



An
Bord
Pleanála

Inspector's Report

ABP-316234-23

Development	Retention of 2 no. walls and amalgamation of vehicular and pedestrian entrances
Location	13 Dromard Raod, Drimnagh, Dublin 12
Planning Authority	Dublin City Council (South)
Planning Authority Reg. Ref.	1023/23
Applicant(s)	Margaret Kennedy
Type of Application	Retention Permission
Planning Authority Decision	Grant of permission subject to 8 no. conditions
Type of Appeal	Third Party
Appellant(s)	Gustavo Ludwig
Observer(s)	None
Date of Site Inspection	7 th June 2023
Inspector	Bernard Dee

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1.0 Site Location and Description

- 1.1. The appeal site is located at 13 Dromard Road, Drimnagh in a housing estate dating from the 1940s or 1950s that are two storey in height and are either semi-detached or as in the case of the appeal site, in short terraces of four dwellings. All the houses have ample front and rear gardens. The front boundaries facing onto the footpath and dividing neighbouring properties were originally defined by metal bar fences with pedestrian gates. Most of the properties on Dromard Road have been modified to create rendered blockwork walls between the front gardens with block walls onto the public footpath widened to accommodate the ingress/egress of cars.
- 1.2. The building to which the appeal relates, No. 13, is located in one of these four unit terraces next to the end of terrace house of the Third Party Appellant, No. 15.
- 1.3. During the site visit on 7th June 2023 it was noted that the wall bounding the properties of Nos. 13 and 15 was unrendered on the side of No. 15.

2.0 Proposed Development

- 2.1. The planning application relates to the retention of the following items:
 - The construction of raising two rendered block walls to a height of 1847mm and length of 1847mm, both to the front of the property; one of which is a boundary wall and one of which is within the curtilage of the property.
 - Retention permission is also sought for the amalgamation of the pedestrian and vehicular openings into a vehicular entrance of 3395mm wide

3.0 Planning Authority Decision

3.1. Decision

A grant of retention permission was issued by the Planning Authority on 15th March 2023 subject to 8 no. conditions.

3.2. Condition No. 2 relates to the heightened walls and states:

The development hereby granted permission shall modified as follows:

a) The length of the 1.84m high wall shall not extend to more than 1.5m when measured from the façade of the dwelling. Thereafter, its height shall not exceed 1.2m.

b) The boundary wall shall be plastered and rendered on all sides. Verification that the above works have been carried out shall be submitted to the Planning Authority within six weeks from the date of this permission.

Reason: To protect the residential and visual amenity of adjoining properties.

3.3. Planning Authority Reports

3.3.1. Planning Reports

Dublin City Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is situated.

The Planner's Report notes the Z2 zoning objective for the area which seeks: "To protect and/or improve the amenities of residential conservation areas." The Planner's Report then cites sections of the Development Plan relating to extensions of domestic properties to the front elevation which are only obliquely of relevance to the heightened walls which are the main point of contention in this appeal case. {More relevant policies in the Development Plan are cited in Section 5.0 of this Inspector's Report below.

3.3.2. Other Technical Reports

- The Drainage Division responded that there was no objection to the items for retention subject to appropriate conditions being applied.
- The Transport Planning Division recommended that retention permission be refused for the following reason:
 - *Having regard to Appendix of the Dublin City Development Plan 2022-2028, the vehicular access is in excess of the 3m wide maximum width and by reason of the encroachment of the boundary wall and pillars onto the public footpath, the retention of the vehicular access should be refused.*

3.3.3. Prescribed Bodies

No responses received.

3.3.4. Observations

An observation was submitted within the five week period by Gustavo Ludwig who is the Third Party appellant in this case. The submission to the Planning Authority was based on similar grounds as the grounds of the appeal which are summarised in Section 6.0 below.

4.0 Planning History

4.1. On the Appeal Site

- There is no planning history on the appeal site but a warning letter was issued regarding alleged widening of the front driveway without the benefit of planning permission (Ref: E0008/22).

4.2. In the Vicinity of the Site

- None relevant in close proximity to the appeal site.

5.0 Policy and Context

5.1. Development Plan

The Dublin City Development Plan 2022-2028 is the statutory plan for the area within which the appeal site is situated and relevant policies and objectives are set down below.

The appeal site is located in an area zoned Z2: *“To protect and/or improve the amenities of residential conservation areas.”*

Chapter 5: Development Standards

15.6.13 Boundary Treatments Walls, fences, metal railings and gates used to define spaces and their usage all impact on the visual character and the quality of a development. These should be selected so as to be an integrated part of overall design. Details of all existing and proposed boundary treatments, including vehicular entrance details, should be submitted as part of any planning application. These

shall include details in relation to proposed materials, finishes, and, in the case of planted boundaries, details in respect of species together with a planting schedule. In all instances, boundary treatments shall be of high quality, durable and attractive

Appendix 5 of the Development Plan – ‘Transport and Mobility: Technical Requirements’ – has the following guidance in relation to vehicular access to front gardens and the treatment of boundary walls, albeit for new housing developments, but some of the guidance is relevant to the present appeal.

4.3 Parking in Front Gardens

Planning Permission is required for the alteration of a front garden in order to provide car parking by creating a new access, or by widening of an existing access.

Proposals for offstreet parking in the front gardens of single dwellings in mainly residential areas may not be permitted where residents rely on on-street car parking and there is a strong demand for such parking.

4.3.1 Dimensions and Surfacing

Vehicular entrances shall be designed to avoid creation of a traffic hazard for passing traffic and conflict with pedestrians. Where a new entrance onto a public road is proposed, the Council will have regard to the road and footway layout, the impact on on-street parking provision (formal or informal), the traffic conditions on the road and available sightlines. For a single residential dwelling, the vehicular opening proposed shall be at least 2.5 metres or at most 3 metres in width and shall not have outward opening gates. Where a shared entrance for two residential dwellings is proposed, this width may increase to a maximum of 4 metres.

The basic dimensions to accommodate the footprint of a car within a front garden are 3 metres by 5 metres. It is essential that there is also adequate space to allow for manoeuvring and circulation between the front boundary and the front of the building. A proposal will not be considered acceptable where there is insufficient area to accommodate the car safely within the garden without overhanging onto the public footpath, or where safe access and egress from the proposed parking space cannot be provided, for example on a very busy road, opposite a traffic island or adjacent to a pedestrian crossing or traffic junction or where visibility to and from the proposed access is inadequate. In certain circumstances, applicants may be

4.3.4 Sustainable Urban Drainage

The combined effect of paving a number of gardens in a street or area increases the risk of flooding and pollution (oil, brake dust, etc.). The use of Sustainable Drainage Systems (SuDS) can help remove pollutants from surface water runoff and reduce overall flood risk in the city while also enhancing amenity and biodiversity. In accordance with Policy SI22, proposals should indicate how the design aims to control surface water runoff in a sustainable fashion through the use of permeable or porous surfaces such as gravel and green areas etc. rather than excessive hard surfacing (for further design guidance please refer to the Dublin City Council Sustainable Drainage Design and Evaluation Guide (2021) which is summarised in Appendix 12. Large unrelieved areas of paving or other impermeable surface treatments will not be considered acceptable. Precast or natural slabs, setts, cobble or other such materials are preferable to the use of concrete or tarmacadam for the paved area. This minimises the visual impact when the car is not parked in the garden. Where unbound material is proposed for driveway, parking and hardstanding areas, it shall be contained in such a way to ensure that it does not transfer on to the public road or footpath on road safety grounds.

4.3.5 Treatment of Front Boundaries

There are many different types of boundary treatment in existence. When considering any alterations, minimal interventions are desirable and proposals should aim to be complementary or consistent to others in the area which are of a high standard and in keeping with the overall character and streetscape. Vehicular entrances with splayed entrance walls or fences will not generally be permitted. All boundary treatment shall take cognisance of the need to provide adequate visibility.

2. Boundary walls of limestone, granite or rubble, either plastered or unplastered.

These may have granite piers. The widening of the entrance should be carried out carefully to move one of the existing piers to a new position, with a revised gate design similar to the existing. Some existing gates can be extended to provide increased width by welding on additional sections.

6. Brick or plastered concrete walls

Existing gate piers should be duplicated, and replacement of plaster and brickwork should match the existing.

4.3.6 Landscape Treatment of Front Gardens

By reducing the paved area to the front garden to a minimum, space can be left for the planting of shrubs and ground cover. The front boundary wall or fence should always be provided with a screen of ornamental small trees or hedging to give visual definition to the extent of the front garden and soften the appearance of the parked car. Importantly, any planting incorporated in the garden must not obscure visibility for drivers when exiting the driveway.

5.2. **Natural Heritage Designations**

There are no natural heritage designations located in the vicinity of the appeal site.

5.3. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ 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 at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

The Third Party grounds of appeal are, in summary, as follows:

- The boundary wall has been constructed partly on the appellants property without the appellant's consent and the retention permission is therefore invalid without this consent.
- The unrendered 1.85m high and 1.85m long wall is both oppressive and overbearing.
- The drawings submitted with the retention application are inaccurate with regard to the location of the boundary wall.
- The widened vehicular entrance is in excess of the 3m width contrary to Development Plan Provisions.

- The new front boundary wall encroaches onto the public footpath and a street lighting pole.

6.1. Applicant Response

The First Party has responded to this appeal and, in summary, makes the following points:

- Consent was sought and granted from the Third Party and evidence of same is appended to the First Party response – copies of exchange of text messages between the parties (Document 2).
- Notwithstanding that the Board has no remit to assess land ownership which is a civil law matter, none of the boundary wall has been built on lands owned by the occupants of No. 15 Dromard Road.
- There is no significant loss of sunlight or daylight to the appellants property given the orientation of the terrace and due to the presence of a tree in the appellant's front garden which currently restricts the levels of sunlight and daylight reaching the interior of the appellant's property.
- Any errors in the drawings submitted with the retention application were minor in nature and have since been corrected.
- The First Party will comply with Condition No. 2 of the grant of retention permission requiring a reduction in height and length of the boundary wall from 1.84m to 1.5m and to render the reduced wall on both sides.

6.2. Planning Authority Response

No response has been received from the Planning Authority.

6.3. Observations

No Observations have been received in relation to this appeal.

6.4. Further Responses

Not applicable.

7.0 Assessment

7.1.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The assessment below therefore addresses whether or not retention permission should be granted for the widened amalgamated vehicular/pedestrian access and for the 1.84m high and long walls on each front boundary wall.

7.1.2. The issue of AA Screening is also addressed in this assessment.

7.1.3. This assessment does not address issues of property ownership or land title as this is an issue that does not fall within the remit of the Board to assess.

7.2. Vehicular/Pedestrian Access

7.2.1. Prior to the construction of the front boundary entrance which measures 3.4m in width, the front boundary was defined by a metal post and rail fence with a pedestrian gate and examples of this boundary treatment can still be seen at several houses on Dromard Road including No. 15. The widening of an entrance onto a public road is not exempted development if as per Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended) it “*consists of or comprises the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.*” Dromard Road is in excess of 4m in width and therefore retention permission was required for the 3.4m wide vehicular/pedestrian amalgamated entrance.

7.2.2. Class 5 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) states that the following works constitute exempted development (providing the provisions of Article 9 are complied with):

The construction, erection or alteration, within or bounding 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.

Subject to the following conditions:

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 will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

3. No such structure shall be a metal palisade or other security fence.

7.2.3. Class 6 of the regulations are applicable to the car parking area to the front of No. 13 and state that the following works are exempted development:

CLASS 6 (a)(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house...whichever is the smaller, or if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

7.2.4. I cite the exempted development Classes and Article 9 of the Planning and Development Regulations 2001 (as amended) above to clarify a misunderstanding on the part of the Third Party when he asserts that as the development on appeal exceeds the heights stated in the Regulations then retention permission should be refused. As the Board will be aware, these Classes of exemption, if the outlined criteria are met, mean that planning permission is not required for the works covered by Classes 5 and 6. Had the First Party constructed the walls and car parking area within the limits of these classes, then retention permission would not have been required in the first instance.

7.2.5. Having examined the site and the traffic on Dromard Road, I am of the opinion that the entrance as it now exists does not represent a traffic hazard or represent a danger to pedestrian traffic on the footpath in front of No. 13, and accordingly should be granted retention permission by the Board.

7.3. Boundary Walls

7.3.1. The boundary walls as constructed, excluding the 1.84m length where the height is 1.84m, are c. 1.2m to the ridge line of the capped wall and as such constitute exempted development under Class 5 as cited above.

7.3.2. The 1.84m length where the height is 1.84m require retention permission and having visited the site I am of the opinion that the retention of these higher sections of the wall would not have an adverse impact on the visual amenity or on the residential amenity of neighbouring properties.

7.3.3. The issue of shadow cast associated with the north- eastern boundary wall (bordering No. 15) is I believe overstated and I find that the retention of the walls as constructed would be in accordance with proper planning and the sustainable development of the area.

7.3.4. I note Condition No. 2 of the Planning Authority Notification of Intention to Grant Permission that reduces the height and length of the section of wall for which retention permission was sought to 1.5m in length and 1.5m in height. I do not believe that this reduction in height and length is necessary as the existing 1.84m length and height does not, in my opinion, have an adverse impact on the visual or residential amenity of the area.

7.3.5. I would concur with the Planning Authority that both sides of the boundary wall should be rendered.

7.3.6. During the site visit I noticed that the gate piers do project onto the public footpath and that the front boundary wall is constructed to embed the lamp standard into the fabric of the wall. I do not believe that these minor infractions are material in nature and that they would fall into the *de minimus* category of development.

7.3.7. As the permission is for retention rather than actual construction, the majority of the conditions attached to the Notification of Intention to Grant Permission are not relevant and have not been reproduced in Section 10 of this Inspector's Report.

7.4. AA Screening

Having regard to the relatively minor development proposed within an existing housing estate and the distance from the nearest 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

I recommend a grant of retention permission for the 1.84m boundary walls along both boundaries boundary of the forecourt to the front of the house and the retention of the 3.4m wide amalgamated vehicular/pedestrian entrance for the reasons and considerations set out below, and subject to the conditions also set out below.

9.0 Reasons and Considerations

Having regard to the provisions of the Dublin City Development Plan 2022-2028, including the Z2 zoning objective of the site which seeks “to protect and/or improve the amenities of residential conservation areas”, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual or residential amenities of the area, or of property in the vicinity. 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 carried out and completed in accordance with the plans and particulars lodged with the application on the 23rd April 2023, 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>The boundary wall hereby granted permission shall be plastered and rendered on all sides. Verification that the above works have been carried out shall be submitted to the Planning Authority within six weeks from the date of this permission.</p> <p>Reason: To protect the residential and visual amenity of adjoining properties.</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.

Bernard Dee
Planning Inspector

9th June 2023