



An
Bord
Pleanála

Inspector's Report 313464-22

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| Development | Retention of boundary wall erected between Highfield House and the neighbouring property (2 Highfield Mews) and all ancillary site development works |
| Location | Highfield House, Ballymakenny Road, Drogheda |
| Planning Authority | Louth County Council |
| Planning Authority Reg. Ref. | 22/118 |
| Applicant(s) | Mark McDonnell |
| Type of Application | Planning permission |
| Planning Authority Decision | Refuse permission |
| Type of Appeal | First Party |
| Appellant(s) | Mark McDonnell |
| Observer(s) | None |
| Date of Site Inspection | 9 th September 2023 |
| Inspector | Mary Kennelly |

1.0 Site Location and Description

- 1.1.** The site is located on Ballymakenny Road (also known as Brookville) in the northern suburbs of Drogheda. This is a residential area, the character of which is mixed with houses of different architectural styles and ages of varying sizes, shapes and plots. Highfield House is a detached two-storey house which has been extended to the rear. There is a pair of semi-detached houses located immediately to the north and a further detached house immediately to the south. Highfield House is located at the back-edge of the footpath, but the houses on either side are setback from the public road. Beyond the pair of houses to the north is the entrance to a housing estate (Grange Rise) and beyond the house to the south is another housing estate, Forest Hills.
- 1.2.** The two houses to the north (Nos. 1 and 2 Highfield Mews) were the subject of a planning permission involving Highfield House which was granted in 2006 (P.A. Ref. 06/510047). At present access is gained to Highfield House by means of private vehicular access (gated) from Ballymakenny Road to a hardstanding area to the north of the house. This is bounded on the northern boundary by a 1.2m high wall which separates the site from the pair of dwellings. These houses are currently accessed by means of a shared vehicular access from Ballymakenny Road, close to the entrance to Grange Rise. The area to the front of these houses is not subdivided and is covered in loose gravel. The boundary wall enclosing the adjoining houses is of concrete block but is not plastered, capped or painted.
- 1.3.** The site area is given as 0.0533ha.

2.0 Proposed Development

- 2.1.** It is proposed to retain the boundary wall that has been erected along the northern boundary of Highfield House which separates the site from the adjoining pair of dwelling houses to the north. The wall has been plastered, capped and painted on the southern side. It is 1.2 metres in height for most of its length, but rises to approx. 2 metres closer to the front door of the adjoining semi-detached house.
- 2.2.** It is stated that there is no reference to any right of way or wayleaves on the folio for the property, which was purchased by the applicant in 2019 from a receiver. The

house was stated to be in a derelict condition at that time. It is further stated that the vehicular entrance to the site has been in existence for many years and that the access to the adjoining pair of houses had initially been a pedestrian entrance, but that this was widened several years ago, prior to the purchase of the property by the applicant.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for two reasons which principally related to non-compliance with a condition of a previous permission. The reasons for refusal read as follows:

1. Under Planning Reference 06510047, planning permission was granted for a shared vehicular access to the public road to provide for Highfield House (the property the subject of this planning application) and the two dwellings immediately to the east of the site namely 1 and 2 Highfield Mews.

The wall for which retention permission is sought prevents access for vehicles from Numbers 1 and 2 Highfield Mews utilising the unauthorised entrance and as such the development would contravene materially Condition 1 of Planning Reference 06510047 which included that the development be in accordance with the drawings and particulars submitted with that planning application. Hence the retention of this development would be contrary to the proper planning and sustainable development of the area.

2. The proposal would necessitate the use of unauthorised vehicular access to Number 1 and 2 Highfield Mews from the public road. It has not been demonstrated to the Planning Authority that adequate visibility is available at this access or that traffic using it would not compromise other road users. The proposed development would, therefore, be prejudicial to road safety and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report noted the planning history on the site (06/510047), whereby planning permission was granted by the P.A. in 2006 for the construction of Two new 2 ½ storey semi-detached dwellings and a new 2-storey extension to existing dwelling at Highfield House. It was noted that the wall that is sought for retention subdivides the site of this permission and separates the application site from that of the two semi-detached houses. It was stated that the wall alters the access arrangements and facilitates the provision of a wider vehicular driveway serving Highfield House. There were no objections in terms of the impact on visual or residential amenities, and it was accepted that it would result in improved security and privacy for the applicant.

The main concern related to the implications for the pair of semi-detached houses which would be forced to utilise an unauthorised vehicular access from the street as the wall would prevent access by means of the permitted shared driveway/access point (06/510047). This would consolidate the unauthorised use of this access point and cause the use of these dwellings to become unauthorised by reason of breaching condition No. 1 of 06/510047. It was considered that a more comprehensive approach was required which addressed the access arrangements for all three dwellings simultaneously.

Refusal was, therefore, recommended on the above grounds.

3.2.2. Other Technical Reports

Infrastructure Office – stated no objection subject to conditions including provision and maintenance of adequate visibility for 75m of either side from a point 3m back from the road edge.

3.3. Prescribed Bodies

3.3.1 None.

3.4. Third party observations

3.4.1. Submission from councillor Tom Cunningham in support of the application.

4.0 Planning History

06/510047 – Planning permission **granted** for a 2-storey extension to the existing Highfield House and construction of 2 no. two-and-a-half-storey, semi-detached houses with a shared driveway and parking area to the front of the two semi-detached houses. Permission was granted subject to 15 no. conditions including the following –

1. The development shall be in accordance with elevation drawings submitted on 1st March 2006 except where these have been revised by subsequent drawings and particulars which were submitted on 30th June 2006 and except where conditions hereunder specify otherwise.

Reason: In the interest of the proper planning and sustainable development of the area.

4. Boundary treatments shall be in accordance with details indicated on Drawing no. MT01-06-002 Rev. A, except where otherwise agreed in writing with the planning authority prior to commencement of the development.

Reason: In the interests of visual amenity and streetscape.

4.1. Louth County Development Plan 2021-2027

4.1.1. The site is zoned Objective A1 Existing Residential for which the objective is “To protect and enhance the amenity and character of existing residential communities.”

4.1.2. The Guidance section states that the objective is to conserve and enhance the quality and character of established residential communities and protect their amenities. Infill developments, extensions and the refurbishment of existing dwellings will be considered where they are appropriate to the character and pattern of development in the area and do not significantly affect the amenities of surrounding properties.

4.1.3. Chapter 4 - Housing

HOU 17 – Promote and facilitate the sustainable development of a high quality built environment where there is a distinctive sense of place in attractive streets, spaces

and neighbourhoods that are accessible and safe places for all members of the community to meet and socialise.

Hou 34 Extensions to dwellings – seeks to encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment, residential amenities, surrounding properties or the local streetscape and are climate resilient.

4.1.4. Chapter 13 Development Management

13.8.11 Boundary Treatment –

Boundary treatments in residential developments shall consist of the following:

- i) The rear boundary shall consist of a 2 metre high block wall;
- ii) Side boundaries between properties shall be 2 metres in height. If timber boundaries are to be used they must be bonded and supported by concrete posts;
- iii) Walls bounding any public areas shall be rendered and capped on both sides; and
- iv) Front boundaries along the estate road and between properties shall be agreed as part of the planning application. They can be open plan, planted, consist of a low-level wall or railing, or as otherwise agreed with the Planning Authority.

4.2. Natural Heritage Designations

River Boyne and River Blackwater SAC (002299) approx. 1.2km distant.

Boyne Coast and Estuary SAC (0001957) c.2.6km distant.

Boyne Estuary SPA (004080) approx. 2.6km distant.

River Boyne and River Blackwater SPA (004232) approx. 3.6km distant.

Clogherhead SAC (0001459) c.11km distant.

5.0 The Appeal

5.1. Grounds of Appeal

The first-party appeal may be summarised as follows:

- **Background to development** – the applicant bought the house from an estate agency in Galway in May 2019. It had been derelict for years and had a Local Authority condemnation order on the roof as slates had begun to fall onto the public path endangering passers-by. The house was renovated extensively and is now the appellant's family home.
- **No rights of way or easements with adjoining dwellings** – There are no rights of way across his property. Copies of the deeds and land registry are enclosed on a memory stick.
- **Development Standards** – the appellant is legally within his rights to construct a 1.2m high wall, which is plastered where visible from the main road and capped, in accordance with the requirements of the planning authority. Such a wall does not need planning permission.
- **Unauthorised entrance to Highfield Mews** – this alleged unauthorised entrance has long been in use prior to the purchase by the appellant of his property. It is untrue to say that the construction of the wall has forced the use of this unauthorised entrance. A letter is attached (USB) from the long-term neighbours to this effect.
- **Health and safety** – The front door to Highfield House is recessed and prior to the construction of the wall, cars were entering and leaving the driveway at speed, which endangered people using his driveway/entrance. His children (aged 8-11), and in particular, his son who has a hearing impairment were in danger from passing cars on the driveway.
- **Security issues** – Nos. 1 and 2 Highfield Mews are rented out and the traffic flow far exceeds the norm. there have been incidents including a car hitting the wall, antisocial behaviour and tools etc. stolen from his back garden, prior to the erection of the wall and the electric gates.

5.2. Planning Authority Response

6.2.1 The P.A. responded to the grounds of appeal on the 30th of May 2022. It was stated that -

'Issues contained in the appellant statement of case have been addressed in the Planner's Report dated 31st March 2022. In relation to additional comments received from the applicant relating to insurance, these are not considered to be planning matters. The proposed development is considered to cause road safety issues in that granting planning permission would consolidate an unauthorised access located to the north-east of this site. It is considered that a more comprehensive approach is needed on this site and the site of the two neighbouring properties to the immediate north-east if alternative access arrangements are to be sought.'

6.0 Planning Assessment

6.1. It is considered that the main issues arising from the appeal are as follows: -

- Principle of development
- Traffic safety
- Procedural matters

6.2. Principle of development

6.2.1. This is a first party appeal against refusal of planning permission. The reasons for refusal contained two distinct elements which are based on firstly, procedural matters and secondly on traffic safety matters. It is noted, however, that the planning authority accepted that the retention of the proposed wall would be acceptable in terms of visual amenity and would not result in any injury to the residential amenities of the area. It was further acknowledged that the applicant had reasons based on improving the security and safety of his property for constructing the wall, which were not considered to be unreasonable. I would agree with the assessment of these issues as set out in the planner's report.

6.2.2. The concerns raised by the planning authority related principally to the consequential effect that the grant of a permission would have on the planning status of the

adjoining properties, due to the terms and conditions of a previous planning permission granted in 2006 which related to all three properties. In addition, it was stated that the planning authority was not satisfied that adequate visibility would be available at the access or that traffic using it would not compromise road users, and hence would be prejudicial to road safety. These matters will be discussed further below.

6.2.3. The appellant believes that he is entitled to construct a 1.2m high wall along the side boundary of his property. It is assumed that the appellant is referring to exempted development rights to erect a wall under Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 5 does confer exempted development rights in the case of a domestic house for such development subject to certain conditions and limitations (Column 2). Specifically,

Class 5 - The construction, erection or alteration within the curtilage of a house of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and limitations

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which would be visible from any road, path or public area, including open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

6.2.4. Although the appellant states that the wall is 1.2m in height, the submitted drawing shows that it is 1.4 metres in height with the rear section rising to approx. 2 metres, which is higher than that specified within the terms of Class 5. In addition, Exempted Development rights are restricted by Article 9 of the same Regulations. Restrictions in this case may relate to matters such as contravention of a condition of planning permission, the formation/material widening of a means of access to a public road

(4m wide road), the possibility of endangering public safety by reason of a traffic hazard etc.

- 6.2.5.** I am not aware that an application for a determination under Section 5 of the Planning and Development Act 2000 (as amended) has been made in respect of this development. As such, it is not considered appropriate to come to any conclusions on the exempted status or otherwise of the wall at this point in time. However, I would agree with the planning authority that as the site of the proposed development was subject to a planning permission which included the application site together with the sites to the north, it is appropriate and necessary to have regard to the terms and conditions of that permission in assessing the current application/appeal.

6.3. Traffic safety

- 6.3.1.** The road is a main thoroughfare which travels through a residential area. It is relatively straight with good visibility in either direction. At the time of my inspection, I noted that the road was quite busy, but not congested, and that traffic tends to travel at speed. The site of the appeal has a gated entrance, which the appellant states has been in place for years. In addition, the two adjoining houses have a shared vehicular entrance (alleged to be unauthorised) which is in close proximity to the entrance to Grange Rise.
- 6.3.2.** I note from the permitted drawings under P.A. Reg. Ref. 06/510047 that the original entrance to Highfield House was in a similar location to the entrance to the appeal site and that the remainder of the frontage comprised a boundary wall. The permitted layout drawings (MT01-06-002 Rev. A, Received 30/06/06) show that the original entrance was to be closed up and that a new entrance (to the north of the original one) was to be introduced which was to provide shared access to all three dwellings (Highfield House and Nos. 1 and 2 Highfield Mews). Thus, the permitted entrance appears to be in between the existing two entrances, and is currently defined by a concrete block wall. It is noted that the current application before the Board relates only to the retention of the side boundary wall and does not include the retention of the entrance, which seems to be at odds with the permitted layout.
- 6.3.3.** The Engineering Section report on file indicates that there should be 75 metre sightlines available in either direction from a point 3m back from the road edge. The

application was accompanied by a plan (JAD/4016) showing 70m sightlines available at the entrance. As the footpath at this location is very deep (approx. 5m), it is considered that the sightlines are likely to be appropriate in this urban context.

- 6.3.4.** It is considered that, notwithstanding the deviation from the permitted plans under 06/510047, the entrance to the appeal site, Highfield House, is unlikely to give rise to a traffic hazard.

6.4. Procedural matters

- 6.4.1.** The appellant claims that there are no rights of way or easements registered on the title deeds to his property. Notwithstanding this, the permission to construct the 2-storey extension to Highfield House (06/510047) included permission to construct the two adjoining houses and it was granted on the basis of a shared access and parking area to the front of Nos. 1 and 2 Highfield Mews. The appellant claims that he was unaware of this permission at the time that the site was purchased, but the onus is on the applicant to ensure that there is sufficient legal interest to carry out a development.
- 6.4.2.** The permission that was granted under 06/510047 has been implemented in that the two semi-detached dwellings and the extension to Highfield House have been constructed. However, this permission was based on a revised layout plan (MT01-06-002 Rev A) that was submitted as Further Information to the P.A. on the 30th of June 2006. This plan clearly shows that the access to the combined site was to be centrally located along the road frontage, which would have necessitated the closing up of the original entrance to Highfield House. This drawing also shows a pedestrian entrance to the shared parking area at the northern-most extent of the boundary treatment. It would appear from the submissions on file, (and from Google Maps which includes previous dates), that the pedestrian gate was provided further to the south than indicated on the layout plan and that the original entrance does not appear to have been closed up. At a subsequent date, the pedestrian gate/entrance was also widened to enable vehicular access to the shared driveway. Thus, it would appear that the access arrangements on the ground differ from those shown on the permitted layout plan in several respects.

- 6.4.3.** Notwithstanding the foregoing, it is clear that the wall that it is proposed to retain would permanently alter the access arrangements as set out in the permitted layout drawings, as discussed above. It would mean that the vehicular access to the shared driveway to the front of Nos. 1 and 2 Highfield Mews would, of necessity, have to continue to use the widened pedestrian access, which would not be in accordance with the permitted layout. This access is alleged by the P.A. to be unauthorised. I am not aware of any subsequent planning permissions which have addressed the alternative access arrangements to the three properties concerned. As such, a grant of permission by the Board for retention of the wall in question would be likely to facilitate the consolidation and intensification of use this unauthorised access.
- 6.4.4.** Furthermore, it is considered that the grant of permission to retain the wall in question is likely to contravene materially a condition(s) attached to an existing permission for development. The conditions in question are Nos. 1 and 3 of the permission granted under Reference No. 06/510047. These required firstly, that the permission be carried out in accordance with the plans and particulars lodged with the application, and as amended by the further submissions made on the 30th June 2006, and secondly, that the boundary treatment be in accordance with that specified in Drawing No. MT01-06-002, Rev A (also submitted on 30/06/06).
- 6.4.5.** In conclusion, it is considered that the Board is precluded from granting permission in this instance given that the proposed development would materially contravene a condition of a previous permission pertaining to the site and that it would facilitate the consolidation of the continued unauthorised use of access to the site of Highfield House and of the adjoining houses that together formed the basis of the said permission.

7.0 Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, 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.

8.0 Appropriate Assessment

- 8.1.1.** The site does not lie within or immediately proximate to any designated European site. The following European Sites are located in the vicinity of the site.

River Boyne and River Blackwater SAC (002299) approx. 1.2km distant.

Boyne Coast and Estuary SAC (0001957) c.2.6km distant.

Boyne Estuary SPA (004080) approx. 2.6km distant.

River Boyne and River Blackwater SPA (004232) approx. 3.6km distant.

Clogherhead SAC (0001459) c.11km distant.

- 8.1.2.** Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

9.0 Recommendation

- 9.1.** It is recommended that planning permission be refused for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development relates to a site the use of which is unauthorised for the carrying on of ----and that the proposed development would facilitate the consolidation and intensification of this unauthorised use. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.
2. The proposed development would, by reason of restricting access to Nos. 1 and 2 Highfield Mews in accordance with the permitted layout for these lands, contravene materially a condition attached to an existing permission for

development namely, condition numbers 1 and 3 attached to the permission granted by the planning authority on the 17th day of July 2006 under planning register reference number P.A. Reg. Ref. 06/510047

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Mary Kennelly
Senior Planning Inspector

9th September 2023