



An
Bord
Pleanála

Inspector's Report ABP315511-23

Development	Alter a portion of boundary wall & all associated site works
Location	Rathdowney Community Centre CLG, Church Street, Rathdowney, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	22/682
Applicant(s)	Trevor Stanley
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	Brian Phelan
Observer(s)	None
Date of Site Inspection	23 rd June 2023
Inspector	Colm Ryan

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1.0 Site Location and Description

1.1. The subject site is located at Church Street, Rathdowney, County Laois. The subject site comprises an existing community centre, which is accessed by an existing entrance off the R433. The site has a stated area of 0.087ha.

2.0 Proposed Development

2.1. Planning permission is sought to alter a portion of the boundary wall and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Notification of a decision to **grant** planning permission for the proposed development subject to 3 no. conditions issued by the Planning Authority, order dated 15th of December 2022.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report is the basis for the Planning Authority's decision. In summary, the report includes:

- An Appropriate Assessment (AA) Screening Report has been prepared. The nearest Natura 2000 site is the Galmoy Fen SAC, located c. 5.1km south of the site.
- The site is outside the confines of the Flood Zone.
- There are no noted monuments or Protected Structures on site.
- Overview of submission received.
- Overview of planning history.

- Overview of the design of the proposed wall. It is noted that a proposed finish is not specified, but a nap plaster finish should be imposed by way of condition.
- Noted that the planning application form states that the applicant is the owner of the subject site, and a right of way had been indicated on the drawings.
- Considered that the proposed alteration to the wall and site boundary does not impact upon the use of the right of way to a significant degree which would render it unusable.
- States Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes about title to land. Any grant of permission is subject to the terms of Section 34(13) of the Planning and Development Act 2000, as amended, which states that '*A person shall not be entitled solely reason of permission under this section to carry out any development.*'
- Subject to the above, it was concluded it would be unreasonable to withhold planning permission for reasons relating to legal interest. Should planning permission be granted, the onus is on the applicant to ensure they have adequate legal interest to carry out the development.
- There are no proposed alterations to the entrance of the subject site.

3.2.2. **Other Technical Reports**

MD Engineer: No objection

4.0 **Planning History**

17/237: Conditional Permission granted to Trevor Stanley, Sec., Rathdowney Community Hall Committee to demolish existing store and construction of single storey multi-function room with toilet and storage and all associated site works.

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5.0 Policy and Context

5.1. Development Plan

- The subject site is zoned 'Town Centre and Industrial' in the Rathdowney Town Plan as set out in Volume 2 of the Laois County Development Plan 2017-2023.

5.2. Natural Heritage Designations

- The nearest Natura 2000 site is the Galmoy Fen SAC, located c. 5.1km south of the site.

5.3. EIA Screening

5.4. 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 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

- The Appellant stated the building of the wall is proposed to be constructed on their legal right of way.
- The information presented in the drawings was not clear and failed to show the right of way marked in yellow.
- Owner of adjoining property not consulted.
- Site notice is not displayed as per planning maps and is therefore misleading.
- Access will be restricted, preventing access of emergency vehicles.

6.2. Applicant Response

- The wall is being constructed over a portion of right of way of folio LS19681 and the Applicant has attached a map to show the changes to boundary as a result of development.
- Owner of adjoining property is aware of the application and construction of the wall was agreed as part of agreement to change the boundary of Folio LS19681F.
- The boundary change extends 1.5m, leaving more than 6m at the tightest point for vehicles to turn, which is above the requirement as stated in Table 5.2 of Technical Guidance Document B (Fire Safety).
- Note that should the wall be constructed, this stretch will not be the narrowest on the right of way.
- Accepts there is a discrepancy on the drawing, but states the position of the affixed site notice is as per the council regulations.

6.3. Planning Authority Response

There was no further submission from the planning authority apart from the content of the planning application.

6.4. Observations

None.

7.0 Assessment

- 7.1. The applicant has proposed to alter a section of a wall which forms the boundary of the site, and construct a new boundary wall. The new section of the boundary is proposed to measure 12.5m in length and extend to a height of approx. 2.4m, with the piers extending to 2.6m. The altered boundary wall is proposed to form a continuous boundary an existing property to the south, and is broadly similar to the existing wall which encompasses the remainder of the boundary. The planning application does not demonstrate the position of the existing boundary, following the

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site visit, it is understood that the proposed wall is located in close proximity to the existing wall. A proposed finish is not specified in the planning application, however, by way of condition a nap plaster is proposed.

7.2. The Appellant states that the site notice is not displayed as per the planning application drawings. Although this is correct, the site notice is broadly located at the stated location, and is erected in accordance with the Planning Regulations, and therefore deemed satisfactory.

7.3. It is noted that the Appellant objects to the alteration of the boundary wall as the wall is being constructed over his alleged legal right of way. It is noted the Applicant has stated in the planning application form that they are the land owners, and the right of way has been identified in the drawings. The drawings also show that the access lane will remain 6.5m wide at its most narrow point along the proposed alteration. Subject to the considerations above, the development of the altered boundary wall will not significantly impact the right of way which would deem it to be not viable for use.

7.4. An advice note in relation to Section 34(13) of the Planning and Development Act 2000 is attached to the decision in the interest of clarity to ensure that the Applicant has legal interest to carry out the proposed development. As per Section 5.13 of the Development Management Guidelines (2007), the planning system is not designed to resolve legal disputes, and therefore, it would be deemed unsuitable for the permission to not be granted for the said reason.

7.5. **Appropriate Assessment Screening**

7.6. 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 AA at an initial stage.

8.0 Recommendation

8.1. The recommendation is to uphold the planning authority's decision, and grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to the provisions of the Laois County Development Plan 2021-2027 and the nature, extent and location of the proposed development, and subject to compliance with the attached conditions, the proposed development would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The boundary wall shall be constructed in accordance with plans and particulars received by the Planning Authority on 04/11/22 and shall be plastered and capped.</p> <p>Reason: in the interest of visual amenity.</p>
3.	<p>(a) During the construction stage of the proposed development, the developer shall comply with sections 3.2, 3.3 and 3.4 of the document titled "Best Practice Guidelines on the Preparation of Waste Management Plans for construction and Demolition Projects" published by the Department of the Environment, Heritage and Local Government.</p> <p>(b) During the development works, the developer is not to permit any material from the site to be spread or deposited along the public roadway.</p>

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<p>The developer shall be responsible for maintaining the adjoining public thoroughfare and properties in a neat, tidy and safe condition.</p> <p>(c) the developer shall make suitable provision for dust minimisation during construction works to include measures such as road/access tracks cleaning, dust suppression, covering of lorries and entering and exiting the site.</p> <p>(d) Any damage cause to the adjoining public thoroughfare shall be made good at the developer's expense to the satisfaction of the Planning Authority.</p> <p>Reason: In the interest of public health and pollution control.</p>

Advice Note to Applicant:

The applicant is advised that Section 34(13) of the Planning and Development Act 2000, as amended, states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. Thus, in the event of any grant of planning permission, the onus is on the applicant to ensure that you have adequate legal interest to carry out the proposed development.

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.



Colm Ryan

Planning Inspector

13th July 2023

