellant contends that the applicant does not have legal interest to erect the fence on the shared boundary, however no clear information is presented. On the basis of the information available, I am satisfied that there is no clear information presented to conclude that the applicant does not have sufficient legal interest in the appeal site and I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. In any case, this is a matter to be resolved between the relevant parties, the applicant and the local authority in this instance, having regard to the provisions of S.34(13) of the 2000 Planning and Development Act.

### 7.2.2. Enforcement

In relation to the issue of alleged ongoing non-compliance with conditions attached to previous permission issued on the appeal site under PL 03.306186 and P.A. Ref. No. 18/158 regarding the removal of part of the boundary fence and light spillage, respectively, it is of note that the Board does not have a role in enforcement. In this respect, I note the content of Section 10.1 of the Development Management Guidelines 2007 which provides that enforcement of planning control is the responsibility of the planning authority.

### 7.3. **Appropriate Assessment**

The nearest designated European sites are located approximately 2.8 kilometres to the south-west of the subject site the Carrowmore Point to Spanish Point and Island's SAC (Site Code: 001021) and the Mid-Clare Coast SPA (Site Code: 004182). Having regard to the nature and scale of the proposed development which relates to retention and alterations to existing works on site and the nature of the receiving environment together with the 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 on combination with other plans or projects on a European site.

## 8.0 **Recommendation**

I recommend that permission be refused for the reason stated below.

## 9.0 Reasons and Considerations

The scale, design and siting of the development for retention forms an incongruous feature when viewed from the rear gardens of the houses to the south-west of the site and would contravene condition no.4 of the governing permission issued under PL 03.306186, the purpose of which was to protect the visual amenities of these residents from such an adverse impact. The development, therefore, seriously injures the amenities of adjoining residential properties and is contrary to the proper planning and sustainable development of the area.

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Liam Bowe  
Planning Inspector

12<sup>th</sup> April 2022