



An
Bord
Pleanála

Inspector's Report

ABP-317493-23

Development	Retention permission for external finishes to 10 houses and permission to omit boundary treatment as previously granted.
Location	54,54A, 55 55A 56 56A 57 57A 58 58A Lake Drive, Kilminchy, Portlaoise Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	2387
Applicants	Kelby Developments
Type of Application	Retain.
Planning Authority Decision	Split Decision
Type of Appeal	Third Party
Appellant	Kelby Developments
Observer	John Cowhig
Date of Site Inspection	16 th February 2024
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at Kilminchy, at the north-eastern end of Portlaoise, Co. Laois. Kilminchy, is a large area of recently constructed low rise residential development of detached, semi-detached and terraced dwellings and apartments; areas where development is currently under construction; and undeveloped lands. The site is at the end of the current residential area facing a road which runs north-east to south west dividing the existing residential development from lands which have yet to be developed. The site is divided into two portions by a north-west to south-east oriented road and comprises a pair of semi-detached houses west of the road and four pairs of semi detached houses east of the road.
- 1.1.2. The semi-detached housing occupying the site is numbered 54, 54A, 55 55A, 56, 56A, 57, 57A and 58 & 58A Lake Drive, Kilminchy,

2.0 Proposed Development

- 2.1.1. The proposal is for
- (a) Retention permission for the existing dry dash and brickwork external wall finishes to house no's 54, 54A 55, 55A 56, 56A 57, 57A and 58, 58A;. and
 - (b) Planning Permission for the omission of a boundary treatment type consisting a 500mm high railing on a 250mm high wall along the entire front boundary, that was previously granted under planning file ref 17/690.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority decided, dated 8th June 2023, to grant permission subject to 2 conditions, for retention of the existing dry dash and brickwork external wall finishes to house no's 54, 54A 55, 55A 56, 56A 57, 57A 58, 58A; and to refuse permission for the omission of boundary treatment type consisting a 500mm high railing on a 250mm high wall along the entire front boundary, that was previously

granted under planning file ref 17/690 at 54, 54A 55, 55A 56, 56A 57, 57A 58 & 58A Lake Drive, Kilminchy, Portlaoise, Co Laois.

- 3.1.2. The grant of permission was subject to two conditions: 1) compliance with documents received, and 2) external finishes to be retained as constructed.
- 3.1.3. The refusal was for the reason – permanent diminution in the residential amenities of the permitted dwellings and material contravention of conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 3.2.2. The first planning report, 8th May 2023, recommending further information on 1 items includes:

The applicant is seeking to retain the existing dry dash and brick finish as constructed to house no's 54, 54A 55, 55A 56, 56A 57, 57A 58, 58A. It is considered that the finishes as constructed are acceptable and accord with the wider development.

The applicant is seeking to omit a 0.5m high wrought iron black railing on a 0.25m high wall to the front gardens and party boundaries as permitted under planning ref 127/690. No rationale for this has been received. It is considered that the boundaries as previously proposed and permitted are acceptable in terms of their design and secure the front garden space for future residents.

The footpath is 1.5m wide and adjoining the road without a grass verge. The boundary wall provides a level of security and protection for young children to safely play.

- 3.2.3. Recommending FI:

The planning authority is not favourably disposed to permitting the omission of the front boundaries as proposed. However, the applicant is requested to submit a rationale which would justify the removal of the front and party boundaries as proposed.

- 3.2.4. The FI response includes:

There are no walls or railings fronting any of the houses at Lake Drive. The developer undertakes to plant suitable hedging to the front boundaries. Planting will take place in the coming planting season: November 2023.

3.2.5. The second planning report, dated 8th June 2023, recommending the split decision which issued, includes:

- Not satisfied with response.
- The boundary wall and rail provide a level of security and protection for young children to safely play. They provide a visually pleasing boundary. It is noted that there are a number of fences constructed to the front gardens across the residential development of Kilminchy of various designs and quality. The fence as permitted on the subject site ensures a consistency and a higher quality and eliminates the ad hoc approach.

3.2.6. Other Technical Reports

3.2.7. Portlaoise Municipal District Office, 31st March 2023 – no objection.

3.3. **Third Party Observations**

3.3.1. A third party observation on the file has been read and noted.

4.0 **Planning History**

17/690 - planning permission granted to Raven Construction to construct 10 no. two storey dwellings comprising: 4 x 4 bedroom semi-detached and 6 x 3 bedroom semi-detached, and all associated site development works.

Condition 10 – Individual and overall site boundary treatment shall be as indicated on drawing 17074-102. Concrete block walls shall be capped and plastered on their external public facades. Railings shall be of wrought iron type and coloured black.

Reason: In the interests of public safety and proper planning.

98/542 planning permission granted for the erection of Commercial and Housing development including 806 houses, 50 retirement apartments, 82 bedroom nursing home and 100 bedroom hotel subject to 54 conditions.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Laois Development Plan 2021 – 2027 is the operative plan. Relevant provisions include:

In order to provide a holistic consideration of policies and objectives, each chapter provides specific policy objectives, followed by development management standards.

Zoned existing residential - to protect and enhance the amenity of developed residential communities. This zone is intended primarily for established housing development but may include a range of other uses particularly those that have the potential to improve the residential amenity of residential communities such as schools, crèches, small shops, doctor's surgeries, playing fields etc. It is an objective on land zoned for Residential 1 to protect the established residential amenity and enhance with associated open space, community uses and where an acceptable standard of amenity can be maintained, a limited range of other uses that support the overall residential function of the area. Within this zoning category the improved quality of existing residential areas will be the Council's priority.

Development Management Standard for Residential Development:

DM HS 10 - Open plan front gardens will generally be discouraged and will only be acceptable in innovative layouts and where a high level of safety is achieved and services can be accommodated at a location which meets the needs of service providers. Open plan gardens will not be permitted on main access roads. In general, where provided, front boundaries shall be defined by walls or fences at least 0.5 metres high in keeping with the house design and to a uniform scheme design.

5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura sites are the River Barrow and River Nore SAC (002162) located c 9km, straight line distance, to the north and 9 km to the east, and the Slieve Bloom Mountains SPA (004160) and Slieve Bloom Mountains SAC (000412) located in excess of 11km, straight line distance, to the west.

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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

6.1. Grounds of Appeal

- 6.1.1. A first party appeal against condition no. 19 has been received from John J Cross, Cross Chartered Building Surveyor, on behalf of Kelby Developments Ltd.

- 6.1.2. The grounds include:

- The original permission 98/542 for the erection of Commercial and Housing development including 806 houses, 50 retirement apartments, 82 bedroom nursing home and 100 bedroom hotel subject to 54 conditions.
- Condition 25 - Residential privacy shall be protected where appropriate by the erection of timber fencing around rear gardens or other sensitive locations as agreed with the Planning Authority. A detailed landscaping scheme shall be agreed with the Planning Authority and this shall include the retention of existing landscape features such as trees & hedges where appropriate.
- This condition details the boundary treatments for the entire development. there is no front boundary fence required.
- There are no front boundary fences in the entire estate of Kilminchy, photographs supplied. It is obvious that front boundaries are not defined by walls, kerbs, railings, hedging, etc.
- The trees are now all semi-mature.
- In this particular scheme of 10 houses, front boundaries, hedging was planted by Kelby Developments Ltd. and it was subsequently removed by the occupiers of the houses.

6.2. Planning Authority Response

6.2.1. The Planning Authority has not responded to the grounds of appeal.

6.3. Observations

6.3.1. An observation on the appeal against the decision to grant permission, has been received from John Cowhig, 16 Lake Edge, Kilminchy, Portlaoise, Co Laois.

6.3.2. The observation includes:

- Original permission 17690 includes the front walls with railings. The planners report refers to the wall enclosing a defensible space.
- Original permission 17690 includes condition no 1.
- No pre-planning took place.
- The fact that very small hedging was planted by Kelby around each front garden is immaterial because this is not what was permitted.
- Kelby have not supplied any photographs to illustrate this poorly planted, very small and unmaturing hedging which it is claimed was removed by occupiers.
- It would be a considerable cost saving.
- The statements made in the appeal that there are no front boundary fences in the entire estate of Kilminchy, and front boundaries are not defined by walls, kerbs, railings, hedging etc are untrue. The photographs supplied were selective. Many fences and walls are now hidden by very mature hedging.
- Observer supplies photographs, with locations.
- Laois County Council Development Plan encourages boundary walls for safety reasons.
- A planner's report regarding retention of a wall in front of a home on Lake Drive in 2020 is provided.

7.0 Assessment

7.1.1. This is an appeal against the decision to refuse permission for the omission of the front boundaries only; although not stated it is clear from the grounds of appeal. The grant of permission for part (a) of the development sought under planning authority reg ref 2387 is not appealed, i.e. retention permission for the existing dry dash and brickwork external wall finishes to house no's 54, 54A 55, 55A 56, 56A 57, 57A and 58, 58A;. and

7.1.2. I consider that the main issues which arise in relation to this appeal are screening for appropriate assessment, development plan policy and residential amenity and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment

7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

7.3. Development Plan

7.3.1. Development Management Standard for Residential Development under DM HS 10 –states that ‘open plan front gardens will generally be discouraged and will only be acceptable in innovative layouts and where a high level of safety is achieved and services can be accommodated at a location which meets the needs of service providers. Open plan gardens will not be permitted on main access roads. In general, where provided, front boundaries shall be defined by walls or fences at least 0.5 metres high in keeping with the house design and to a uniform scheme design.’

7.3.2. This is not an innovative layout where a high level of safety is achieved. Currently the road has development on this side only and therefore more akin to a main access road than roads in the vicinity. I am satisfied that the development plan requires the provision of front boundaries in this case.

7.3.3. I note that the condition requires a specific boundary type, a railing on top of a high wall. I noted on the date of inspection that some front gardens in the area are

defined by boundaries comprising a wrought iron type railing only. While I would have no objection to such a boundary type, it is not the subject of this appeal.

7.4. Residential Amenity

7.4.1. The observation states disagreement with the statements made in the appeal that there are no front boundary fences in the entire estate of Kilminchy, and supplies photographs to show the many fences and walls, some of which are now hidden by very mature hedging. The observer provides a copy of the planner's report for the retention of one such boundary fence: a 1.23m high concrete post and panel fence.

7.4.2. The planner's report provided includes:

'Kilminchy 2020 is significantly different to Kilminchy in its originally planned and approved format. Layouts, designs and densities have all changed. In addition, there are numerous properties which enclosed front garden spaces (albeit in breach of the condition). The types of enclosures are varied and include planting, iron railing and timber fencing.'

The report concluded that it would be onerous to refuse permission.

7.4.3. In my opinion the provision of front boundaries enhances the residential amenity of the area by creating a more secure, enclosed area in front of the dwelling which facilitates the provision and maintenance of individual landscaped areas, provides a relatively secure area for children's play, and could potentially be used by a family pet, such as a dog, for outdoor exercise. Residents' preference for fenced front gardens is expressed by their provision elsewhere in Kilminchy, even where the permission required front gardens not to have fences.

7.4.4. I agree with the planner's assessment that the boundaries as previously proposed and permitted under Reg Ref 17/690 are acceptable in terms of their design and that adhering to the boundary requirement which was part of the permitted development on the subject site, will ensure consistency and eliminate the ad hoc approach, thereby achieving a higher quality of visual amenity.

8.0 Recommendation

- 8.1. In accordance with the foregoing assessment I recommend that permission is refused for the following reasons and considerations.

9.0 Reasons and Considerations

Failure to provide front fencing to the gardens of house no's 54, 54A 55, 55A 56, 56A 57, 57A 58 and 58A, Lake Drive, Kilminchy would be contrary to the Development Management Standard for Residential Development, DM HS 10, of the Laois Development Plan 2021 – 2027, would constitute a permanent diminution in the residential amenities of the permitted dwellings and would be likely to lead to an ad hoc approach to the provision of such boundaries, impacting on the visual amenities of the area; the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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.

Planning Inspector

4th March 2024

Appendices

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2021-2027, extracts

Appendix 3 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317493		
Proposed Development Summary	the omission of a boundary treatment type consisting a 500mm high railing on a 250mm high wall along the entire front boundary, that was previously granted under planning file ref 17/690.		
Development Address	The semi-detached housing: numbers 54, 54A, 55 55A, 56, 56A, 57, 57A, 58 & 58A at Lake Drive, Kilminchy, Portlaoise		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	/	
	No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	/		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	/	N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	/	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Appendices

Appendix 1 Photographs

Appendix 2 Laois County Development Plan 2021-2027, extracts.