



An
Bord
Pleanála

Inspector's Report ABP-317582-23

Development	Retention of domestic property alterations
Location	1 Pembroke Heights, Pembroke Wood, Passage West, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	234839
Applicant(s)	Amanda Greene and David Kelleher
Type of Application	Permission for Retention
Planning Authority Decision	Refuse retention
Type of Appeal	First Party
Appellant(s)	Amanda Green and David Kelleher
Observer(s)	David Whitty Mary Foley Mr and Mrs Stephen Moynihan
Date of Site Inspection	22 nd December 2023
Inspector	Claire McVeigh

1.0 Site Location and Description

- 1.1. No. 1 Pembroke Heights is located at the southern edge of the established residential Pembroke estate in Passage West, County Cork. To the rear of the subject site are mature trees and the ruins of a derelict property within the Pembroke Woods. The land rises steeply at this location directly behind and to the east of the subject site with the bank stepped with stone gabion baskets.
- 1.2. The turning bay is shortened by the northeastern boundary wall comprising precast concrete uprights and interconnecting planks with a timber vehicular gateway. This boundary wall extends to the rear point of the cul-de-sac providing a consistent height and finish with the existing end of cul-de-sac and rear of those properties fronting onto Pembroke Row.

2.0 Proposed Development

- 2.1. Retention sought for northeastern boundary wall comprising a concrete wall ranging in height between 1750mm-2070mm, with vehicular gateway and incorporation of public open space into the curtilage of the existing dwelling house.

3.0 Planning Authority Decision

3.1. Decision

The decision of the planning authority was to refuse permission for retention based on the following reason:

The proposed development to be retained would endanger public safety by reason of traffic hazard because it would remove the opportunity for emergency and refuse vehicles to make safe turning movements at this location and lead to the reversing of these vehicles in a built-up estate. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 20th June 2023, as signed off on by the Senior Executive Planner, refers to:

- Planning history of the subject site and confirms that no pre-planning consultation was undertaken.
- Sets out the policy context for the area.
- Notes the four third party submissions received. Noting that two of which support the development and two are objecting to the development.
- In the subject application the applicants have included additional engineering reports to try to address the issues raised in the decision to refuse retention permission by An Bord Pleanála.
- EIA not applicable.
- Following AA screening concludes that the subject proposal would not be likely to give rise to significant impacts on the Cork Harbour Special Protection Area (SPA) and /or the Great Channel Island SAC by reason of the nature and extent of the development and its relationship with the SPA and SAC.

3.2.2. Other Technical Reports

Area Engineer

Highlights that no engineering report was available at the time of the previous planning application (register reference 21/6855). They note the previous appeal to An Bord Pleanála and notes the submissions made by the applicant and third parties to this new application.

Recommends refusal as the turning bays is integral part of the estate design and has the function of providing turning movement areas for refuse, more importantly, emergency vehicles. Authorising of the removal of a turning bay from an estate after planning has been granted would set a dangerous precedent and open up a route for other applicants to seek to do the same at other locations in the County.

Estates Primary Report

Notes the information provided by the applicant's engineer in which the autotrack drawings indicate that necessary turning movements can be accommodated. Nevertheless, notes the Area Engineer's report and considers that the

recommendation for refusal should take precedence over the submitted autotrack analysis.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Four submissions were received in respect to the planning application. Two of these submissions supported the development and two were objecting to the development. In summary:

- Highlighting the enforcement action on going with respect to the unauthorised works, carried out in or about 2016 Enforcement ref. EH16010, and commitments given by the applicants to restore the turning area to its original dimensions.
- No such anti-social behaviour has been observed in the area over a lengthy period of time and which predates the unauthorised works including the taking over of the turning area and adjacent open space.
- Submitted planning application indicates clearly that the applicants do not own the subject lands. Letters provided do not state that consent to make an application has been obtained.
- Scaled dimensions of vehicles and indicated lengths do not match – the drawings are unreliable. In addition, the choice of vehicles selected, and their dimensions do not accurately reflect the actual size of the Fire Tender (Scania P120) with an overall length of 10.3m and Irish Waste Operators' Vehicles.
- The unauthorised works will result in a traffic hazard.

4.0 Planning History

ABP-312505-22 (Planning register reference 21/6855) Retention permission refused of the northeastern boundary wall with vehicular gateway and incorporation of public

open space into the curtilage of the existing dwelling house for the following reason and considerations:

Having regard to the absence of information submitted on the file to show the capability of the reduced area of the turning bay to accommodate necessary traffic movements, it is considered that there is insufficient information to allow for an adequate assessment and, therefore, the Board cannot be satisfied that the development for which retention is sought would not pose a risk to pedestrian and traffic safety. The Board is, therefore, precluded from giving further consideration to the granting of permission for the development to be retained in such circumstances.

In deciding not to accept the inspector's recommendation to grant permission, the Board considered that sufficient information had not been provided to show that the retention would not pose a risk to pedestrian and traffic safety.

Planning register reference 17/4304 (Incomplete application) retention of the northeastern boundary wall with vehicular gateway and incorporation of public open space.

Planning register reference 06/9993 – permission was granted for a two-storey extension to the side of the dwelling.

5.0 Policy Context

5.1. Cork County Development Plan 2022

Passage West is a 'Metropolitan Town' within the County Metropolitan Cork Strategic Planning Area. The development plan notes that a Town Framework Plan has been prepared for Passage West (Volume 4 South Cork provides detail).

The subject site is zoned 'Existing Residential/Mixed Residential and Other Uses' and lands immediately south and east of the subject site are zoned as 'Green Infrastructure'.

Specific Development Objectives outlined for this green infrastructure area immediately south and east of the subject site: - PW-GC-02 Open space with views overlooking Cork Harbour. Provision for landscape protection. The following habitat

of county importance can be found within this site: Scrub/Transitional Woodland, Dense Bracken and an Ecological corridor.

The subject site also sits within the designated high value landscape.

Section 1.5 Passage West/Glenbrook/Monkstown (Volume 4 South Cork) refers.

5.2. Natural Heritage Designations

pNHA Douglas River Estuary

Cork Harbour SPA (Site Code 004030)

Great Island Channel SAC (Site Code 001058)

pNHA Great Island Channel

5.3. EIA Screening

See Form 1 attached.

6.0 The Appeal

6.1. Grounds of Appeal

A first-party appeal has been received. I note the comprehensive submission and attachments supporting the appeal, including autotrack analysis and additional autotrack analysis with supporting commentary from applicant's engineer.

The grounds of appeal can be summarised as follows:

- Justification for the works undertaken based on addressing anti-social behaviour in the turning area which was hidden from view and to prevent people climbing the gabion baskets and accessing properties from the rear.
- Consent from ManorPark Homebuilders Ltd. Received in 2011 to remove the existing boundary and construct same in line with the attached drawing which shows the hammerhead removed and realigned.
- The area engineer's assessment was made without any apparent consideration for the Autotrack analysis and the road width beyond the turning circle.

- The planner's assessment took the area engineers recommendation on board without holistic consideration of its effect on the proper planning and sustainable development.
- The applicant addresses concerns raised in the third-party submissions.

6.2. Planning Authority Response

Submission dated 8th August 2023 stating that the planning authority is of the opinion that that all relevant issues have been covered in the technical reports already forwarded to the Board as part of the appeal documentation and has no further comment to make in this matter.

6.3. Observations

- David Whitty – Do not agree that the works carried out are justified as a response to anti-social behaviour and does not think adequate evidence of same has been provided. As a neighbouring property no significant anti-social behaviour noted living in the area since 2007. Witness to fire tenders having to reverse out of the cul-de-sac. The turning bay did provide space for rubbish trucks to turn until the appellants began to park within the bay. Question the ownership and legality of agreements made to transfer land. Highlights the area engineers report of the 14th June 2023.
- Mary Foley – Describes the anti-social behaviour witnessed since moving to the estate in 2003. Highlighting the applicant's proposal to allow the fire brigade access in the event of an emergency.
- Mr and Mrs Stephen Moynihan – request that the decision to refuse retention permission by the planning authority is reaffirmed, having regard to and referring to ABP 312505-22 (planning register reference 216855), disagree with the appellants view that the planning authority have not adequately assessed the application and that the submitted documents do not match the existing boundary walls (the unauthorised wall is constructed of precast concrete uprights and inter connecting planks). A shed located in the front garden is not shown on the application drawings.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, the report of the local authority and having inspected the site, and having regard to the relevant local, regional, national policies and guidance I consider that the substantive issues in this appeal to be considered are as follows:

- Traffic movement and public safety
- Miscellaneous (legal ownership and discrepancies in application documentation)

7.2. Traffic movement and public safety

7.2.1. At the outset I would like to highlight that issues identified in the application and further elaborated in the submitted appeal with respect to justification for the works undertaken are acknowledged and, in my assessment, I have had regard to the submissions from both the applicant and the observers in respect to anti-social behaviour experienced. The lack of designed in passive surveillance at this end of cul-de-sac, in culmination with the steep topography of the lands immediately abutting the properties boundary and the desire lines by people in the area to shortcut through Pembroke Wood (Attachment 22 illustrates) has, from the information available on file, led to opportunities for anti-social behaviour and adversely impacted on the residential amenity of the area. The two-storey extension as constructed to no. 1 Pembroke Heights, without any windows on the side elevation at upper floor levels, has in my view unfortunately further reduced opportunity for passive surveillance of this space.

7.2.2. This subject appeal relates to a previously refused application for retention, as set out in section 4.0 and, as such, having regard to the previous decision by the Board I am focusing on the issue of whether the application has demonstrated sufficiently the capability of the reduced area of the turning bay to accommodate necessary traffic movements to avoid risk to pedestrian and traffic safety.

7.2.3. The applicant confirms that as a response to the refusal of retention by the Board they engaged an engineer to analyse the capability of the reduced area of the turning bay to accommodate a range of vehicles, and submitted autotrack drawings

to support the application along with the snapshots of video footage showing vehicles turning, drawing references:

- D-SK-001 Cars,
- D-SK-002 Vans,
- D-SK-003 Waste Collection Trucks, and
- D-SK-004 Fire Tenders.

7.2.4. Having reviewed these autotrack drawings I note that the swept paths for both cars and vans can be accommodated within the road space, with an acknowledged additional number of turns necessary. The autotrack drawings indicate that for a 7.737m long waste collection truck and a 7.7m long fire tender, in both scenarios, the path extends over the existing kerbing along the rear boundaries of the properties of Pembroke Row, currently a planted area and as such cannot be accommodated within the road space. The applicant clarifies that the waste collection truck dimensions in the autotrack is generally not that which services Pembroke Wood and that the waste companies are using some of the biggest bin lorries currently on the market at approximately 10.5 metres long. In addition, page 8 of the applicant's appeal submission includes a table setting out the length of the fire tenders in use by both Carrigaline and Crosshaven's stations. All but one of these fire tenders is less than 7.7metres (the selected autotrack fire tender). Notwithstanding that the submitted autotrack analysis is not reflective of the actual larger vehicles used by the waste companies and fire service tenders, I am of the view that the autotrack evidence clearly demonstrates that the reduced hammerhead cannot accommodate the turning movements of a waste collection truck or a fire tender in a best-case scenario where smaller waste collection trucks and fire tenders are used.

7.2.5. The planning authority area engineer's report identifies concerns that the development would remove the opportunity for emergency and refuse vehicles to make safe turning movements and lead to reversing of these vehicles in a built-up estate. The applicant raises concerns that the area engineer's assessment was made without "any apparent consideration for the Autotrack analysis". I would agree with the applicant that the area engineer's report does not specifically identify or engage in the detail of the autotrack analysis. However, the planning authority's area engineer does note, in their report dated 14 June 2023, 'the submissions' made by

the applicant. I note also that the planner's report dated 20 June 2023 concludes highlighting that the additional information submitted by the applicant has not satisfied the area engineer and that the turning head as per the original permission for the estate is the correct option in terms of vehicle turning and manoeuvres.

- 7.2.6. Additional autotrack analysis (Attachment 16 -Autotrack Fire Tenders drawing reference D-SK-004 Issue B) with an 8.2 metre fire tender has been submitted with a commentary prepared by the applicants' engineer as part of the appeal submission. The applicant's appeal submission states that the arcs of the manoeuvring vehicle appear to 'collide' with the verges of the turning area. It is further explained by the applicant that "in any heavy vehicle such as a fire engine or refuse truck, there is an overhang before the front wheel axle and a similar overhang behind the rear wheel axle. That enables the vehicle's wheels to drive right up to the kerb whilst the body of the vehicle is over the kerb". I note that the applicant's engineer does not include in their commentary clarification on the point relating to collision with the kerbing. On my site inspection I noted that some trees and shrubs are growing within the space between the kerb and the rear boundary wall of those properties in Pembroke Row. These planted areas would in my opinion restrict vehicles from overhanging, or the planting would be damaged by such vehicular movements. As previously noted in the original autotrack analysis fire tender vehicular movements cannot be accommodated within the dedicated road space in both examples provided.
- 7.2.7. I acknowledge that the applicant has gone to significant efforts to respond to the concerns raised in the previously refused application for retention. In addition, is putting forward solutions to address the constraint on fire services tender movements with a revised automated gate allowing the fire service independent access via manual override or fob access as recommended by the fire service. I am of the opinion that such a measure would result in an unnecessary step in allowing full safe movement of a fire tender.
- 7.2.8. Taking the issues identified with respect to anti-social behaviour and resultant impacts on residential amenity into account, on balance, I am of the view that greater weighting to public safety, pedestrian safety and traffic safety must be given. I do not consider that the concrete boundary wall of approximately 2 metres in height with double vehicular gateway contributes to the creation of a safe and more integrated street design as suggested in the appeal submission. The finishes and the height

read as a rear boundary rather than matching in with the front and side boundary treatment of No. 1 Pembroke Heights and, as such, its design and height reinforces the sense of lack of 'eyes on the street' to this end of cul de sac. Notably the other properties along Pembroke Heights have no front boundary walls and have an open plan design allowing for a good sense of overlooking of the road in front.

- 7.2.9. In conclusion, I consider that the information submitted on file has not demonstrated the capacity of the reduced area of the turning bay to appropriately accommodate necessary traffic movements. I am not satisfied that the development for which retention is sought would not pose a risk to pedestrian and traffic safety and as such would warrant refusal.

7.3. Miscellaneous (legal ownership and discrepancies in application documentation)

Legal ownership/consent to make the application

- 7.3.1. I note the letter of consent to the making of the application received from ManorPark Homebuilders in 2011. Histron Ltd. a joint venture between Manor Park Homebuilders and John F Supple were the applicants in respect to the original permission relating to the subject site, as detailed in section 4.0. This joint venture, the applicant states that ManorPark Homebuilders were majority shareholder, was dissolved in May 2013 (Attachment 11 details). In 2017 an application was made by the applicants to retain the wall and this application was deemed incomplete as no letter from the landowner was submitted for the works outside their ownership. In application 21/6855 the letter of the 2011 from ManorPark Homebuilders, which the applicant found after misplacing it, was noted by the planning authority as sufficient to validate the application. However, in their assessment the planner's report does highlight that the provisions of section 34(13) of the Act applies i.e. a person is not entitled solely by reason of a permission to carry out any development. In the current application under assessment the planner's report in respect to planning register reference 23/4039 again notes that the application has been deemed valid and that, ultimately, it is not within the remit of the planning authority to determine legal interests in this regard.
- 7.3.2. I concur with the planner's assessment and in terms of the issues relating to consent to make the application the Development Management Guidelines for Planning

Authorities (2009) make clear the "...planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts" (p.53). Therefore, this is a matter to be resolved between the parties, having regard to the provisions of s. 34(13) of the 2000 Planning and Development Act (as amended). Accordingly, should the Board decide to grant retention permission I would recommend that an advisory note be added at the end of the planning decision.

Discrepancies in application documentation

- 7.3.3. One of the observers has raised issues with discrepancies in the application documentation. One issue is that submitted drawings indicate that the wall to be retained matches the existing boundary walls. The observer states that the unauthorised wall is constructed of precast concrete uprights and interconnecting planks and does not match existing front and side boundary walls. I agree with the observer that the wall finish and design does not match the existing front and side boundary wall of no. 1 Pembroke Heights. However, the drawings do clearly note that it is a concrete boundary wall matching the existing concrete wall at the end of the cul-de-sac and what is the rear boundaries of the properties on Pembroke Row. I consider the submitted application drawings to accurately reflect the proposed development to be retained. Notwithstanding, referring back to letter of consent for the making of an application by ManorPark Homebuilders (contained in Attachment 10 of the appeal submission) I note that their permission is based on the "removal of the existing boundary and the construction of same". In my opinion the boundary wall as repositioned should have replicated the existing boundary, to accord with the letter of consent. As such a brick and rough render finish, instead of the concrete finish which I consider is more appropriate for a rear boundary.
- 7.3.4. The observer also highlights that a shed within the front garden, located forward to the front building line, has not been shown on the application drawings. I draw the Board's attention that my site inspection confirms the location of the shed in the front garden of No. 1 Pembroke Heights. The matter of enforcement falls under the jurisdiction of the planning authority.

8.0 AA Screening

- 8.1. The planning authority screened out appropriate assessment. The closest European site is the Special Protection Area: Cork Harbour SPA (Site Code: 004030). The subject site is also within approximately 1.5 km southwest of the Great Island Channel SAC (Site Code 001058).
- 8.2. Given the small scale of the development proposed to be retained and the absence of any indication of a hydrological link or other pathway to the European sites, it is considered that no appropriate assessment issues arise as the development to be retained would not be likely to have a significant effect individually or in combination with other plans or projects on any European sites and Appropriate Assessment is not therefore required.

9.0 Recommendation

I recommend that planning retention permission be refused for the reasons and considerations set out in section 10.0.

10.0 Reasons and Considerations

1. The proposed development to be retained, having built over a portion of the existing cul-de-sac turning bay reducing its capacity to accommodate necessary traffic movements, would endanger public safety by reason of a traffic hazard. The proposed development to be retained would be contrary to the proper planning and 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.

Claire McVeigh
Planning Inspector

7 May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317582-23		
Proposed Development Summary	Retention of northeastern boundary wall with vehicular gateway and incorporation of public open space into the curtilage of the existing dwelling house.		
Development Address	No. 1 Pembroke Heights, Pembroke, Passage West, Co. Cork.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	
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			
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	✓		No EIAR or Preliminary Examination required.
Yes			

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____