



An
Bord
Pleanála

Inspector's Report

ABP-317922-23

Development	Retention of boundary fence
Location	Coneybeg, Watergrasshill, Co.Cork,
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	235199
Applicant(s)	Dave and Elizabeth Hogan.
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Dave and Elizabeth Hogan
Observer(s)	None
Date of Site Inspection	22/11/2023
Inspector	Niall Sheehan

1.0 Site Location and Description

- 1.1. The application site is located to the southern side of the L-6978-29 in the townland of Coneybeg, c. 2.7km southwest of Watergrasshill. The site has a stated area of 0.44ha and has a road frontage of c.85m. The wider site is effectively divided into two interconnected areas, with the area to the west hosting the two-storey dwellinghouse and garage, and, the area to the east providing a paddock. The previously existing roadside boundary has been removed and replaced with a timber fence. A laurel hedge has been planted inside the fence and tree planting(young trees) have taken place behind the edge line. There are 2 no. c.12m high telephone poles to the eastern corner of the front boundary just inside the mutual boundary. The dwelling is significantly visible from the adjoining road.
- 1.2. The surrounding area, particularly the southern side of the L-6978-29 is characterised by a relatively high level of one-off rural housing. The application site forms one of twelve dwellinghouses in row. There are 4 no. units in the same stretch of roadway to the opposite side of the road.
- 1.3. The local authority have recently widened this road by approximately 0.5m on the southern side as part of road improvement works, including a portion of road and verge adjacent to the road boundary subject to this appeal.

2.0 Proposed Development

- 2.1. Permission for retention of development namely;
 - Timber post(capped) and rail fencing which now forms the front roadside boundary;
 - Landscaping(laurel hedge) to rear/inside of fencing;

Permission to make the following alterations to the above mentioned fence namely

- Removal of cappings (c.215mm each in height) from 14 no. vertical posts(at distance of c.2.4m apart) over a length of 33m out from the eastern front boundary;
- Removal of top rail for same length of easternmost boundary where the fence returns at the front eastern corner at their property.

3.0 Planning Authority Decision

3.1. Decision

Cork County Council decided to refuse permission for the following stated reasons (as summarised):

1. Retention of the timber post and rail fence and laurel hedge at this location fails to provide any level of screening of the existing two-storey dwellinghouse, would significantly alter the character of this rural environment and would significantly detract from the visual amenity of the surrounding area. The development to be retained materially contravenes Condition No. 10 of Planning Permission Register No. 14/6013 which requires retention or reinstatement of sod and stone boundaries ,and, also materially contravenes Policy Objectives PL 3-5, RP 5-22, GI 14-9 and HE 16-21 of the Cork County Development Plan 2022 and would set an undesirable precedent for similar developments in the area.
2. It has not been demonstrated that adequate sight visibility can be achieved at the entrance to the neighbouring property to the east of the application site. It is therefore considered that the retention of the fence would constitute a traffic hazard and would be contrary to proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planning report is the basis of the planning authority's decision and concerns raised in this report reflect the two cited reasons for refusal which are set out in Section 3.1.1 of this report.

3.2.2. Other Technical Reports

Area Engineer: Requests further information for the following:

- Timber post and rail fences are not permitted adjacent roads due to the significant danger they present if struck by errant traffic.
- Notwithstanding the concerns regarding the existing fence type, the proposals regarding the sightline improvements are not adequate. The neighbouring

driveway to the east is set at a lower level to the subject road boundary so the sightline improvements proposed will not make sufficient distance to this neighbour's sight distance. Neighbours sightlines will remain obstructed.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

A third party observation was made by Mairead O'Callaghan who resides in the adjacent neighbouring property immediately east.

Her observation reads as follows:

- Adequate visibility was not an issue prior to removal of hedgerow and planting of replacement;
- Replacement boundary positioned much further out towards roadside edge which compromises visibility;
- Planted vegetation will grow higher and denser behind subject fence;
- The local county road L6978 is a narrow but very busy road;
- Ballindenisk Equestrian Centre is located c.3km south west on L6978. Venue holds international, national and local events with heavy vehicle along roads;
- Removal of capping from 14 no. vertical posts will not address visibility;
- Height of posts and angle of fence to eastern corner further obstructs vision.
- Removal of the subject area of fence may represent a satisfactory outcome.

4.0 Planning History

The Appeal Site

P.A Reg. Ref. 057968 Two storey dwellinghouse with garage (Patrick Thornhill) Refused.

P.A Reg. Ref. 14/4182 Construction of a 1.5 storey dwellinghouse, 1.5 storey detached domestic garage, installation of a septic tank and all associated site works (David and Elizabeth Hogan) Refused

P.A Reg. Ref. 14/6013 Construction of a two storey dwellinghouse, detached domestic garage, installation of a septic tank and all associated site works (David and Elizabeth Hogan) Granted Conditional Permission.

Condition No. 10 states works to the roadside boundary shall be carried out as per plans and details submitted to the Planning Authority on 12/12/14. In the interests of orderly development.

Submitted site layout plan shows retention of stone and sod front boundary ditch with splayed front entrance (stone clad blockwork)

P.A Reg. Ref. 20/5811 Retention of timber post and rail fencing which now forms roadside boundary, concrete kerbing to the grass margin, chevron sign and the landscaping as planted on site (David and Elizabeth Hogan). Subsequently withdrawn as Clarification of Further Information request not responded to within the statutory time frame/period.

Enforcement

P.A Reg. Ref. EF/17/224 Current enforcement investigation ongoing regarding alleged non-compliance with the terms and conditions of Planning Reg. Ref. No. 14/6013, specifically Condition No. 10 (Roadside Boundary)

5.0 Policy Context

5.1. Legislation

Planning and Development Act 2000 (as amended and consolidated)

Section 37

(2) (b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with *paragraph (a)* where it considers that—

(i) the proposed development is of strategic or national importance,

(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or,;

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

5.2. National Guidance

Transport Infrastructure Ireland publication DN-GEO-03060

Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separated junctions);

5.3. Local Planning Policy Provisions

5.4. Cork County Development Plan 2022-2028

The above stated plan is applicable to the subject site and its setting. The relevant policy objectives are detailed below:

Objective PL 3-5: Rural Placemaking

The Plan acknowledges that there are distinct and regional patterns of development within the rural villages and rural areas of County Cork and these make a positive contribution to the County's settlement network and rural landscape. The Plan states 'New buildings should make a positive contribution to historic placemaking and built form prevalent in the area'.

Objective RP 5-22: Design and Landscaping of New Dwelling House and Replacement Dwellings in Rural Areas

- d) Require the appropriate landscaping and screen planting of proposed developments by retention of existing trees, hedgerows, historic boundaries, and natural features using predominantly indigenous/local trees and plant species and groupings.

Objective TM 12-8: Traffic/Mobility Management and Road Safety;

- d) Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.
- e) Improve the standards and safety of public roads and to protect the investment of public resources in the provision, improvement and maintenance of the public road network.

Objective GI 14-9: Landscape;

- d) Protect the visual and scenic amenities of County Cork's built and natural environment.

Objective HE 16-21: Design and Landscaping of New Buildings

- e) Require the appropriate landscaping and screen planting of proposed developments by using predominantly indigenous/local species and groupings

and protecting existing hedgerows and historic boundaries in rural areas. Protection of historical/commemorative trees will also be provided for.

Cork Rural Design Guide

- Building a New House in the Countryside, Second Edition 2010
- Part Two: Well Considered Site Layout; Creating New Boundaries.

5.5. Natural Heritage Designations

The appeal site is located c.8km north of the Special Protection Area of Cork Harbour, c.9.5km to the north of Special Area of Conservation Great Island Channel SAC.

5.6. EIA Screening

The development to be retained is not a class under Schedule 5 of the Planning and Development Regulations 2001 as amended and consolidated, hence no preliminary examination or EIA determination is required.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is by David and Elizabeth Hogan (first party)

- This application was made resultant of ongoing correspondence with the Planning and Enforcement Sections as part of previous application 20/5811 which was withdrawn;
- The application attempts to address issues raised in enforcement case (EF/17/224) initial warning letter dated September 2017 which referred to 'alleged non-compliance with the terms and conditions of planning reg. ref. 14/6013 – specifically condition no.10 (roadside boundary)';
- Initially it was required to remove c.15m of existing boundary to provide new splayed entrance, however due to the alignment of road and boundary ditch, it was necessary to alter/remove additional c.23m to provide a sightline to the

east. It became evident when works began there was no defined stone formation or structure to the ditch which mostly comprised of loose earth material which became unstable when examined/alterd.

- It was therefore decided to remove the ditch (average width of 1.6m extending to 2.65m) and erect a natural timber post and rail fencing to form the front boundary of the property and erect a timber fence set back to where the original ditch line was to further improve visibility. This fence was set back into the site as per photographs attached (photographs stated to be taken in October 2017).
- The applicants then reinstated a grass margin on the roadside which ranged in width from 1.3m at the eastern corner up to 3.2m at the western side/entrance.
- This margin was reduced in June 2023 when the local authority widened the public road as part of improvement works.
- The removal of the wide boundary ditch resulted in a gap at the eastern front corner so the timber fence was returned back to meet the dividing/neighbouring boundary in an attempt to secure the properties.
- Around the same time the site was landscaped and a Laurel hedge was planted behind the front fence.
- The neighbouring dwellinghouse to the east was granted under planning permission reg. ref. S/99/1907 which condition no.8 refers to a recessed

entrance provided 'provide proper sight distance for emerging traffic in the interests of road safety'. This has not been provided to date.

- It is stated that the visibility and safety along the public road had to be improved by removing the wide/overgrown boundary;
- The applicant offered and proposed to carry out alterations/remedial works to the fence close to the eastern boundary (as indicated under proposed works within subject application and previous correspondence to planning authority).
- It is further stated that if required to reinstate the sod and stone front boundary to its original location, this would remove all visibility that now exists.

6.2. Planning Authority Response

The planning authority did not respond to the grounds of the appeal.

7.0 Assessment

Having reviewed the grounds of appeal I consider that it is appropriate to address the appeal under the following broad headings:

- Background;
- Visual Amenities;
- Road Safety;
- Material Contravention;

Background

- 7.1. Firstly, for the purposes of clarity this appeal relates to the entire length of front boundary post and rail treatment for which measures c.70m spanning across both parts of the site, the eastern part providing a paddock and the western part providing for applicant's dwellinghouse, garage and immediate garden area. The proposed removal of 14 no. cappings and top rail of fence relates the easternmost 14 no. vertical posts for which form a length of c.33m from the eastern boundary.

- 7.2. Secondly, Condition No.10 of parent grant of permission reg. ref. 14/6013 details that works to the roadside boundary shall be carried out as per plans and details submitted to the Planning Authority on 12/12/14. The site has a substantial road frontage of c.85m and under planning permission 14/6013 the majority of the roadside boundary (c.70m) was to be retained (stone, sod and native hedgerow) as existing behind sightlines.
- 7.3. It is noted in both the appeal statement and also that the local authority planning report that the local authority have recently widened this road by approximately 0.5m on the southern side including a portion of road and verge adjacent to the road boundary subject to this appeal as part of road improvement works.

Visual Amenity

- 7.4. With regard to visual amenity, it is considered that the retention of the timber post and rail fence and laurel hedge at this location in its entirety significantly alters the character of this rural environment and significantly detracts from the visual amenity of the surrounding area.
- 7.5. This is contrary to Condition No. 10 of Planning Permission Register No. 14/6013 which states that works to the roadside boundary shall be carried out as per the plans and details submitted to the Planning Authority on 12/12/2014.
- 7.6. Furthermore, it is noted that 'Part Two' of the 'Cork Rural Design Guide, Building a New House in the Countryside, 2nd edition 2010 discourages open boundaries where hedgerow has been removed including those with post and rail fencing. The Design Guide advocates for the retention, maintenance and supplementation of hedgerow where appropriate. I would consider the development to be contrary to the Design Guide in this respect.
- 7.7. On assessment against Cork County Development Plan 2022-2028 Objectives RP 5-22, and, HE 16-21, the development to be retained fails to provide appropriate landscaping and screening by failing to retain existing native hedgerow and natural features (or provide suitable replacement), hence is considered to materially contravene these objectives. For the purposes of clarity, I do not consider the planting of Laurel hedgerow on its own to be a suitable choice of planting/landscaping and thus

is at odds with other native hedgerow including the likes of hawthorn, blackthorn, whitethorn which are more native to the area, and, more commensurate with existing field boundaries.

- 7.8. The development to be retained is also considered to be at odds with Objective GI 14-9 as it allows full views of the application site thus failing to screen the two storey dwellinghouse and garage. The development to be retained thus fails to protect the visual amenity the natural environment for which stone, sod or and hedgerow(existing or replacement) offered/would achieve.
- 7.9. For the purposes of clarification, I noticed the presence of a small number of timber post and rail front boundary arrangements to the front of properties (in the minority) along the same stretch of local county road however from site assessment and also a search of the planning authority's records the vast majority of these appear to be historic and pre-date both subject grant of planning permission 14/6013 and also the current and previous more recent county development plans. It is also noted that these arrangements (despite being timber post and rail fencing) appear to be better set back and I am of the view that they do not resultantly compromise visual amenity, visibility or road safety(discussed below) to the same degree.

Road Safety

- 7.10. As per Cork County Council's Area Engineer's Report, a sight distance of 80m to the centreline of the road looking westward is required from the midpoint of the neighbour's driveway setback 2.4m from the existing road edge, and, the provision of sight distances spanning through objects which are above this vertical plane are not considered to be acceptable.
- 7.11. There is a slight fall in gradient from west to east and the neighbouring driveway to the east is set at a slightly lower level to the subject roadside boundary. Although the sightline improvements proposed (removal of cappings and top railing) are noted, they will not make a sufficient difference to this neighbour's sightlines which will remain significantly obstructed. It is also considered that the removal of the top rail for a significant section of fencing would appear at odds with the remainder of the front boundary (albeit post and rail design).

- 7.12. I therefore consider that the removal of 14 no. cappings to top of fence and the top rail posts (for a section of c.33m) would not make a significant difference to adequately improve sightlines looking westward from same adjacent neighbouring property.
- 7.13. In addition to the aforementioned the local authority Area Engineer has also raised concerns regarding potential impalement for any road users in the event of a collision given the nature of the material and the design of the fence including its' cappings.
- 7.14. Overall the proposed development is unacceptable from a road safety as it significantly compromises sightlines (looking westward) to the neighbouring vehicular access, and, is also constructed of a material for which may exacerbate injury for road users in the event of an accident/collision. This is to the detriment of road safety and the development to be retained contravenes Objective TM 12-8 of the Cork County Development Plan 2022-2028.

Material Contravention

- 7.15. For the basis of assessment as to whether the development to be retained materially contravenes Policy Objectives PL 3-5, RP 5-22, GI 14-9 and HE 16-21 of the Cork County Development Plan 2022, I consider it necessary to assess against each policy (5-22 and 16-21 grouped together).
- 7.16. Firstly prior to assessment against each policy, I consider that the development materially contravenes Condition No. 10 of Planning Permission Register No. 14/6013 however this alone does not provide a basis for refusal in its own right.
- 7.17. Condition No. 10 states works to the roadside boundary shall be carried out as per plans and details submitted to the Planning Authority on 12/12/2014, which shows retention of stone and sod front boundary ditch with splayed front entrance (stone clad blockwork).
- 7.18. Secondly on assessment against Objective PL 3-5: Rural Placemaking, the pattern of development in the immediate and wider surrounding area in respect of boundary treatment is a mixture of different front boundary treatments with the preferred treatment being native hedgerow comprising of the likes of hawthorn, blackthorn, whitethorn rather than timber post and rail fencing with laurel hedgerow inside. Having regard to the general nature of the objective, I do not necessarily consider it to materially contravene.

- 7.19. Thirdly, on assessment against Objective RP 5-22s: Design and Landscaping of New Dwelling House and Replacement Dwellings in Rural Areas, and, Objective HE 16-21: Design and Landscaping of New Buildings (paired for purposes of assessment as similarities), I consider that the replacement boundary subject of appeal fails to retain pre-existing hedgerow (or provide suitable replacement), historic boundary or natural features, and strengthen with indigenous species. I therefore consider the development to be retained would materially contravene Objectives RP5-22 and HE16-21.
- 7.20. Fourthly on assessment against Objective GI 14-9: Landscape, although the development to be retained would not protect the visual and scenic amenities of County Cork's natural environment per se, and would thus not be in accordance with PL3-5, I do not necessarily consider it to materially contravene having regard to the general nature of the objective.
- 7.21. As per 'Policy Context', the Planning and Development Act 2000 (as amended and consolidated) (2) (b) refers to a planning authority decision to refuse permission on grounds that a proposed development (including development to be retained in this instance) materially contravenes the development plan. The board may only grant permission in certain circumstances as per '*paragraph (a)*', where the proposed development is (i) of strategic or national importance, (ii) there are conflicting objectives in the development plan or not clearly stated, (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, Section 28 Guidelines, Section 29 Policy Directives, statutory obligations for local authority, and, any relevant policy of the Government, or any Minister of the Government, or (iv) having regard to the pattern of development, permissions granted (in the area) since the making of the development plan.
- 7.22. Having assessed the appeal including assessment of relevant sections of County Development Plan and site visit, I am of the view that; (i) it is not of strategic or national importance; (ii) there are no conflicting objectives in the County Development Plan; (iii) there are no provisions in the Southern Regional, Spatial and Economic Strategy, Section 28 Guidelines, Section 29 Policy Directives, statutory obligations for local authority ,or, any relevant policy of the Government; (iv) the pattern of development in the immediate and wider surrounding area (recent and historic) does not have any very similar instances ,or, there are no permissions granted since the making of the

County Development Plan which would serve as precedent to justify the proposed development.

Summary

7.23. Overall, I consider the development to be retained materially contravenes Objectives RP 5-22, 16-21 as it would provide an inappropriate front boundary treatment at odds with that pre-existing and also the rural nature of the area, and, would be contrary to Objective TM 12-8 as it would significantly compromise road safety. I am of the view that if approved the development to be retained would set an undesirable precedent for similar developments in the area ,and, would be harmful in both road safety and visual amenity terms and contrary to the proper planning and sustainable development of the area. I therefore concur with the position of the planning authority.

8.0 Recommendation

8.1. Permission shall be refused.

9.0 Reasons and Considerations

1. The retention of the timber post and rail fence and laurel hedge at this location significantly impacts on the character of this rural environment and detracts from the visual amenity of the surrounding area. The development materially contravenes Objectives RP 5-22 and HE 16-21 of the Cork County Development Plan 2022 which seeks to provide appropriate boundary treatment, appropriate planting and landscaping and protect the visual amenity of the area, which objectives are considered to be reasonable. The development to be retained contravenes Condition No. 10 of Planning Permission Register No. 14/6013 which requires the retention of the existing sod and stone roadside boundary. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The board is not satisfied that adequate sight visibility for the neighbouring property to the east for a distance can be achieved given the current or proposed boundary arrangements. The retention of the subject fence in its current position (irrespective of alterations proposed) would impede the vision of the neighbouring property on entry to the public road and constitute a traffic hazard thereby significantly compromising the safety of all road users. The development to be retained (including proposed alterations) is contrary to Objective TM 12-8 and 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.



Niall Sheehan
Planning Inspector

14th December 2023

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference			
Proposed Development Summary	Retention of boundary fence		
Development Address	Coneybeg, Watergrasshill, 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	X
		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) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	X		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	X	N/A	Not a class of development
			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: *Niall Guerin* Date: 14th December 2023