



An
Bord
Pleanála

Inspector's Report

ABP-312840-22

Development	Retention of concrete retaining wall, ground floor windows, canopy over main entrance door and permission to install 1.8m high eco fence panels with painted steel posts on top of the existing concrete retaining wall and all associated site works
Location	Chapel Lane, Townlands, Rosscarbery, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	21700
Applicant(s)	Shane & Deirdre Murphy
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	John & Ann Cadogan
Date of Site Inspection	5 th May 2022
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.096 hectares. There is a newly constructed two-storey house on the site that fronts onto Chapel Lane to the north-east of Rosscarbery village centre. The site is roughly rectangular in shape, slopes up from the public road and there is a low wall with hedging delineating the front boundary. The lands to the rear rise steeply in a north-westerly direction. The site has been subdivided from the side garden of a detached 1 ½ storey house to the northeast.
- 1.2. The site is bounded to the southwest by a two-storey dwelling which fronts directly onto the road. A low stone wall and outbuilding delineate the front section of the shared boundary after which temporary security fencing is placed along the top of a retaining wall. The dwelling is served by a long rear garden area. It has windows facing onto the appeal site at both ground and 1st floor level. An enclave of two storey dwellings is to the northwest of same with two storey terraced dwellings along Chapel Lane further west. There is a line of two storey, semi-detached dwellings to the north-east with a small scheme of two storey dwellings noted on the opposite side of the road.

2.0 Proposed Development

- 2.1. The proposed development would comprise the retention of a retaining wall on the southwestern boundary of the site, 2 no. ground floor windows, 1 no. first floor window, 1 no. rooflight, and a canopy on the existing house, as well as permission for a 1.8m high eco wall on top of the retaining wall.

3.0 Planning Authority Decision

3.1. Request for Further Information

Prior to its notification of decision, the Planning Authority issued a further information request on 2nd December 2021 requiring issues to be addressed in relation to the garden level of the adjoining property to the south-west, concerns about the visual impact of the proposed fence within an Architectural Conservation Area, the

transition from the driveway to the public footpath and subsequently to the public road, and third-party concerns regarding a potential gully.

In response, on 23rd December 2021 the first party submitted a contiguous elevation of the southwest boundary, details of agreement with the Area Engineer regarding the footpath and confirming that the proposed fence will not impact on the existing gully.

3.2. Decision

By order dated 26th January 2022 Cork County Council issued a notification of decision to Grant Permission for the proposed development subject to 5 no. conditions. The Conditions include, inter alia, the following:

- Condition No.3: Requiring details of proposed hedging to be agreed.
- Condition No.5: Specifying location, height and colour of the proposed fence.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the Planning Officer outlines the relevant planning policy for the site, notes the objections received and raises concerns regarding the potential for an adverse visual impact from the proposed fence on the ACA, the transition from the driveway to the public footpath and subsequently to the public road, and third-party concerns regarding a potential gully. Notwithstanding this, further information was recommended.

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

A second report, subsequent to the submission of a response to further information, recommends a grant of permission consistent with the notification of decision which issued.

3.3.2. **Other Technical Reports**

Area Engineer – The report dated 22nd November 2021 raises concerns regarding the transition from the driveway to the public footpath and subsequently to the public road, requesting dropped footpaths on either side of the entrance. A second report dated 16th January 2022 recommends that permission be granted.

Conservation Officer – The report dated 18th January 2022 raises concerns about the height of the proposed eco fence proposed along the top of the retaining wall and recommends limiting the height of it to 1.2m.

3.4. **Prescribed Bodies**

None.

3.5. **Third Party Observations**

- 3.5.1. An objection to the proposal received by the planning authority raised issues comparable to those set out in the 3rd party appeal summarised in section 6 below.

4.0 **Planning History**

4.1. **Appeal site:**

PL88.301085 (P.A. ref. no.: 17432) – Permission granted for the construction of a dwelling, realignment of existing entrance to provide shared entrance and all associated works.

5.0 **Policy Context**

The Board should note that the Planning Authority carried out their assessment of the proposed development based on the policies and objectives contained in the Cork County Development Plan 2014 and the West Cork Municipal District Local Area Plan 2017. The Cork County Development Plan 2022-2028 and the West Cork Local Area Plan 2022-2028 came into effect on 6th June 2022.

5.1. Cork County Development Plan 2022-2028

5.1.1. Architectural Conservation Areas

Objective HE 16-15:

Conserve and enhance the special character of the ACAs. The special character of an area includes its traditional building stock, material finishes, spaces, streetscape, shopfronts, landscape and setting. This will be achieved by:

- Protecting all buildings, structures, group of structures, sites, landscapes and all other features considered to be intrinsic elements to the special character of the ACA, from demolition and non-sympathetic alterations.
- Promoting appropriate and sensitive reuse and rehabilitation of buildings and sites within the ACA and securing appropriate infill development.
- Ensure new development within or adjacent to an ACA respects the established character of the area and contributes positively in terms of design, scale, setting and material finishes to the ACA.
- Promoting high quality architectural design within ACAs.
- Seek the repair and re-use of traditional shopfronts and where appropriate, encourage new shopfronts of a high quality architectural design.
- Ensure all new signage, lighting advertising and utilities to buildings within ACAs are designed, constructed and located in such a manner they do not detract from the character of the ACA.
- Protect and enhance the character and quality of the public realm within ACAs. All projects which involve works within the public realm of an ACA shall undertake a character assessment of the said area which will inform a sensitive and appropriate approach to any proposed project in terms of design and material specifications. All projects shall provide for the use of suitably qualified conservation architects/ designers.
- Protect and enhance the character of the ACA and the open spaces contained therein. This shall be achieved through the careful and considered strategic management of all signage, lighting, utilities, art

works/pieces/paintings, facilities etc to protect the integrity and quality of the structures and spaces within each ACA.

- Ensure the protection and reuse of historic street finishes, furniture and features which contribute to the character of the ACA.

5.1.2. Scenic Routes

Objective GI 14-13:

Protect the character of those views and prospects obtainable from scenic routes and in particular stretches of scenic routes that have very special views and prospects identified in this Plan.

Objective GI 14-14:

a) Require those seeking to carry out development in the environs of a scenic route and/or an area with important views and prospects, to demonstrate that there will be no adverse obstruction or degradation of the views towards and from vulnerable landscape features. In such areas, the appropriateness of the design, site layout, and landscaping of the proposed development must be demonstrated along with mitigation measures to prevent significant alterations to the appearance or character of the area.

b) Encourage appropriate landscaping and screen planting of developments along scenic routes.

The local road to the eats is part of Scenic Route S78.

5.2. West Cork Municipal District Local Area Plan 2022-2028

Rosscarbery is designated as a key village.

Section 2.20.1 – the strategic aims for Rosscarbery are to preserve the unique architectural character and landscape setting of the settlement and to promote sympathetic development in tandem with the provision of services.

5.3. Natural Heritage Designations

5.3.1. The site is not located within or near any European site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the separation from sensitive environmental receptors, I am satisfied that no likely significant impacts on the environment arise from the proposed development and that the carrying out of an EIA is not required in this case.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal are submitted by Coakley O'Neill Town Planning Ltd., NSC Campus, Mahon, Cork on behalf of John and Ann Cadogan, Chapel Lane, Rosscarbery, Co. Cork, residents of the adjoining house to the southwest of the appeal site. The main points made can be summarised as follows:

- The basis of seeking modifications to the grant of permission is because of the contended undue negative impacts on the residential amenity of neighbouring properties in terms of loss of privacy, health and safety and overlooking.
- Contend that the leylandii hedge was removed before construction commenced, which contravened condition no.10 of the permission issued under ABP-301085-18.
- Contend that condition no.11 of the permission has also not being complied with as the farm gate remains in place.
- Contend that the planning authority's decision to limit the height of the fence on the shared boundary to 1.2m will not address safety issues with the boundary and request that this fence be 2m in height.
- Request that the first floor windows on the south western elevation be top hung as also required by a condition on the governing permission.

6.2. Applicant Response

6.2.1. The main issues raised in the First Party response to the grounds of appeal can be summarised as follows:

- State that, regrettably, the integrity of the hedge could not be secured commensurate with site works and the erection of the pile wall.
- State that the pile wall was constructed to negate any structural risks to the shared boundary.
- State that the minor changes that were carried to the dwelling during construction were as a consequence of the special needs of a sibling and all these changes are annotated on the drawings.
- State that it was not possible to construct a wall in the location of the farm gate as the appellant's connection to the public sewer runs under this gate.
- Highlights contended inconsistency in the third-party submission and appeal regarding the height of the proposed eco wall.

6.3. Planning Authority Response

The Planning Authority has stated, in the interests of clarity, that planning application ref. no. 21/22 was deemed to be withdrawn when a response to a RFI was not made within the 6 months statutory time period.

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Impact on the character of the area
- Impact on the amenities of the adjoining property
- Other issues
- Appropriate Assessment

7.1. Impact on character of the area

- 7.1.1. The entire village of Rosscarbery is designated as an Architectural Conservation Area. It is an objective of the County Development Plan to conserve and enhance the special character of such areas by ensuring that new development respects the established character and contributes positively in terms of design, scale, setting and material finishes.
- 7.1.2. The building line of the house is setback from the line of semi-detached two storey dwellings to the north-east. The appellants' property which fronts directly onto the road is a detached, three bay two storey dwelling served by a long narrow rear garden and, whilst included in the National Inventory of Architectural Heritage (reg. no. 20855027), is not included in the list of protected structures for County Cork set out in Volume 2 of the County Development Plan. I note that the NIAH considers that the house makes an excellent addition to the streetscape and is accorded a regional rating. It is separated from the two-storey terraced streetscape to the west (synonymous with the village centre) by an entrance to a small enclave of two storey dwellings setback from the road. I also note that a small scheme of two storey residential units has been developed on the opposite side of the road.
- 7.1.3. I submit that the context of the site which is surrounded by a mix of architectural style and layouts, allows for greater latitude in terms of design relative to a site where the streetscape is more rigidly defined. I note the positioning of the proposed fence to the side of the house. The proposed fence is 19m in length and the planning authority imposed a condition requiring it to be limited to 1.2m in height, although the appellants request that the fence be 2m in height for residential amenity purposes. I consider, regardless of the height of the fence, there will be less than 2m of the proposed fence forward of the building line of the house. I also note that by reason of the alignment of the road and the pattern of development views of the site are restricted when travelling in both directions along Chapel Lane. There are limited views of the appeal site from the designated scenic route (S78) located approximately 50m to the northeast.
- 7.1.4. On balance, I consider that in view of the positioning of the proposed fence, predominantly to the side of the dwelling on the site, that the fence, subject to a condition imposed by the planning authority limiting its height to 1.2m, would be of an

acceptable design, would not have an overbearing or dominant impact on the streetscape and would not detract from the character of the ACA at this location.

7.2. Impact on the amenities of the adjoining property

- 7.2.1. The existing boundary to the appellants' property is delineated by a stone wall along the front section and, due to the removal of a high leylandii hedge, is open towards the rear. On day of my site inspection, I noted the north-eastern elevation of the appellants' property, which has windows overlooking the appeal site at ground and 1st floor level and is visible from the road.
- 7.2.2. With the stone outbuilding to the rear of the appellants' dwelling along the shared boundary providing a screen, overlooking would be largely precluded. However, the mature leylandii hedge would have precluded overlooking to / from either property. The Board should note the two ground floor windows for retention on the southwestern elevation as well as the first floor window on the north western elevation. I am satisfied, given the difference in ground levels between the site and the appellants' property (varies between 2m and 3m for the length of the retaining wall), that no overlooking from the two ground floor would occur and that the placing of a 1.2m high fence along the top of the retaining wall is sufficient to protect the privacy of the occupiers of both dwellings. Similarly, given the aspect and orientation of the house, I am satisfied that a replacement hedge along the shared boundary to the rear of the appellant's' house, as proposed on Drawing no. 16148 – GA – 005 R submitted to the planning authority on 23rd December 2021, would also ensure the protection of the privacy of the occupiers of both dwellings.
- 7.2.3. I therefore consider that the erection of a 1.2m high fence and a semi-mature hedge along the southwestern boundary with the retention of windows at ground, below the level of the ground on the site to the southwest, and first floor levels would not militate against the protection of the amenities and privacy of the appellants' dwelling.

7.3. Other issues

Farm gate access and first floor windows

- 7.3.1. I note the references from the appellants regarding possible unauthorised and non-compliant development on the site in relation to a farm gate access and first floor windows on the southwestern elevation. The development for retention and permission under this appeal is for the retention of a retaining wall on the southwestern boundary of the site, 2 no. ground floor windows, 1 no. first floor window, 1 no. rooflight, and a canopy on the existing house, as well as permission for a 1.8m high eco wall on top of the retaining wall entrance and, consequently, an assessment on the farm gate and first floor windows specified by the appellant on the appeal site has not been carried out herein. Planning Enforcement is the role of the respective Planning Authority, and An Bord Pleanála has no role in this.

7.4. Appropriate Assessment

- 7.4.1. Having regard to the location of the fully serviced site within the settlement boundary of Rosscarbery no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions

9.0 Reasons and Considerations

- 9.1.1. Having regard to the location of the site within the settlement boundary of Rosscarbery, to the pattern of development and character of the general area and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of property in the vicinity and would respect the existing character of the Architectural Conservation Area. The

proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained and carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 23rd day of December 2021, and the terms and conditions of the parent permission issued by An Bord Pleanála under PL88.301085, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>A semi-mature beech or evergreen hedge shall be planted along part of the south-western boundary of the site as shown on Drawing no. 16148 – GA – 005 R submitted to the planning authority on the 23rd day of December 2021. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of visual amenity and protection of amenities of adjoining property.</p>
3.	<p>a) The proposed eco panel fence shall be located only on top of the retaining boundary wall,</p> <p>b) The fence shall not exceed 1.2m in height at any point, and</p> <p>c) The fence shall be grey in colour.</p>

	<p>Prior to commencement of development, the applicants shall submit for the written agreement of the planning authority precise details of the fence in accordance with this condition.</p> <p>Reason: In the interest of protecting the residential and visual amenity of the area.</p>
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Liam Bowe
Planning Inspector

9th June 2022