



An
Bord
Pleanála

Inspector's Report ABP313695-22

Development	A c.457m long extension to an existing 2.5m high boundary wall and all associated works
Location	Lands in the townland of Mooretown, Swords, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0273
Applicant	Gannon Properties
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Gannon Properties
Observers	None
Date of Site Inspection	18 th August 2023
Inspector	Michael Walsh

1.0 Site Location and Description

- 1.1. Swords is a rapidly developing satellite town in South Fingal. The site of the proposed development is located alongside the western face of the developing area of Swords. Much of this area is being developed in line with the Oldtown-Mooretown Local Area Plan. The area of this plan occupies land on both sides of the Rathbeale road, an arterial road leading towards Ashbourne (R125). On the southern side of this road the course of the Swords Western Distributor Road runs along the western face of the developing area to meet Brackenstown Road.
- 1.2. The Swords Western Distributor Road has now been completed as far as a point just north of the appeal site. A substantial wall has been constructed along the western side of this road, on foot of the permission granted under Reg. Ref. F18A/0102. This road terminates at a junction at the point described above. From this junction a roadway branches off and runs for a short distance to the east, where it provides access to a large newly completed school campus. Some residential development has been carried out in a part of the Local Plan area close to the Rathbeale road.
- 1.3. The appeal site comprises a strip of land between the course of the Swords Western Distributor Road and the boundary of the applicant's property. This boundary coincides with the hedgerow forming the boundary of the townlands of Mooretown and Rathbeale. The lands immediately adjoining in Rathbeale are in agricultural use, while the lands adjoining in Mooretown have permission for a large residential development permitted under the Strategic Housing Development scheme. These lands, including the appeal site and the reservation for the road, are currently fenced off and in agricultural use.
- 1.4. In this area there is a steady rise in levels towards the southwest and towards the hedgerow forming the western boundary of the appeal site. As result the hedgerow appears as a prominent feature on the skyline from the current end of the road. It comprises a substantial and dense mass of hedging and is interspersed with many mature trees.
- 1.5. To the south of the appeal site the course of the proposed link road runs through open land which is part of the greenbelt and then joins Brackenstown Road. To the east of this proposed junction there is a housing development with access from Brackenstown Road. In one part of this development (Abbeyvale Court) there is a

small open space abutting the site of the permitted Strategic Housing Development. This space is proposed to be used to facilitate a permitted pedestrian/cycle link from Abbeyvale Court to the proposed Swords Western Distributor Road (permitted under Reg. Ref. F20A/0095).

2.0 Proposed Development

- 2.1. This is essentially as described in the notices. The proposed wall is set back approximately 10 metres from the existing hedge. Its height is shown to be 2.5 metres with piers rising to 2.68 metres. A coarse random stone finish is shown. Details of proposals for the treatment of the site, for the protection of existing trees and hedges and for further planting are set out. It is explained that the purpose of the wall is to provide a permanent and secure boundary between the new road and the dairy farm located to the west, for the benefit of the neighbouring farmer.
- 2.2. In a request for additional information the planning authority expressed a concern about the siting and design of the proposed boundary treatment and requested the submission of a revised treatment along with a statement setting out how this treatment complies with provisions of the Fingal Development Plan 2017-2023.
- 2.3. Details submitted in response provided revisions to the landscaping and planting proposals and a statement on compliance with the provisions of the Fingal Development Plan. The planting proposals included a herb layer/wildflower edge mix along the edge of the proposed new woodland and the planting of a line of London Plane trees along the western edge of the Western Distributor Road. It was submitted that the overall mix should improve the overall biodiversity of the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 The planning authority decided to refuse permission for the following reasons:

1. The subject site is located on land within the “GB” Greenbelt zoning objective in the Fingal Development Plan 2017-2023, the objective of which is to “Protect & Provide for a Greenbelt”. The proposed development would be contrary to the vision of the greenbelt zoning objective and would not provide an appropriate transition between the urban and rural environment. The

proposed boundary wall, by reason of its excessive length, height and design, in conjunction with the existing boundary wall, would create an overbearing and visually obtrusive feature in the landscape for the future residents of Mooretown, would impede the movement of native wildlife and would have a negative effect on the landscape character and appearance of the greenbelt and surrounding area. The proposed development would contravene materially Objectives CH34, PM31, PM33 and DMS80 of the Fingal Development Plan 2017-2023 and as such would be contrary to the proper planning & sustainable development of the area.

2. The proposed development, if approved, would set an undesirable precedent for other similar developments, which would in themselves and cumulatively, seriously injure the amenities of the greenbelt and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the planner outlined the planning context including relevant provisions of the Oldtown-Mooretown Local Area Plan and Fingal Development Plan, with particular regard to the Greenbelt Zoning Objective and other objectives of the latter. In its assessment of the main issues the report concluded that the proposed development would not contribute towards the achievement of the vision of the Greenbelt zoning objective, would have a negative impact in terms of visual amenity, would detract from the natural heritage of the Mooretown area and would set an undesirable precedent for other similar development in the area.

The further report of the planner concluded that the issues raised in the additional information request had not been adequately addressed and that the excessive length of the proposed boundary wall, taken in conjunction with the length of the existing boundary wall, would impede the movement of native wildlife and have a negative effect on the landscape character and appearance of the surrounding area.

3.2.2. Other Technical Reports

The initial report of the Parks and Green Infrastructure Division referred to relevant objectives of the Fingal Development Plan, emphasised the importance of the hedgerow as an ecological corridor, allowing movement of wildlife through the landscape, and the likely negative impact of the wall on the visual amenity and natural heritage of the Mooretown area. Three possible conditions were recommended in the event of a decision to grant permission. The later report of that

Division expressed the opinions that the proposed wall was wholly unacceptable and unnecessary and did not reflect the objectives of the “Green Belt” zoning of the site.

The report of the Transportation Planning Section of the Council expressed no objection to the proposed development.

4.0 Planning History

4.1. The letter submitted with the application provided a list of 18 previous applications. Reference might be made here to those of most relevance to the development currently proposed.

- F18A/0102. Permission granted on 19.06.2018 for a 2.5m high, c.210m long boundary wall and all associated works at Mooretown, to the north of the development now proposed.
- F20A/0095 (Appeal Ref. ABP-310034-21). Permission granted on appeal on 25.02.2022 for a c.185m long pedestrian and cycle path to provide a new east-west connection from Abbeyvale Court to Mooretown Distributor Road extension and to the new school campus.
- F20A/0096. Permission granted on 29.03.2021 for a c.400m long southerly extension to Mooretown Distributor Road and ancillary works, on site effectively adjoining site of development now proposed.
- ABP-313362-22. Permission granted by An Bord Pleanála on 30.03.2023 (and amended on 9.05.2023) by means of the Strategic Housing Development scheme, for a development of 650 residential units, 1 childcare facility, 5 retail units and 1 café/restaurant on a site occupying a large area to the east of the site of the current appeal site and abutting existing development at Abbeyvale Grove and Berwick Grove.

5.0 Policy and Context

5.1. Development Plan

The current development plan for the area of the Planning Authority is the Fingal Development Plan 2023-2029. This plan came into effect on 5.04.2023. The Plan in effect at the time of the processing of the application, the making of the decision and the lodgement of the appeal was the 2017-2023 Fingal Development Plan. The current Plan is that to which regard must be had in the assessment of this appeal. The current zoning objective applicable to this site is stated to be “**GB**”. The associated objective is expressed as “protect and provide for a Greenbelt”. This objective is essentially the same as that set out in the 2017-2023 Development Plan. A number of other policies and objectives of the current Development Plan might be referred to. These are as follows.

Policy SPQHP49 To recognise the importance of and preserve the greenbelt to safeguard valuable countryside and to ensure that existing urban areas do not coalesce.

Objective SPQHO91 To ensure the retention of hedgerows and boundary treatments in rural areas.

Policy GINHP8 To protect, conserve and enhance landscape, natural, cultural and built heritage features.

Policy GINHP21 To protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character.

Objective DMSO128 (DMS80 in 2017-2023 Plan) Ensure trees, hedges and other features which demarcate townland boundaries are preserved and incorporated where appropriate into the design of developments

5.2. Natural Heritage Designations

There are no Natural Heritage Sites in close proximity to the site of the proposed development. As noted in the Planner’s report there are two Natura 2000 sites located in moderately close proximity to this site. These are the Malahide Estuary

Special Area of Conservation and the Broadmeadow Swords Estuary Special Area of Protection. It can be inferred that, having regard to the nature of the proposed development, no need can be identified for a Stage 2 Appropriate Assessment.

5.3. EIA Screening

Having regard to the nature and modest scale of the proposed development, its location in a built-up urban area and the likely emissions therefrom, it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and that the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

Description of Development

The context of the development is explained. This development comprises an extension to an existing length of wall permitted in 2018 and constructed in tandem with the construction of portion of the Swords Western Distributor Road. Prior to the construction of the first section of this road, the appellants agreed to construct a wall to address concerns regarding trespass and damage to land and livestock. This wall is stated to be outside the root protection area of the hedgerow.

Further Information and Decision to Refuse Permission

Given the unacceptability of an alternative to the wall, the applicant submitted a revised landscape proposal and a statement on compliance with the provisions of the Fingal Development Plan but the decision of the Council was to refuse permission for the wall.

Rationale for a Decision to Grant Permission

1. Compliance with Development Plan

Boundary walls are neither listed as *permitted in principle* nor *not permitted* in the Greenbelt Zoning Objective. The case is made that in time the landscaping and planting scheme will soften the appearance of the wall in the landscape and it is

noted that the lands west of the townland boundary are not public lands. Four particular objectives of the Development Plan are identified and it is submitted that the proposed wall does not materially contravene them.

2. Visual Impact and Landscape Proposals

In a detailed response by the Landscape Architects it is pointed out that the hedgerow along the western boundary has been subject to a necessary maintenance operation, that a mixed woodland area with a large native element is proposed to provide an organic edge along the boundary, that a herb layer/wildflower edge mix is proposed along the edge of the new woodland and that a line of London Plane trees is proposed along the western edge of the Link Road. The anticipated growing range over defined periods is illustrated on an accompanying drawing.

3. Planning History and Precedent

Two relevant applications are referred to as follows:

FS5/011/16. Application for a declaration of exemption for a wall not exceeding 2m in height on the first section of the wall on the Mooretown lands The Planning Officer advised that the wall would not constitute exempted development.

F18A/0102. Construction of 2.5m high, 210m long Boundary Wall Following the receipt of further information the Planning Officer concluded that the development was acceptable and in accordance with the Local Area Plan. Permission was granted for the construction of the wall and this has now been built.

It is pointed out that questions of compliance with and material contravention of the Fingal Development Plan 2017-2023 were not issues for the Planning Authority and that the current application is made under the same Development Plan. It is contended that a strong precedent has been established to permit an extension to the boundary wall.

6.2. **Planning Authority Response**

The substance of this response is that the Planning Authority has no further comment to make on the development and that, in the event of the appeal being successful, a Section 48 Contribution should be applied.

6.3. **Observations**

No observations have been received. It is noted that requests by the Board to the Heritage Council, the National Parks and Wildlife Service and An Taisce inviting them to make submissions or observations on this appeal were not responded to.

7.0 **Assessment**

7.1 The issues in this appeal arise essentially from the substance of the two reasons for refusal given by the planning authority and can appropriately be dealt with under the following headings:

- Appropriate Assessment Screening
- Context of Development
- Contravention of Greenbelt Zoning Objective
- Effects on Amenities
- Effects on Wildlife
- Effects on Cultural Heritage
- Contravention of Development Plan Objectives
- Creation of a Precedent

7.2 **Appropriate Assessment Screening**

7.2.1 Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

7.3 **Context of Development**

7.3.1 It might be noted initially that the proposed wall is located in a relatively small strip of land between the course of the proposed Swords Western Distributor Road and a longstanding field boundary, which comprises portion of the boundary between the

townlands of Mooretown and Rathbeale. The significance of this strip of land is that this strip together with the road reservation effectively forms a buffer zone between the lands to the east zoned **RA** (Residential Area) and the lands to the west zoned **GB** (Greenbelt). The proposed development must therefore be considered in the context of the function of the wall and its relationship to adjoining uses.

7.3.2 The lands to the east of the road reservation were designated for residential development in the Mooretown/Oldtown Local Area Plan and now enjoy a permission for residential development granted under the Strategic Housing Development scheme, as noted above. The lands to the west are in agricultural use as a dairy farm. The point has been made in material submitted with the application and appeal that this farm has been subject to trespass and damage to land and livestock. It is reasonable to infer that these are problems likely to arise in an interface situation such as this and some evidence of a track into a field in agricultural use can be observed from a small open space on Abbeyvale Court. That essentially is what has given rise to the need to provide effective security along the farm boundary. That need is not contested by the planning authority but the authority have taken issue with the details of the boundary treatment proposed, this being the construction of the wall as specified in the application.

7.4 **Contravention of Greenbelt Zoning Objective**

7.4.1 The core of the first reason for refusal is that the proposed development would be contrary to the vision of the greenbelt zoning objective (described as **GB**) and would not provide an appropriate transition between the urban and rural environment.

7.4.2 In a location such as this, effectively an interface between two distinct uses, regard must be had to likely effects on these uses. In the case of the dairy farm, this is a use which is consistent with the zoning objective and contributes to the visual character of the countryside. At the same time, it comprises land in productive use and is essentially a material asset. It is private land and not open to public access. The vision for the greenbelt refers, inter alia, to opportunities for countryside access but much of the land in the greenbelt is private land and, when appropriately used, this land can comply fully with the greenbelt zoning objective.

7.4.3. Having regard to the issues of trespass and damage to land and livestock, it follows that the continued operation of the farm as a productive enterprise depends on the provision of a secure boundary between the farm and the projected residential development on the land on the far side of the proposed link road. The first reason for refusal refers to specific aspects of the proposed wall and these can appropriately be dealt with under further headings.

7.5 Effects on Amenities

7.5.1. It is also stated in the first reason that the wall would create an overbearing and visually obtrusive feature in the landscape for the future residents of Mooretown. The amenities of future residents are a material issue and the maintenance of an outlook of good quality is a worthwhile aim. The hedge currently appears as a prominent feature from the site of the residential development, given the general rise in levels towards the southwest. There is not however a view as such into the greenbelt lands as the hedge appears on the skyline.

7.5.2. The open view towards the hedge inevitably has to change. The hedge would be porous as a boundary and needs to be reinforced in some way. The planning authority have taken issue with the wall as proposed. This would be a structure of some mass and, in the absence of any screening, would be visually obtrusive. It is necessary however to view the proposal in the context of the proposed planting and screening proposals. The proposal for the adjoining section of the link road provided for a landscape plan and it is pointed out in the application that the current landscape plan is identical to that previously submitted as part of the application for the road extension (Reg. Ref. F20A/0096), with minor amendments to accommodate the proposed wall. There is adequate space available for this plan and I consider that the cumulative effect of the proposals would effectively offset the bare appearance of the wall. In time the planted strip would be likely to thicken and increase the extent of screening.

7.5.3 The existing hedge would not therefore, regardless of the construction of the proposed wall, appear in views from the link road and from the housing development and I consider that, particularly with the passage of time, the outlook towards the greenbelt would be visually satisfactory and provide an acceptable interface with the greenbelt.

7.6 Effects on Wildlife

7.6.1 The first reason for refusal also states that the wall would impede the movement of native wildlife. The hedgerow is described as an ecological corridor that allows movement of wildlife through the landscape. This is the current situation but circumstances could scarcely but change with the construction of the link road and large-scale housing development. Even if there were to be some permeability in the boundary, the developed area would be an uninviting area for wildlife. Against that the wall would have the benefit of preventing the ingress of domestic dogs and cats into the area of the farm. In that respect the wall might be assessed as having a net positive effect on wildlife.

7.7 Effects on Cultural Heritage

7.7.1 The issue of possible effects on cultural heritage arises from the reference in the first reason for refusal to the negative effect on the landscape character and appearance of the greenbelt, from the reference to Objective DMS80 in the then current development plan and also from the statement in the application letter that the hedgerow on the townland boundary carries cultural and historic significance. In some parts of the country a townland boundary of this type would be described as a *march line*. The protection of the boundary has however been provided for. A root protection area has been defined along the boundary and the wall has been sited clear of this area. Accepting that the hedgerow would require regular maintenance, it is reasonable to presume that this could be done from the side of the farm. The planning authority have also expressed a concern about possible anti-social behaviour in the area between the wall and the hedge. Opportunities for such behaviour by determined individuals can never be fully eliminated but the existence of a solid high wall should have a significant deterrent effect.

7.7.2 One area of concern noted in the planner's report is the crossing of the root protection area by the wall at the southern site boundary. The townland boundary hedge runs alongside this boundary and this part of the boundary will have to be breached to facilitate the extension of the link road. I see no alternative to continuing the wall to the southern site boundary, but the details of the Tree Constraints Plan suggest that the construction of this part of the wall would be unlikely to have any great effect on the boundary hedges in its vicinity.

7.8 Contravention of Development Plan Objectives

7.8.1 Material contravention of four specified objectives of the Fingal Development Plan 2017-2023 is set out in the first reason for refusal. That plan is no longer current and, while the substance of some of these objectives may be found in policies and objectives of the current plan, the general arrangement and numbering is quite different. There are few directly corresponding objectives but an exception is Objective DMS80 (DMSO128 in current plan), which relates to the preservation of trees, hedgerows, etc. demarcating townland boundaries. This issue is addressed in Section 7.7 of this report. Otherwise, the material in the objectives referred to is of a general nature and of questionable relevance to the development now proposed. It is not necessary therefore to comment any further on the contents of these objectives.

7.9 Creation of a Precedent

7.9.1 The substance of the second reason for refusal is that the proposed wall would set an undesirable precedent for other similar developments. Whatever view might be taken of the quality of the proposed wall, the problem with this statement is that a precedent has been created through the construction of a similar wall along the constructed section of the link road. The decision which resulted in the granting of permission for that section of the wall has been noted above (Reg. Ref. No. F18A/0102). In any case the merits of the wall now proposed must be considered by reference to the appropriate planning criteria and this assessment is orientated to the currently proposed section of the proposed wall.

7.9.2 It might be of some relevance to refer to the continuation of the link road through to Brackenstown Road, as is proposed in the Development Plan. This portion of the road is shown to run through the area zoned as Greenbelt. It is not possible at this stage to determine how the road might be bounded from adjoining lands. This is likely to depend on circumstances existing at the relevant time and it might well be the case that the construction of an extension to the wall currently proposed, were this wall to be permitted, would not be considered an appropriate measure in the light of these circumstances.

8.0 Recommendation

- 8.1 It might be noted at this stage that it is pointed out in the Planner's report that the desire to secure the adjoining agricultural enterprise is acknowledged and that an alternative boundary treatment might be possible. At the same time the decision to refuse permission is based on the wall as proposed in this application. In this situation the Board's consideration of this appeal, having regard to the relevant statutory criteria, is orientated to the details of the development as submitted to Fingal County Council. On the basis of the above assessment, I recommend that permission be granted for the development proposed. The details of the recommended draft decision are set out in the following sections of the report.

9.0 Reasons and Considerations

Having regard to the location of the site of this development between the course of the Swords Western Distributor Road and an area of land in agricultural use, to the pattern of existing and permitted uses in the vicinity of the site and to the inclusion of the site in an area with the zoning objective "to protect and provide for a Greenbelt" in the Fingal Development Plan 2023-2029, it is considered that, subject to compliance with the conditions set out below, the proposed development would not materially affect the amenities of property in its vicinity, would not materially affect wildlife in the area and would in general be consistent with relevant objectives of the said plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application [as amended by the further plans and particulars submitted on the 8 th day of April 2022], 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
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	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The site shall be landscaped in accordance with a landscape scheme incorporating the details submitted with the application [as amended by the further plans and particulars submitted on the 8th day of April 2022]. The landscape scheme shall be implemented fully in the first planting season following completion of the development, and any trees or shrubs which die or are removed within three years of planting shall be replaced in the first planting season thereafter.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: To protect the amenities of the area.</p>
4.	<p>All necessary measures shall be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the applicant's/developer's own expense.</p> <p>Reason: In the interest of visual amenity.</p>

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.

Michael Walsh
Planning Inspector
9 November 2023