



An  
Bord  
Pleanála

## Inspector's Report ABP 312505-22.

---

<b>Development</b>	Retention of boundary wall of the existing dwelling house.
<b>Location</b>	No. 1 Pembroke Heights, Passage West, Co. Cork.
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	216855
<b>Applicants</b>	Amanda Green & David Kelleher
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	David Whitty & Stephen Moynihan
<b>Observers</b>	None
<b>Date of Site Inspection</b>	12/4/2022
<b>Inspector</b>	Siobhan Carroll

# 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 .....	3
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	5
5.1. Cork County Development Plan 2014 (As varied).....	5
5.2. Ballincollig Carrigaline Municipal District Local Area Plan 2017.....	5
5.3. Natural Heritage Designations .....	6
5.4. EIA Screening .....	6
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Applicant Response .....	8
6.3. Planning Authority Response .....	13
7.0 Assessment.....	14
7.1. Principle of the development and traffic .....	14
7.2. Legal Issues.....	17
7.3. Appropriate Assessment .....	19
8.0 Recommendation.....	19
9.0 Reasons and Considerations.....	19
10.0 Conditions .....	20

## **1.0 Site Location and Description**

- 1.1. The proposed development is located at no. 1 Pembroke Heights, Passage West, Co. Cork. Pembroke Heights forms part of a housing estate which is located off the R610. It contains a mix of housing including two-storey semi-detached dwellings and apartments.
- 1.2. The site itself has a stated area of 0.00905 hectares and is occupied by a dormer three storey detached dwelling which features a two-storey extension to the side.
- 1.3. The subject wall was constructed from the front boundary wall of no. 1 Pembroke Heights to the gabion wall at the end of the cul de sac. The wall extends for circa 14m and has a height of between 1.75m and 2.07m.
- 1.4. The subject wall encloses an area of circa 85.5sq m which was formally an area of incidental open space and also a section of the hammerhead located at the end of the cul de sac. The area currently forms part of the side garden of the property and is surfaced with artificial grass.

## **2.0 Proposed Development**

- 2.1. Permission is sought for the retention of a boundary wall of the existing dwelling house.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority granted permission subject to 1 no. condition.

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

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

- It was concluded that the incorporation of the public open space into the curtilage of the dwelling was acceptable on the basis that the open space was

incidental and that it did not function as usable open space for amenity purposes. Furthermore, the Planning Officer considered that based on the size and isolation of the area and level of existing open space in the estate that this loss would not seriously injure the residential amenity of the area. Regarding the alteration of the turning bay the report of the Planning Officer notes that there is no report from the Area Engineer and that the report from the Estates Engineer did not reach a recommendation in relation to potential implications for road safety. The report from the Estates Engineer accepts that some vehicles have to reverse down the road but in general the road is a cul de sac where there is limited activity. Therefore, none of the Council Engineers have concluded that it represents a traffic hazard. In relation to the matter of whether the applicants have sufficient legal interest to carry out the development the Planning Officer noted that the applicants have a letter of consent from the owner and that they met their legal requirements as a valid application was registered. The Planning Officer concluded that the retention of the proposed development would not result in a serious traffic hazard and would not seriously injure the amenity of the housing estate and permission was therefore recommended.

### 3.2.2. Other Technical Reports

Estates Primary Report – A site visit was carried to no. 1 Pembroke Heights by the Planning Department in 2017, this was in response to a complaint received from neighbouring residents in relation to alleged unauthorised development. The applicant was advised in writing by the Estates and Enforcement Officer that the erection of the fence and a gated entrance and the incorporation of a green area into the private curtilage of a dwelling area constituted unauthorised development. They were advised to regularise the situation by either making a planning application or to remove the structures entirely. It should be noted that the householder does not own the land that the unauthorised structures are situated on. A letter from Manor Park Homebuilders in 2011 was submitted with this application, stating their agreement to the hammer head being removed and realigned along with a drawing showing a “proposed kerb line”. No reference is made to a fence or gated structure being agreed. There is no agreement on file from the Planning Department to the realignment of this kerb line. The presence of a drawing with the application showing

the proposed kerb line which is allegedly from Manor Park Homes is noted. It is stated that no agreement was ever given for same from the Planning or Estates Department. A turning area per say exists which measures 8m wide and this includes a 5.5m road. It is accepted that from the submissions received that some vehicles have to reverse down the road lending itself to a difficult situation but in general the road is a cul de sac where in all likelihood there is limited activity beyond the normal usually associated with a small group of houses. The applicants have been advised on many occasions over the years, that the structure was erected without permission or knowledge from the Planning Authority and as such unless permission for retention is granted, it remains an unauthorised Structure/Development.

### **3.3. Prescribed Bodies**

- None

### **3.4. Third Party Observations**

- 3.4.1. The Planning Authority received 2 no. submissions/observations in relation to the application. The main issues raised are similar to those set out in the appeal.

## **4.0 Planning History**

Reg. Ref. 06/9993 – Permission was granted for a two-storey extension to the side of the dwelling.

## **5.0 Policy Context**

### **5.1. Cork County Development Plan 2014 (As varied)**

- 5.1.1. Chapter 3 refers to Housing
- 5.1.2. Appendix A refers to Ministerial Guidelines

### **5.2. Ballincollig Carrigaline Municipal District Local Area Plan 2017**

- 5.2.1. The site is zoned 'Existing Built Up Areas'.

### 5.3. **Natural Heritage Designations**

- None

### 5.4. **EIA Screening**

- 5.4.1. 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. An EIA - Preliminary Examination form has been completed and a screening determination is not required.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A third party appeal has been submitted by John Mac Carthy & Partners Chartered Engineers on behalf of Mr. Steven Moynihan and Mr. David Whitty. The issues raised are as follows;

- It is contended that the application made to the Planning Authority is invalid. Reference is made to two previous planning applications which were made to Cork Co. Council under Reg. Ref. 17/4304 and Reg. Ref. 21/6571 which were both declared invalid.
- It is stated in the appeal that following searches made by the appellants in relation to ownership that they consider that the land in question is in the ownership of Messrs Histron and that Manor Park Home Builders are not the owners of the lands and area which form part of the site which the turning area was constructed.
- It is submitted that applicants do not have sufficient interest in the lands to make the planning application.
- It is stated that the lands are not in ownership of Manor Park Home Builders. Reference is made to Folio 37049, Plan no. 9 which the appellants state

indicates that the lands to the east of the applicant's home are in the ownership of Histon Ltd.

- It is stated that the applicants are not the owners of this area of the site and that no letter of consent has been issued by the property owners to support the application.
- The appellants state that they wish regard to be taken of the existing layout and pattern of development on the subject lands prior to unauthorised works being carried out by the applicants. The previous layout included a standard hammerhead turning area located at the end of the cul de sac.
- It is highlighted that the permitted and developed layout was in compliance with the relevant Planning Authority documents and National Planning guidance documents.
- The appellants cite the provisions of the "Recommendations for Site Development Works for Housing Areas" published by the DoEHLG in 1998. It is highlighted that the document informed the detailed design approach set out in County Development Plans. Section 2.6 of the document refers to cul-de-sac ends. It sets out that "Turning bays should be provided at the end of cul-de sacs. The provisions of the guidance document have provided specific requirements in relation to designing safe development including roadway and carriageway layouts and turning areas.
- The appellants note the Guidance document "Sustainable Residential Development in Urban Areas" published by DoEHLG in 2008. They note that chapter 4 refers Planning for Sustainable Neighbourhoods and Section 4.22 states that residential roads and streets should be safe for people to drive, cycle to walk and in certain situations to play in.
- The appellants consider that the applicants have not provided a justification for the loss of the turning area in relation to traffic and transportation guidance. It is stated that no autotrack analysis was provided.
- It is submitted that the unauthorised works carried out have resulted in the creation of a traffic hazard. It is stated that the loss of the turning area has resulted in service vehicles, delivery vans etc reversing the full length of the

cul-de-sac. It is considered that has resulted in the roadway being less safe for children to use.

- The appeal refers to the Estates Primary Report dated 9/12/21 which notes that a site visit was carried out at the site in 2017 following complaints of alleged unauthorised development. The report refers to the letter from Manor Park Home Builders of 2011. It is stated in the report that ‘no agreement was ever given for same from the Planning or Estates Departments.’
- The appeal also refers to the report of the Planning Officer which identified the issues to consider, the incorporation of public open space into the curtilage of a dwelling and the road safety issues resulting from the loss of a turning bay. It is noted in the report that there is no report from the Area Engineer and reference is made to the comments in the Estates Engineers Report regarding reversing manoeuvres.
- Reference is made by the appellant to a section of the report of the Planning Officer which refers to the developer. The section quoted states, “the applicant is only obliged to produce a letter of consent from the developer/owner and is not legally required to own or buy the third party land on which the application is made.”
- The appellants consider that the report is not correct in relation to the assessment of the validity of the letter of consent. The use of the term developer is also questioned.
- The appellants query that the report of the Planning Officer did not refer to the Cork County Council Design Document published in 2011.
- It is submitted that the Board should refuse permission on the basis that it would constitute a traffic hazard.

## 6.2. Applicant Response

A response to the first party appeal has been received from the applicants Amanda Greene and Dave Kelleher. The issues raised are as follows;

- The applicants and their family are the owners and reside at no. 1 Pembroke Heights. The house is situated at the end of the cul-de-sac within the estate



where a turning area is located. The initial purpose of the turning area was to facilitate cars manoeuvring from the cul-de-sac, however the design and layout provided an area where anti-social behaviour regularly occurred.

- The design of the turning area meant that there was a corner area which was not directly visible to drivers and pedestrians along Pembroke Heights. Therefore, anyone within the area was hidden from view and the area became a location where anti-social behaviour occurred on a daily/nightly basis.
- The applicants state that the area was frequented by older teenagers who left various items of rubbish both on the green area and in their property. The applicants have submitted photographs with the appeal response which illustrate the level of littering which occurred and the items which were littered.
- It is stated that the area also drew cars to be driven there for the occupants to congregate and litter the area.
- The applicants state that due to the level of littering which occurred they were required to regularly clean up the location.
- It is also stated that the rock gabion wall located behind the houses along Pembroke Heights was accessible from the end of the cul de sac and that children used the wall to climb and gain access to their rear garden.
- The applicants state that they brought up the ongoing issue of the anti-social behaviour occurring at the end of the cul-de-sac at each Residents Association meeting.
- The applicants state that they considered that the only viable solution to the ongoing anti-social problems was to remove the hidden corner and make the gabion wall less accessible. Having given the issue considerable thought the applicants concluded that the only way to remove the hidden corner and address the anti-social behaviour was to move their boundary wall forward. The applicants state that they spoke to their neighbours and the Residents Association and then they met with John Moran and Fred Sweeney from Manor Park Homebuilders along with Cllr. Marcia Dalton from the Residents Association. They provided the representatives from Manor Park Homebuilders with letters from Passage West Garda Station, the Residents

Association and the elected representatives Michael McGrath TD and Brian Crowley MEP which all refer to the ongoing anti-social problems.

- The applicants state that all the neighbours apart from those at no. 3 and no. 5 Pembroke Heights were in favour of the relocation of the wall as it would benefit all residents. Letters of support from neighbours have been included with the appeal response.
- The appeal submission includes copies of letters and email from John Moran and Fred Sweeney for Manor Park Home Builders. The letter dated 26<sup>th</sup> January 2011 addressed to the applicants states, “we wish to confirm to you our agreement in relation to the removal of the existing boundary and the construction of same in line with the attached drawing which shows the “Hammer Head” removed and realigned. These works will be completed and financed by Amanda Greene and David Kelleher of 1 Pembroke Heights. This will assist the removal of anti-social behaviour which is quite prominent in this area. Cork County Council Estate Manager has no objection to the above and we are granting consent to making of the application.
- It is set out that the applicants did not close off the full turning bay or block any ESB or Water station should maintenance be necessary.
- When the boundary wall was relocated and the area replanted with shrubs the applicants state that no more anti-social behaviour has since occurred there.
- In response to the matters raised in the appeal that a bin truck can no longer turn in the turning area, a letter from County Clean included with the appeal confirms that the original turning area did not provide sufficient space for a waste collection truck to turn.
- In relation to the issues of a DPD delivery van not being able to turn, the applicants confirm that the long DPD delivery van can turn in the revised turning area.
- In relation to the matter of fire truck access and the claim in the appeal that fire trucks took 15-20 minutes to vacate the cul-de-sac. The applicants state that they contacted the local fire stations to check if this had occurred and that

they were advised if such an event had occurred that it would have been reported and that there were no records of it.

- Regarding the matter of cars parking in the turning area. The applicants state that the only time that any cars would be parked in the area would be if they had visitors or builders working at their property.
- The appeal states that the letter from Manor Park Homebuilders is invalid and it was queried why the relocation of the wall was not carried out until 2016. The applicant states that it was not carried out until 2016 because they mislaid paperwork including the letter from Manor Park Homebuilders due to a leak in their home which resulted them in having to remove items including paper work to a family members property.
- To confirm the validity of the letter from Manor Park Homebuilders they tracked down Fred Sweeney who formerly worked for Manor Park Homebuilders. Mr Sweeney has provided a letter to the applicants which confirms the validity of the letters provided to the applicants in 2011. Mr. Sweeny confirms in this letter that all directors of Histron Ltd were very clear on the issue and gave their permission.
- The first party reiterate that the moving of the boundary wall has not impeded the ability of vehicles to turn.
- It is stated that works were carried out without any reference to the Planning Authority. The letters from Manor Park Homebuilders clearly states that the longstanding anti-social issues which were occurring at the end of the Pembroke Heights were discussed with the Estates Engineers. It is clear from the email from Fred Sweeney to John Moran that Manor Park Homebuilders (acting on behalf of Histron) intended the moving of the boundary to be regularised by way of compliance when Pembroke Wood was taken in charge. The taking of charge did not occur because Manor Park Homebuilders went into receivership in 2011. It is stated in the report of the Planning Officer that it was considered that the retention of the moved boundary wall would not result in a traffic hazard and would not seriously injure the amenity of the housing estate.

- The appeal refers to chapter 4 of the ‘Sustainable Residential Development in Urban Areas Guidelines’ in relation to the issue of traffic safety. The first party note that the guidelines refer to personal safety in the Amenity/Quality of Life section. It states, “the ability to live with a feeling of comfort and safety in the residential area is an essential component of sustainable communities. The design of the built environment can contribute to this by creating a sense of security and ownership within residential areas. The applicants state that prior to the boundary being revised that they felt imprisoned and threatened in their home by the anti-social behaviour taking place in the turning area.
- The dark corner which was located at the turning area was what subsection (b) recommends against – blank facades and areas that are not overlooked should be avoided.
- It is noted that chapter 7 of the Guidelines also addresses safety, it states that designers can improve safety by preventing unauthorised access to rear gardens by means of suitable boundary treatment and avoiding blank facades to the public domain.
- In relation to the matter of the taking over of the public open space, the applicants state they have provided photos of this area which indicates that it did not constitute public open space. They note chapter 4 and section (a) of the ‘Sustainable Residential Development in Urban Areas Guidelines’ which states, “public open space can have a positive impact on physical and mental well being. It provides space to meet, interact, exercise and relax. It is one of the key elements in defining the quality of the residential environment. It adds to the sense of identity of a neighbourhood, helps create a community spirit and can improve the image of an area.
- In relation to the turning area and the statement that there is a specific requirement for one in accordance with Cork County Council: ‘Making Places, a Design Guide for Residential Estate Development’. The response notes that the document is very clear about its priorities for residential estates like Pembroke Heights. The priority is with the residential environment with the pedestrian/cyclist and not the car. It states that “the character and

pleasantness of the spaces takes precedence over the speed and throughput of traffic to be carried by the road contained within it.”

- The revised boundary has resulted in the turning area being a Type 5 turning area instead of a Type 3 turning area. It is reiterated that it is of sufficient size to accommodate reasonably sized vehicles including delivery trucks to turn. The applicants do not agree with the statement in the appeal that the works have created a traffic hazard.
- In relation to the statement in the appeal that the application should have been deemed invalid the applicants state that they do not own the land which was incorporated inside the moved boundary wall they did get the permission from Manor Park Homebuilders to move the wall. Histron was a joint venture between John F Supple and Manor Park Homebuilders. In relation to the letter issued in 2011 by Manor Park Homebuilders the applicants state that Fred Sweeney has confirmed that all the directors involved with Histron were aware of the permission given by Manor Park Homebuilders to them to relocate the boundary wall. It is noted that a liquidator was appointed to John F Supple in 2012 and that Histron was dissolved in 2013. The applicants submit that therefore they received valid permission from the land owners to carry out the development.
- In conclusion, the applicants wish the Board to consider that they have done their best to comply with the regulations and all the evidence provided shows that the moving of the boundary wall has eliminated not created hazard.

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

- The Planning Authority note the comments made in the appeal and consider that the issues have been raised in the course of the application with no new information being presented in the appeal documentation. It is considered that the original reports on file should be considered by the Board.
- It is noted in the appeal that the term ‘developer’ was used in the report of the Executive Planner and was referred to by the appellants regarding a letter of consent. As a point of clarification, the intention of this point was to state that the applicants are not legally obliged to own the land on which they seek

planning. If they do not own the land then they need the letter of consent from the landowner. In this case the original landowners were the developers.

## **7.0 Assessment**

The main issues in this appeal are raised in the grounds of appeal. Appropriate Assessment also needs to be addressed. I am satisfied that no other substantive issues arise. The issues can be dealt with under the following headings:

- Principle of the development and traffic
- Legal issues
- Appropriate Assessment

### **7.1. Principle of the development and traffic**

- 7.1.1. This appeal concerns the retention of the boundary wall boundary located to the eastern side of the property no. 1 Pembroke Heights. The appellants raised concern that the location the subject boundary wall has resulted in the loss of a section of the existing hammerhead turning area located at the end of the cul de sac. They submit that the unauthorised works carried out have resulted in the creation of a traffic hazard.
- 7.1.2. In respect of the principle of the development the applicants have provided a detailed appeal response outlining their requirement for the subject boundary wall to be relocated. The details on file including the appeal response outline the anti-social behaviour which took place at the area of green space formally at the end of the cul-de-sac. The applicants have submitted a number of photographs indicating the level of littering which regularly occurred. The appeal submission details that the area was used by teenagers to congregate due to the layout whereby the green area was secluded and not directly visible from the road along Pembroke Heights to the west. The applicants also detailed that the gabion wall was used by groups to climb and gain to access to the rear garden of their property. I note the various letters submitted with the appeal response including from neighbouring property owners along Pembroke Heights, Passage West Garda Station and elected representatives which refer to the level of anti-social behaviour which previously occurred at this

location. Furthermore, I note that the applicants sought to resolve the matter with discussion with the Residents Association and Manor Park Homebuilders. I note that agreement was reached that the best course of action to address the matter of the on-going anti-social behaviour was that the applicants boundary wall would be relocated to remove the secluded corner within the cul-de-sac.

- 7.1.3. The appellants and the first party both cite the Guidelines for Planning Authorities on “Sustainable Residential Development in Urban Areas”. The appellants refer to Section 4.23 of the Guidelines states that residential roads and streets should be safe for people to drive, cycle to walk and in certain situations to play in. The first party note that the Guidelines also advise in Section 4.22 in relation to personal safety that ‘the ability to live with a feeling of comfort and safety in the residential area is an essential component of sustainable communities. The design of the built environment can contribute to this by creating a sense of security and ownership within residential areas. Good design is essential in a residential area in giving a sense of personal safety, e.g. by providing: for the passive surveillance of the street and roads by residents and passers-by; blank facades and areas that are not overlooked should be avoided. Chapter 4 of the Guidelines refers to Planning for sustainable neighbourhoods. The Guideline advise that housing layouts provide residential roads which are safe for people to drive, to cycle and walk in and in relation to personal safety that the design and layout provides an environment where residents have the ability to live with a feeling of comfort and safety.
- 7.1.4. Clearly the layout as originally constructed with a green space area at the end of the cul de sac where there was no passive surveillance resulted in a location which was prone to congregation and ongoing anti-social behaviour which did not provide a environment which contributed to a sense of security for residents.
- 7.1.5. The relocation of the boundary wall has resulted in the previously existing small area of open space being removed. The report of the Planning Officer refers to this matter and considered that the area of open space was limited and isolated and given the overall level of open space provision within the estate that the loss of this small area of open space would not be detrimental to the residential amenities of the area. I would concur with this assessment.

- 7.1.6. The appellants main concerns refer to traffic considerations and specifically that the relocation of the boundary wall has resulted in the reduction in the area of the hammerhead at the end of the cul-de-sac. It is stated in the appeal that the Planning Authority in their assessment of the application did not consider the provisions of Cork County Council: 'Making Places, a Design Guide for Residential Estate Development' (2011). The appellants also refer to the guidance document 'Recommendations for Site Development Works for Housing Areas' published by the DoEHLG in 1998, I would note that the provisions of that document also informed the Council document: 'Making Places, a Design Guide for Residential Estate Development'. Page 96 of the Council's document refers to turning bays and it provides general guidance in respect of turning bay type and size required. I would note the turning bay as it was originally designed would appear to be a size 3 turning bay as detailed in this document which is a side turn. I note that the relocation of the boundary wall has resulted in the reduction in the length of the southern section of the side turn by circa 3.5m.
- 7.1.7. The appeal refers to the matter of the suitability of the revised turning bay for trucks including the bin collection truck and delivery vehicles to turn and they note that no autotrack analysis was provided. In response to the matter of the bin truck the applicants provided a letter from the collection company County Clean which confirmed that the original turning area did not provide sufficient space for their waste collection truck to turn. Regarding the other delivery vehicles such as DPD delivery vans the applicants confirm that the long DPD delivery van can turn in the revised turning area. It is clear that the design of the original turning area only provided sufficient space for certain vehicles to manoeuvre as detailed above the existing bin collection service did not use it. The appeal also referred to the issue of cars being parked within the turning area, on inspection of the site I did not observe any vehicles parked within the turning area at the end of the cul de sac. The first party in response to the matter stated that vehicles were occasionally parked there when they had visitors and when building works were being carried out at their property.
- 7.1.8. The report of the Planning Officer refers to the matter of the alteration of the existing turning bay and notes that no report was received from the Area Engineer and that the report from the Estates Engineer did not reach a recommendation in relation to



potential implications for road safety. Their report accepts that some vehicles have to reverse down the road but in general the road is a cul de sac where there is limited activity. Accordingly, the Planning Officer considered that none of the Council Engineers have concluded that it represents a traffic hazard and was satisfied with the revisions to the turning bay on that basis.

- 7.1.9. Accordingly, having regard to details discussed above I am satisfied the applicants have presented sufficient justification for the relocation of the boundary wall on the basis of addressing the previously occurring anti-social behaviour and given the limited level of vehicles which would be using the turning area at the end of the cul de sac I do not consider that the revision in the design of the turning area would have an undue adverse impact on the traffic or pedestrian safety in the area.

## **7.2. Legal Issues**

- 7.2.1. The appellants have raised concern in respect of the applicant's legal interest to carry out the works. The matter of the validity of the application is also raised. It is set out in the appeal that the applicants do not have sufficient interest in the lands to make the planning application. The appellants state that the lands where the wall has been built are not in the ownership of Manor Park Home Builders but rather Histon Ltd. Therefore, the appellants consider that the applicants did not receive a letter of support from the owners of the subject lands.
- 7.2.2. In response to this the applicants have provided some background on the subject and stated that Histron was a joint venture between John F Supple and Manor Park Homebuilders. John F Supple were the builders on site until 2006 and that in 2009 Manor Park Homebuilders then completed the estate. When the applicants sought to incorporate the subject lands into their site and to construct the subject wall they had discussions in relation to the matter with representatives of Manor Park Homebuilders, Mr. John Moran and Mr. Fred Sweeney. The letter on file dated the 26<sup>th</sup> of January 2011 which is addressed to the applicants Amanda Green & David Kelleher and which was signed by Fred Sweeney for and on behalf of Manor Park Homebuilders states, "we wish to confirm to you our agreement in relation to the removal of the existing boundary and the construction of same in line with the attached drawing which shows the "Hammer Head" removed and realigned. These works will be completed and financed by Amanda Greene and David Kelleher of 1

Pembroke Heights. This will assist the removal of anti-social behaviour which is quite prominent in this area. Cork County Council Estate Manager has no objection to the above and we are granting consent to making of the application.”

- 7.2.3. The contents of the letter clearly confirm that the applicants had the agreement of Manor Park Homebuilders to construct the wall on the subject lands. The appellants have raised the matter that Histron Ltd were the owners of the lands. In response to this the applicants contacted Mr Fred Sweeney who provided them with a further letter which clarified that he was the Project Manager and representative of Manor Park Homebuilders Ltd on the Pembroke Wood site from 1998 to 2011. Mr. Sweeney advised that Histron was a joint venture between John F Supple and Manor Park Homebuilders and that Manor Park Homebuilders were the sole representatives of Histron on site. Mr. Sweeney confirms that all the directors involved with Histron were aware of the permission given by Manor Park Homebuilders to applicants Amanda Greene and David Kelleher to relocate the boundary wall.
- 7.2.4. It is detailed in the appeal response that a liquidator was appointed to John F Supple in 2012 and that Histron was dissolved in 2013. The applicants therefore submit that they received valid permission from the land owners to carry out the development.
- 7.2.5. Firstly, in respect of the validity of the application, I note the Planning Authority were satisfied with the documentation provided and that the planning application were determined as valid on that basis.
- 7.2.6. Secondly, regard the matter of whether the applicants have sufficient legal interest to carry out the development, the Planning and Development Act 2000, as amended, requires that the applicants have sufficient legal interests in the lands to carry out the development. Having regard to the documentation on file including the letter from Manor Park Homebuilders and the letter from Mr. Fred Sweeney I am satisfied that the applicants received the permission of the subject landowners to make the application and carry out the subject development. In relation to these matters, I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development.” This subsection makes it clear that the grant of

permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate.”

- 7.2.7. Furthermore, I note that the Planning Authority in their determination of the application were satisfied that the applicant had provided sufficient legal title to carry out the development. Accordingly, I do not consider that these matters are reasonable and substantive grounds for refusal of the proposed development.

### **7.3. Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development, the retention of a boundary wall, and the separation distance to any 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 a European site.

## **8.0 Recommendation**

- 8.1. It is recommended that permission be granted for the reasons and consideration set out below.

## **9.0 Reasons and Considerations**

Having regard to the pattern of development in the area and to the scale, nature and design of the works to be retained, it is considered that, subject to compliance with the condition set out below, the development for which retention is sought, would not seriously injure the amenities of the area or of property in the vicinity and would not pose a risk to pedestrian and traffic safety. The development proposed for retention 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.

**Reason:** In the interest of clarity.

---

Siobhan Carroll  
Planning Inspector

25<sup>th</sup> April 2022