



An
Bord
Pleanála

Inspector's Report ABP 319287-24

Development	Retention and completion of existing 1.4m to 1.8m high concrete wall, piers and wingwalls together with proposed planting of hedges and shrubs to roadside of same
Location	TK50 Collon, Drogheda, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	23486
Applicant	Jacinta Devins
Type of Application	Permission for retention
Planning Authority Decision	To refuse permission
Type of Appeal	First Party
Appellant	Jacinta Devins
Observers	None
Date of Site Inspection	19 th May 2024
Inspector	Trevor Rue

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1.0 Site Location and Description

- 1.1. The application site is located in the countryside about 2 kilometres to the south east of the village of Collon. It is on the western side of a minor road that runs between Priest Hill to the north and the R168 Drogheda Road to the south.
- 1.2. The site, with a stated area of 0.62 hectares, is occupied by a detached two-storey dwelling. It lies within a row of similar dwellings and there is also a row of dwellings on the eastern side of the road. The roadside verge fronting the site is over 4 metres deep. The dwelling is sited 43.2 metres back from the inner side of the verge.
- 1.3. A rendered concrete block wall spans the road frontage of the site, which is about 37.6 metres in length. The wall varies in height from 1.4 metres at the northern end to 1.8 metres at the southern end. There is an 11.4-metre break in the front wall to facilitate vehicular access to the dwelling. Wing walls flank the entrance driveway where gates have been fitted. There are in total eight piers at intervals along the frontage wall and at the ends of the wing walls. The piers, where they occur, add 0.45 metres to the height of the wall.

2.0 Proposed Development

- 2.1. It is proposed to retain the existing frontage wall, wing walls and piers. It is also proposed to site a box hedge on the outer side of the frontage wall, to be maintained at a height of 600 millimetres. A birch tree, 1.5 metres high, and a mixture of shrubs would be planted on the outer side of each wing wall. A grass margin would be sown between the wall and the public road, 150 millimetres above the carriageway edge.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 15th February 2024, the Council decided to refuse planning permission for the following reason:

The development for which retention permission is sought is contrary to section 13.9.5 of the Louth County Development Plan 2021 – 2027 (as varied) in that the development will have an unacceptable visual impact on this sensitive rural area by

reason of its substantial scale and unsympathetic form. The wall for which retention is sought is considered to be visually obtrusive and will further erode the rural character of this area. The development also conflicts with Condition 1 and 4 of Louth County Council Planning Register Reference 21/616. The development would therefore set an undesirable precedent for other similar developments within the area and is contrary to the sustainable and orderly development of the area.

3.2. Planning Authority Reports

Planning Reports

3.2.1. The planning report of 13th February 2024 provided the reasoning for the authority's decision. It contained the following assessment:

- The site is of high scenic quality and is located in close proximity to the Monasterboice tentative World Heritage Site and the Newgrange / Boyne Valley World Heritage Site.
- There has been a substantial amount of development along this road in recent years. Most of the developed sites have hedgerows along their front boundaries. There are a number of winged walls at vehicular entrances and a number of timber fences. The wall for which retention permission is sought is substantially larger than any other wall located along this section of road.
- The development is contrary to the broad thrust of Development Plan policy which seeks to preserve roadside boundaries and when these have to be removed seeks their replacement with sensitive boundary definition that blends sympathetically with its surroundings. The approved planning application for the dwelling included a landscaping schedule that indicated that a hedgerow of indigenous species (including hawthorn and blackthorn) would be planted across the site frontage.
- The development is uncharacteristic of the surrounding rural area and erodes its rural character. Whilst an attempt has been made to mitigate the visual impact of the wall by the siting of a box hedgerow, it is suburban in form and also uncharacteristic of, and unsympathetic to, its rural surroundings.

Other Technical Reports

- 3.2.2. An Executive Engineer in the Council's Place Making and Physical Infrastructure Section had no objections to the proposed development subject to accordance with the submitted drawings.

3.3. **Third Party Submission**

- 3.3.1. A local Councillor sent a letter of support for the application to the Council.

4.0 **Planning History**

- 4.1. **21616:** On 9th August 2021, the Council granted permission for a dwelling and garage at the application site, subject to seven conditions. The planning authority report included photographic evidence that there was an existing row of trees along the roadside boundary. Conditions 1 and 4 of the permission read as follows:

1. *The development shall be carried out in strict accordance with plans and particulars lodged with the Planning Authority on 20th May 2021 except as may otherwise be required to comply with the following conditions.*
4. i) *The scheme of landscaping proposals and boundary treatments submitted on Drawing No. JD-103 and D104 shall be carried out in the first planting season following the commencement of development and permanently retained thereafter or as otherwise agreed in writing with the Planning Authority. Any planting which fails in the first planting season shall be replaced.*

- 4.2. **UD/23/159:** On 24th October 2023, a warning letter was sent stating that a wall constructed to the front of the site was not in compliance with the permission granted.

5.0 **Policy Context**

5.1. **Development Plan**

- 5.1.1. Policy Objective ENV 39 in Chapter 11 of the Louth County Development Plan 2021-2027 is to protect and preserve existing hedgerows in new developments, particularly species rich roadside and townland boundary hedgerows, and where their removal is

necessary during the course of road works or other works seek their replacement with new hedgerows of native species indigenous to the area.

5.1.2. Section 13.9 of the Plan is headed "Housing in the Open Countryside". Section 13.9.5 of the Plan (cited in the Council's decision) is to do with ribbon development. Section 13.9.15 states that sites which have existing natural boundaries of a high quality are at an advantage in enabling a suitably designed dwelling to blend into the landscape. These boundaries shall be retained and augmented where necessary to assist integration. Boundary treatments shall be sensitive to the area in which the dwelling is located and shall be designed to assist its integration into the local landscape. Landscaping consisting of compatible native species hedgerow or other suitable planting shall normally take place along all site boundaries. Other suitable boundary treatments include appropriately sized natural stone walls, or a post and rail fence to the rear of any planting. Inappropriate boundary treatments can be out of character and visually obtrusive in the landscape and shall be avoided.

5.1.3. Section 13.8 of the Plan is headed "Housing in Urban Areas". Section 13.8.11 deals with boundary treatments in residential developments. It states that front boundaries along the estate road and between properties shall be agreed as part of the planning application. They can be open plan, planted, consist of a low-level wall or railing, or as otherwise agreed with the Planning Authority.

5.2. Natural Heritage Designations

5.2.1. The application site is not located in or close to any Natura 2000 European site of nature conservation importance.

5.3. EIA Screening

5.3.1. The proposed development is not one to which Schedule 5 of the Planning and Development Regulations 2001, as amended, applies and therefore, the requirement for submission of an environmental impact assessment report and carrying out of environmental impact assessment does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

- The Council's notification of decision to refuse did not provide instructions on how to appeal or state the period for doing so. This information was not readily available on the Council's website, which directed the reader to a message on An Bord Pleanála's website which read "Page Not Found". The appeal was submitted in a timely manner only because of extensive research undertaken by the applicant. This greatly increased the time, effort and stress involved.
- The Council's reason for refusal does not specify, by reference to relevant law or the Development Plan, why it considered the wall visually unacceptable. Section 13.9.5 of the Plan does not specifically reference boundary walls. The refusal notice did not provide an opportunity to present in this appeal how a remediation could be achieved.
- The Council's reason for refusal says that the boundary wall is unsympathetic in form but does not particularise what this means. The Development Plan does not use the word "sympathy" or any of its derivatives and it was not possible for the appellant to prevent or understand the relevant planning breach.
- Section 13.8.11 of the Plan notes that front boundaries along the estate road can consist of a low-level wall but does not specify the height. The appellant is happy to remediate this issue by reducing the height of the boundary wall by 225 metres across its entirety.
- Section 13.9.15 of the Plan states that other suitable boundary treatments include appropriately-sized natural stone walls. The appellant is agreeable to altering the appearance of the boundary wall by the addition of natural or field stone to the wall in its entirety.
- While the reason for refusal refers to setting an undesirable precedent, a precedent has already been set by the Council. Four images were attached displaying what was described as a small sample of other boundary walls of a similar structure and height within the rural area.

- Piers with wing walls were included in plans submitted to the Council for the two-storey dwelling and were subsequently approved under reference 21616.
- The application site is elevated and exposed to high westerly and north-westerly winds. The boundary wall shelters the site against these winds. The average wind speed in the Collon area during winter and spring is 35 kilometres per hour (9.7 metres per second) and it is further exposed to powerful gusts.
- It is stated on Met Éireann's website that the wind at a particular location can be influenced by a number of factors such as obstruction by buildings or trees, the nature of the terrain and deflection by nearby mountains or hills. Average annual wind speeds range from 3 metres per second in parts of south Leinster to over 8 metres per second in the extreme north.
- A post-and-rail boundary fence with hedging would not provide sufficient shelter to the appellant's property. Over the course of Storms Isha and Jocelyn in January 2024, the wooden fence of a neighbouring development was flattened. This has since been repaired.
- In the early hours of 22nd November 2023, the property was entered by force as a result of a burglary. A window on the ground floor at the front of the house was smashed. A call was made to the Garda and a report was filed. The boundary wall and gate fitting were not complete at the time, therefore the site was not fully secured.
- In response to this incident security was swiftly enhanced. An electronic alarm system was installed and an exterior wrought-iron gate was attached to the boundary wall. The weight and size of this gate could not be supported by a post-and-rail boundary fence with hedging. The wall and piers need to be of sufficient stature to maintain the operation of the gate currently fitted. Article 40(5) of the Constitution of Ireland states that the dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

6.2. Planning Authority Response

- It is not possible to determine whether the information sheet which states the required time frame for appealing was attached to the refusal notice but this

issue has been highlighted internally for future reference. An Bord Pleanála's website is outside the control of Louth County Council.

- The exact location of the walls depicted in the photographs attached to the appeal statement is unclear, and it is also unclear when permission was granted for these walls. Each application is assessed on its own merits.
- The dwelling is a considerable distance back from the wall. When selecting the site, the applicant should have considered the wind speed. Hedgerow planting could provide means of shelter and would have less visual impact while also promoting biodiversity.
- There are means of securing a property without creating a visual impact on the character of the surrounding area. These include closed-circuit television and alarms. Most properties in the vicinity of the site do not have walls of the same height. A hedgerow even with a timber post-and-rail or post-and-sheepwire fence would help address the security issue.

7.0 Assessment

7.1. Procedural Issues

- 7.1.1. Regulation 31 of the Planning and Development Regulations 2001 requires planning authorities, when notifying applicants of their decisions on planning applications, to specify that an appeal against the decision may be made to the Board within the period of four weeks. In this instance, the copy of the notification provided to the Board by Louth County Council did not contain this information and it is reasonable to infer that it was not provided to the applicant.
- 7.1.2. An Bord Pleanála's website has an easily found page titled "Planning Appeals" which provides essential information about the process and refers in bold type to the four-week deadline. Despite the difficulties complained of, the applicant has made a valid appeal to the Board.

7.2. Appropriate Assessment Screening

- 7.2.1. Having regard to the nature and scale of the proposed development, the absence of emissions therefrom and the distance from any European site, it is possible to screen out the requirement for the submission of a Natura impact statement and the carrying

out of an appropriate assessment pursuant to the European Union Habitats Directive (92/43/EEC) at an initial stage.

7.3. Substantive Issues

7.3.1. Having inspected the site and considered in detail the documentation on file for this first-party appeal, it seems to me that the main planning issues are:

- visual amenity and rural character;
- shelter and security; and
- precedent.

7.3.2. The site layout plan approved by the Council in August 2021 showed two wing walls and four associated piers flanking the entrance driveway in the positions indicated in the current planning application. I am satisfied that these structures are authorised and do not require a further planning permission. My assessment will therefore focus on the boundary walls which run parallel to the public road, together with the four piers which are attached only to those walls and not to the wing walls.

7.4. Visual Amenity and Rural Character

7.4.1. Section 13.8.11 of the Louth County Development Plan deals with boundary treatments in residential developments in urban areas and is not relevant to this proposal which relates to an individual dwelling in the countryside. The Development Plan policy relevant to housing in the open countryside, set out in Section 13.9.15, is to preserve, retain and augment existing natural boundaries in order to assist the integration of dwellings into the local landscape.

7.4.2. The planning authority's reason for refusal, incorporating the phrases "unacceptable visual impact" and "unsympathetic form", is not difficult to understand. Plainly, the Council judged the walls to be unsightly and out of keeping with their surroundings. I agree with that judgement. The introduction of long hard concrete structures in place of the row of trees that previously existed is detrimental to the appearance and rural character of the area. While accesses to several other dwellings on both sides of the road in this locality are flanked by wing walls, no other boundary walls extend along the entire frontage of the sites concerned.

7.4.3. Section 13.9.15 of the Plan requires boundary treatments to be sensitive to the area in which the dwelling is located. I do not consider that the addition of natural or field

stone to the existing boundary walls would be sensitive to this part of the rural area which is not characterised by such materials. A reduction in the height of the existing walls would not overcome the fact that they are out of place. I agree with the planning authority that box hedgerows are suburban in form and would be unsympathetic to their rural surroundings. In my opinion, the proposed mitigation measures, individually and collectively, would be insufficient to undo the harm caused by the boundary walls.

7.5. Shelter and Security

- 7.5.1. I find it impossible to accept that boundary walls 1.4 to 1.8 metres in height provide essential shelter from the effects of winds on a two-storey dwelling 43 metres away. It seems to me that a hedgerow of indigenous species as previously proposed or a row of replacement trees would be equally if not more effective.
- 7.5.2. The Constitution prohibits forcible entry into a citizen's home except where specifically authorised by law. In my opinion, it does not follow that citizens have an untrammelled constitutional right to put in place whatever measures they deem necessary to protect their homes against illegal entry.
- 7.5.3. I see no reason why the authorised wing walls would be insufficient to support a sturdy set of gates at the entrance to the residential site. I am not persuaded that the boundary walls which run parallel to the public road are essential to the security of the dwelling. I conclude that the concerns raised in the appeal statement about shelter and security do not outweigh the Council's well founded objections on visual amenity and rural character grounds, in so far as they relate to those boundary walls.

7.6. Precedent

- 7.6.1. The locations of the walls depicted in the four images appended to the appeal statement are not identified. No evidence has been provided indicating whether, when and in what planning policy and factual context, planning permission was granted for these walls. In the absence of such information, it is not possible to determine whether there has been any inconsistency on the part of the planning authority. I am convinced, however, that a grant of permission for the boundary walls to which the current application relates would set an undesirable precedent for other similar developments in the area.

8.0 Recommendation

8.1. I recommend that planning permission be refused.

9.0 Reasons and Considerations

9.1. The retention of the boundary walls which run parallel to the public road and of the piers attached only to those walls (and not to the already permitted wing walls) would be contrary to Policy Objective ENV 39 and Section 13.9.5 of the Louth County Development Plan 2021-2027. The boundary walls are visually obtrusive by reason of their length and unsympathetic materials and are detrimental to the appearance and rural character of the area. A grant of retention permission would therefore set an undesirable precedent for other similar developments 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.



TREVOR A RUE

Planning Inspector

24th May 2024