



An
Coimisiún
Pleanála

Inspector's Report

PL-500270-LH-25

Development	Retention and completion of groundworks to rear garden
Location	11 Ard Cullen, Omeath, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	2560285
Applicant(s)	Jeff & Jolene Lin
Type of Application	Retention Permission & Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Zell Yanyan Ping Miriam McArdle Donnelly Michael Lau & Ruby Zhao
Observer(s)	None
Date of Site Inspection	18 th February 2026
Inspector	Barry Diamond

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Appendix 1 –EIA Screening

1.0 Site Location and Description

- 1.1. The application site comprises an existing one and a half storey detached dwelling located towards the end of a cul-de-sac in a residential estate known as Ard Cullen. The rear garden area which is the subject of the application slopes downwards from the southwest to the northeast. The site abuts the rear garden of No. 8 Ard Cullen along its northeastern boundary, No. 10 Ard Cullen along its northwestern boundary and No. 12 Ard Cullen along its southeastern boundary.
- 1.2. There is an existing retaining wall c. 1.97 metres in height with a chainlink fence atop defining the boundary between the application site and No. 8 Ard Cullen which sits at a much lower ground level than the application site. Nos. 10 and 12 Ard Cullen are located either side of the application site and have similar sloping back gardens to the application site. The two neighbouring dwellings are separated from the application site by fencing 1.8 metres in height to the rear of the dwellings, however, the height of the fencing drops as it approaches the rear boundaries of the respective properties. At the time of the inspection a portion of fencing along the boundary with No. 10 had been removed.
- 1.3. The surrounding area is residential in character with walls and fencing being notable boundary treatments in the area with some elevated views of Carlingford Lough.

2.0 Proposed Development

- 2.1. The application seeks the retention and completion of groundworks to the rear garden of a domestic dwelling and includes a number of different elements:
 - Retention of groundworks to rear garden to include alterations to ground levels and construction of retaining walls;
 - Completion of groundworks to include retaining wall to provide level areas to the rear garden of the dwelling; and
 - All associated site development works.

3.0 Planning Authority Decision

3.1. Decision

On the 6th November 2025 the Planning Authority issued a decision to grant planning permission subject to conditions.

Conditions

2. Surface water from the site shall be disposed of within the boundaries of the site and shall not discharge onto the access road or adjoining property.

Surface water drainage design, attenuation and disposal shall be carried out in accordance with the Soakaway Design report received on the 5th November 2025 and accompanying site layout plan (Drawing No 12969(P)-001-FI2) prepared by ECC Design & Engineering Ltd.

Reason: In the interests of orderly development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the planner reflects the need for amendments during the processing of the application and the decision to grant planning permission. It includes the following points:

- The principle of development works relating to ancillary landscaping and groundworks within the curtilage of a dwelling is acceptable;
- Owing to the sloping topography of the site, there has always been opportunities for overlooking from the rear garden area;
- Further information is required to demonstrate the acceptability of the scheme in terms of the impact on residential amenity and surface water drainage;
- Issues raised by third parties relating to compliance with the Health & Safety Regulations, the Waste Management Act 1996, the Forestry Act 1947, the Wildlife Act 1976 lie outside the remit of the planning application being determined;
- The application complies with and has been processed in accordance with the relevant planning legislation;
- Issues of property damage are civil matters between the relevant parties; and
- Further information is requested on soakaway permeability, existing and proposed drainage infrastructure along with contiguous proposed and existing

elevations showing the proposed development and its relationship to the immediate neighbouring development.

Further information was submitted and the planner comments:

- Details of soil permeability testing has been provided, however, further clarification is required in relation to how surface water will be disposed of on the site;
- Contiguous elevations showing the developments relationship to the immediate neighbours along with a site inspection has indicated that there will be no new opportunities for overlooking which did not previously exist; and
- Further information is requested to show a detailed surface water layout showing the location of the proposed soakaway including distances from structures, foundations etc., along with clarification of how the Infiltration Rate was achieved.

Clarification on the further information was submitted and the planner comments:

- Details of the surface water drainage layout and how the infiltration rate was received. Consultation with the Placemaking & Physical Development section was carried out and the Officer indicates that there are no concerns with the drainage proposals subject to condition.

3.2.2. Other Technical Reports

- Placemaking & Physical Development – No objection subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

3.4.1. There were four observations during the processing of the planning application which are attached to the file. I consider that some of the issues raised in their submissions to the Commission correlate with the issues raised, however, the additional issues raised in the observations to the Planning Authority are as follows:

- The development is contrary to the Health & Safety Regulations, the Waste Management Act 1996, the Forestry Act 1947, the Wildlife Act 1976;

- The site notice was not viewable from the public road;
- The work is in breach of Article 22 of the Planning and Development Regulations 2001, due to the lack of information and consideration regarding the impact on the environment;
- It is stated that that the applicant is planning to build a studio-type structure in the garden, including a kitchenette and toilet solution which is not mentioned;
- The 'existing timber fence and existing foundation' were not pre-existing before development commenced;
- The proposed development is of an inappropriate scale to this small residential estate;
- The third parties commissioned Reports from Geoman Ltd and Robin Knox Building and Structural Engineers which raised concern with the level of detail provided at the time; and
- Photographs of internal structural cracks within No. 10 Ard Cullen were provided.

4.0 Planning History

Site

02218 - Permission was granted in June 2002 for the development of 4no. detached dwellinghouses & garages at Drumullagh, Omeath, Co. Louth.

Setting

12512 - Permission was granted in January 2013 for the development of a proposed single storey detached domestic garage ancillary to existing dwellinghouse & located to southwest corner of 12 Ard Cullen, Drummullagh, Omeath, Co. Louth.

5.0 Policy Context

5.1. Development Plan

The Louth County Development Plan, 2021-2027 (LCDP) as varied applies. The site is zoned 'A1' Existing Residential with the objective "To protect and enhance the amenity and character of existing residential communities."

Objective NBG 37 - To protect the unspoiled rural landscapes of the Areas of High Scenic Quality (AHSQ) from inappropriate development for the benefit and enjoyment of current and future generations.

Section 8.12.2 - Areas of High Scenic Quality (AHSQ) - The Council considers it important that AHSQ are protected from excessive development, particularly from inappropriate, one-off, urban-generated housing, in order to preserve their unspoiled rural landscapes.

Section 13.8.35 states that the extension or renovation of dwellings is generally encouraged and supported as it results in the upgrade and/or improvement to an existing building, maximises the existing building stock, and is often more sustainable than the construction of a new dwelling unit. Any application for the extension to or renovation of a property shall consider the following criteria, which is summarised where relevant.

- Scale - The scale of the extension shall normally be ancillary to the main dwelling.
- Design - Normally reflect the character of the existing property. Contemporary designs will be considered.
- Privacy - Extensions shall not result in overlooking.
- Daylight- Extensions shall not result in a significant decrease in daylight or sunlight entering a property. There may be instances where a daylight and sunlight assessment will be required.
- Private Open Space - An adequate area of functional private open space shall be retained.

Car Parking – Any development resulting in the loss of in-curtilage parking shall not result in an increase in on-street parking.

- Services

Section 3.16.2 - Extensions to Dwellings and HOU 36 seeks to encourage sensitively designed extensions to existing dwellings which do not negatively impact on the environment, residential amenities, surrounding properties, or the local streetscape and are climate resilient.

Section 13.19.8 - Areas of Outstanding Natural Beauty and High Scenic Quality - Any development in Areas of Outstanding Natural Beauty (AONB) or High Scenic Quality (AHSQ) shall be sensitive to the landscape in which will be located.

Policy Objective IU 19 - Requires the use of Sustainable Drainage Systems to minimise and limit the extent of hard surfacing and paving and require the use of SuDS measures be incorporated in all new development (including extensions to existing developments). All development proposals shall be accompanied by a comprehensive SuDS assessment including run-off quantity, run off quality and impacts on habitat and water quality.

Section 13.20.4 Sustainable Drainage Systems' (SuDS) - All new developments (including amendments/extensions to existing developments) will be required to incorporate 'Sustainable Urban Drainage Systems' (SuDS) as part of the development/design proposals.

5.2. Relevant National or Regional Policy / Ministerial Guidelines

Development Management Guidelines for Planning Authorities (2007)

5.3. Natural Heritage Designations

The appeal site is not located on or within proximity to any designated Natura 2000 sites, with the nearest designated site being the Carlingford Shore SAC (SAC: 002306) which is located c. 0.35km to the northeast of the site.

6.0 EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of my report.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1 There are three third party appellants to this appeal from the residents of Nos; 8, 10 & 12 Ard Cullen.

7.1.2 The appeal grounds for Zell Yanyan Ping (No. 12 Ard Cullen) are made by RW Nowlan & Associates Chartered Planners and Property Advisors and can be summarised as follows;

- A soakaway drainage area is located adjacent to No. 8 which may result in overflows of surface water to adjoining properties;
- The soakaway design is not compliant with BRE 365 Guidelines as it is within 5 metres of a retaining wall and may waterlog this area;
- The longitude and latitude co-ordinates within the Soakaway Report do not correspond with the site and therefore the rainfall assumptions and calculations cannot be relied upon;
- The soakaway will not perform as well as the trial hole suggests as the ground for the soakaway is to be bounded on three sides by existing and proposed walls and the trial hole was located at the top of the slope rather than the location for the soakaway;
- There are no details of the existing surface water drains for the house or pavement;
- There are retaining walls within 50cm of the boundary fencing which poses a risk of subsidence particularly during periods of heavy rainfall;
- The new block wall above No. 8 may contribute to erosion or drainage issues;
- Structural cracks have appeared at neighbouring properties and the slope adjacent to No. 12 has been exposed and is unsupported;
- There are no clear elevations or dimensional details for the retaining walls and no detail of how it will be backfilled to provide adequate drainage;
- Many of the dwellings in the area suffer from water logging and flooding;
- The Health & Safety Authority stated that the site lacked a Project Supervisor (Design & Construction), appropriate edge protection and a formal inspection system; and
- A High Court case has been brought by three neighbouring properties and this legal dispute should be considered when determining this appeal.

7.1.3 The appeal grounds for Miriam Donnelly (No. 8 Ard Cullen) are made by McNamee Building Surveyors Ltd and can be summarised as follows;

- The initial application should not have been validated due to incomplete information;

- The description of development refers to a retaining wall, whereas two are proposed;
- The neighbouring properties should have been notified of the further information submitted by the applicant;
- The further information fails to show the dimensions of existing foundations and the retaining walls which is critical;
- There is a significant hydrological link to the SAC as the surface water will flow downwards and given the proximity of the SAC an Appropriate Assessment should have been provided;
- There are no details of the heights or elevational drawings of the retaining walls to be constructed to the eastern and western boundaries;
- The planning description should have referred to new boundary treatments;
- The retaining walls have a drainage channel at the base of the wall which is indicated to be directed into the existing drainage system, however, there is no existing drainage system to cope with the volumes of water;
- The retaining walls cannot be constructed as shown due to the extent of the drainage and backfilling zones which is not available on the site given the manufacturers specification;
- The surface water soakaway may discharge to No. 8 which is already suffering from waterlogging from the existing works;
- BRE Digest 365 states that soakaways should not be within 5 metres of foundations, however, the soakaway is less than 5 metres from the retaining structures;
- The excavations and trial hole uncovered building materials which is not mentioned in the Soakaway Report and this could lead to pollution of the ground water as the site is within an area of High Vulnerability as per Geological Survey for Ireland data base.
- The concrete steps are referred to as being permeable when they are not;
- The soakaway design has significant errors, the depth of water in the test is recorded as 0.48mm and not 0.48m and the longitude and latitude co-

ordinates within the Soakaway Report do not correspond with the site and therefore the rainfall assumptions and calculations cannot be relied upon;

- The site formerly contained trees and vegetation which would have absorbed water and bonded the soil; and
- The appearance of the retaining walls will be heavy in appearance and detrimental to the character of the area.

7.1.4 The appeal grounds for Michael Lau and Ruby Zhao (No. 10 Ard Cullen) can be summarised as follows:

- The works are unauthorised and an application combining the retention and completion of development is an improper hybrid application, contrary to Section 34(12) of the Planning and Development Act (2000) as amended and contrary to case law set by O'Brien v's South Dublin County Council [2007] IEHC;
- Structural cracks have formed at No. 10 since the works were carried out;
- Inadequate drainage has been provided;
- Elevated and more useable ground levels will increase overlooking;
- The development will adversely affect the Area of High Scenic Quality;
- There is insufficient information to allow a proper assessment of the application; and
- Neighbours were not notified by the Planning Authority of the further information submitted by the applicant.

7.2. Applicant Response

7.2.1 The applicant for planning permission has engaged EHP Services to make representations on their behalf which can be summarised as follows:

- The initial development was thought to be exempted development under Class 6, Schedule 2, Part 1 of the Planning and Development Regulations 2001;
- Since works began 15 months ago the sides of the excavated slopes have not moved, slumped or collapsed;

- The appeal is without evidence and the Commission should consider whether to dismiss the appeal under 138 of the Act;
- Similar works have been carried out at other nearby properties;
- No precedent is set as each case has subtle but significant differences;
- The letter from Geoman Ltd has major deficiencies as it was carried out on one day (19th September 2024) and the observations were made from outside the site;
- There is no evidence that the structural cracks at a nearby property were caused by the development;
- The observations from the third party's are not based on a completed scheme rather on the period during construction;
- The submission of further drainage information during the processing of the planning application is not a ground of appeal;
- Condition 02 of the Planning Authority's grant of permission requires all necessary precautions and reassurances that when the works are complete that surface water will not flow onto adjoining lands;
- A housing estate which is set on steep sloping topography will inevitably give rise to some level of overlooking;
- The proposed development is within a heavily developed urban setting that is not visually conspicuous from the public domain and will not affect the unspoiled rural landscape of the Area of High Scenic Quality;
- Matters pertaining to Health & Safety and slope stability are outside the remit of planning;
- Any alleged procedural missteps of the Planning Authority are matters which are subject to judicial review and not the appeals process;
- There is no requirement to submit two separate applications, one seeking retention and one seeking completion works; and
- Information was included in the appendix detailing that the Health and Safety Authority have closed their case.

7.3. **Planning Authority Response**

The points raised in appeal have already been addressed in the Case Officer Report and the proposed development accords with the provisions of the Louth County Development Plan 2021-2027 (as varied). The Planning Authority requests that the decision to grant planning permission is upheld.

7.4. **Observations**

None

8.0 **Assessment**

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

- Principle of Development
- Design
- Residential Amenity
- Drainage
- Slope Stability
- Other Matters

8.2 **Principle of Development**

8.2.1 The proposed development seeks the retention and completion of groundworks to rear garden of an existing dwelling. The Louth County Development Plan, 2021-2027 as varied (LCDP) does not contain specific policies relating to the redevelopment of rear amenity spaces other than the overarching objective of the 'A1' Existing Residential zoning which has the objective "To protect and enhance the amenity and character of existing residential communities."

8.2.2 It is noted that Section 14.10.2 supports applications to amend existing dwelling units to reconfigure and extend existing dwellings as the needs of the household change, subject to specific safeguards. As the subject development encompasses

landscaping works within the curtilage of a dwelling I am of the view that Section 14.10.2 sets useful criteria to assess this application.

8.2.3 In addition, the site is located within the Feede Mountains and Cooley Area of High Scenic Quality. It is noted that Section 13.19.8 of the LCDP requires that any development in Areas of High Scenic Quality (AHSQ) shall be sensitive to the landscape in which it is located.

8.2.4 I consider that the principle of groundworks within the curtilage of a dwelling which are ancillary to the enjoyment that dwelling is acceptable subject to their being no adverse impact on neighbour amenity, the character of the area and other relevant factors.

8.3 **Design**

8.3.1 The development involves two components, the retention of existing ground works which included a retaining wall and boundary fence close to the rear boundary and the completion of groundworks to include retaining walls to provide stepped terrace areas to the rear garden of the dwelling. All of these works are confined to the rear garden area which slopes downwards from the southwest to the northeast.

8.3.2 It is understood that the former rear garden area had a level area to the immediate rear of the dwelling, which still remains, then the garden sloped downwards to its boundary with No. 8 Ard Cullen which is defined by an existing retaining wall c.1.97 metres. The fall in the slope is 3.34 metres from the highest point of the garden to the top of the existing retaining wall at the bottom of the garden.

8.3.3 There are 2 No. new retaining walls proposed and 1 No. retaining wall which has already been constructed. These retaining structures form a series of terraces to the rear garden area which are indicated to be finished in permeable paving or decorative stone. The first retaining wall which is the closest to the dwelling is 1 metre in height, the second wall located roughly in the middle of the garden is also 1 metre in height, while the last retaining wall closest to the boundary is indicated to be 0.33 metres in height and includes a new 1 metre high close boarded fence on top which is set back from the boundary with No. 8 Ard Cullen.

8.3.4 There are also retaining walls located along the boundaries of the site to the northwest and southeast. Steps between each terrace are indicated along the southeastern boundary and are to be formed with concrete. The proposed elevations do not include any new or additional fencing to the boundaries with Nos. 10 & 12

which are currently defined by a 2 metre high fencing in the area closest to the rear of the dwelling which then reduces to 1 metre in height along the slopes.

- 8.3.5 The site is located within an Area of High Scenic Quality as defined in the LCDP with Objective NBG 37 indicating the need to protect the unspoiled rural landscapes from inappropriate development. Section 3.16.2 and HOU 36 of the LCDP seeks to ensure that development, referred to in the policy as domestic extensions, does not negatively impact on the environment of the local streetscape.
- 8.3.6 The subject development is located within the settlement of Omeath and sits on the periphery of an existing housing estate. Although a series of retaining walls could read together as an imposing concrete structure, however, the subject development is not readily viewable from surrounding public vantage points due to intervening boundary vegetation and the built form in the area. In my opinion the groundworks, including the retaining walls are acceptable given the limited visual impact from the surrounding area. Additionally, the development would not have a detrimental impact upon the Area of High Scenic Quality given its location within the urban footprint and limited viewpoints.

8.4 **Residential Amenity**

- 8.4.1 A number of third party's have indicated that the proposed development would lead to overlooking of their property as the terraces would make the rear garden area become more useable. Section 3.16.2 and HOU 36 of the LCDP seeks to encourage development which does not negatively impact residential amenities of surrounding properties.
- 8.4.2 I consider that the garden areas of the neighbouring properties are already exposed to overlooking due to the higher level that the dwellings sit above the rear garden areas and are only partially screened by the low boundary fences. The garden fences are not being lowered and while the useability of the applicant's garden area would be enhanced, I do not consider that this would lead to any significant loss of privacy to the adjoining garden areas given the level of overlooking which already exists. A fence has been erected close to the boundary with No. 8 Ard Cullen which will undoubtedly assist in providing a screening to the rear garden of that property which is currently defined by a retaining wall and a chain link fence.
- 8.4.3 I am of the opinion that the subject development would not increase the level of overlooking into the rear garden areas, nor would the terracing of the garden areas

provide any overlooking into the living spaces within the adjoining dwellings. Given that the development comprises mostly groundworks there are no concerns with dominance or overshadowing. The proposed development, in my view, complies with Section 3.16.2 and HOU 36 of the LCDP.

8.5 Drainage

- 8.5.1 The issue of adequate drainage for the development works was a matter raised by the third parties who have also engaged consultants to provide comment. Policy Objective IU 19 and Section 13.20.4 of LCDP indicate that all new developments (including amendments/extensions to existing developments) will be required to incorporate 'Sustainable Urban Drainage Systems' (SuDS) as part of the development/design proposals.
- 8.5.2 During the course of the planning application there were two soakaway design documents submitted by way of further information which were prepared by ECC Design & Engineering Ltd on behalf of the applicant. I consider it pertinent to focus on the latest submission in the interests of expediency as it represents the final position of the applicant. It is indicated that the soakaway design is based on 'BRE Digest 386 – Soakaway Design'.
- 8.5.3 A trail pit test was undertaken, an assessment of the total impermeable area for the whole site (140sqm) and an infiltration rate calculation. The time to empty the soakaway from full to 50% was 2.66 hours which is significantly less than the 24 hours compliance threshold within the BRE Digest 365. The Planning Authority consulted with their Placemaking & Physical Development Section and the Officer indicated that there were no concerns with the drainage proposals subject to condition.
- 8.5.4 The proposed soakaway pit is to be located in the northern corner of the site close to the smallest of the retaining walls. Land drains are indicated to divert water from the base of the retaining walls towards the proposed soakaway. The location of the two existing soakaway pits for the existing dwelling are indicated to both the front and rear of the dwelling and are to remain.
- 8.5.5 The third party's raise concern with the location of the soak pit, the robustness of the soakaway design, the detail within it and the location of the soakaway pit. Specifically they state that the depth of water in the trial pit between 75 and 25 percent empty is recoded as 0.48mm rather than 0.48cm. In my view this appears to be a typo and does not affect the remainder of the calculations for the infiltration rate.

The coordinates used for return rainfall were raised as inaccurate and the third party provided a table with different coordinates. The detail within the table is largely illegible and I am unable to discern the figures within the submission. In addition, there is no comment made by the third party on how any variance would affect the overall result other than an overarching observation that the figures cannot be relied upon. I am of the opinion that the difference is based on the applicants engineer using a five digit easting and northing as opposed to the six digits relied upon by the third party which does not lead to a critical disparity in the location for the purposes of the assessment.

- 8.5.6 The last substantive point relates to the location of the soakaway pit close to existing retaining walls and it is indicated that BRE Guidance indicates that a soakaway pit should not be located within 5 metres of foundations. The proposed soakaway pit is located within the northern corner of the site close within 1 metre of the last retaining wall which is also adjacent to the stone drainage for the existing retaining wall which forms the boundary with No. 8 Ard Cullen.
- 8.5.7 The location of the soakaway pit does not comply with the 5 metre separation distance referred to in the BRE Guidance, however, the guidance indicates that the distance of 5 metres is often quoted, however, some allowance can be given for on site conditions. In this regard I consider that there is a number of mitigating factors.
- 8.5.8 The vast majority of the area affected by the groundworks is to be finished with permeable surfacing, nevertheless, the soakaway report has provided for a soakaway pit for the entire area of groundworks (c. 140sqm) at the request of the Planning Authority. The only impermeable elements of the proposed development are the concrete steps and the tops of the retaining walls which results in a relatively small impermeable surface area which would have minimal impact.
- 8.5.9 The Placemaking & Physical Development Section of the Planning Authority had no objection to the siting. The existing soakaway pits that serve the existing dwelling and areas of hardstanding are to remain. At the time of the site inspection, there had been sustained periods of heavy rainfall which persisted during the visit. I noted that there were no issues with ponding or signs of runoff across the site.
- 8.5.10 Overall I am of the view that the level of surface water drainage will be low given the limited impermeable surfaces following the completion of the groundworks, the site drainage will be managed through the use of soakaways, the location of the soakaway pit adjacent to a shallow retaining wall and the limited drainage to the

soakaway pit would not lead to a risk of subsidence in that feature. The issue of the stability of slopes and retaining structures are considered below.

8.6 **Slope Stability**

- 8.6.1 The third party's raised concern with the stability of the ground and the potential detrimental impact that it has had, and may have, on the adjoining properties, including an observation that structural cracks had appeared in at least one property. The regrading of the garden slope is indicated to be secured through the construction of a series of retaining walls to brace and retain the ground and enhance stability.
- 8.6.2 I note that the third parties have employed a number of engineers who have indicated that the retaining structures may not be suitable, however, there is no direct evidence to indicate that the structures are not fit for purpose. The GeoMan Ltd survey carried out by a chartered engineer was submitted by a third party during the course of the application. This survey commented on the groundworks undertaken and specifically referenced that they did not have knowledge of the proposed plans. A further submission included comments from Robin Knox, Building Engineer and Structural Surveyor which referenced the inadequacy of the details provided in the initial submission to the Planning Authority, however, no comments were made on slope stability.
- 8.6.3 The appeal submissions included concerns about the suitability of the retaining structures, however, there was no evidence to support a position that the retaining structures were unsuitable from an engineering perspective. I also note that there is reference to a specification drawing for retaining walls in one of the submissions and it is stated that the retaining walls along the boundaries could not be built without infringing on the neighbouring property given the lack of backfill required for this specific retaining wall.
- 8.6.4 The suitability of a retaining structure to provide adequate support for soil stability is not one which normally falls within the remit of planning and the source of damage to a property is not a matter which can be adjudicated by the Coimisiún. I refer to Section 7.8 of the Development Management Guidelines for Planning Authorities (2007) (DMGPA) which states that it is inappropriate, in development management, to deal with matters which are the subject of other controls unless there are particular circumstances e.g. the matters are relevant to proper planning and sustainable development and there is good reason to believe that they cannot be

dealt with effectively by other means. In addition, it states that the Building Regulations require certification by the developer's design team.

8.6.5 I note that issues to do with ownership of land are not matters which can be adjudicated by the Coimisiún. I refer to Section 5.13 of the DMGPA which states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land with Section 34(13) of the Planning and Development Act 2000 (as amended) stating that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. The grant of permission therefore does not entitle the applicant to carry out works on a third parties land and all necessary consents and permissions need to be obtained by the developer.

8.6.6 I consider that the concerns with slope stability are mainly focussed on the partially completed works, which on the facts of the case related to partially excavated ground with no supporting structures in place. The applicant has indicated that the slopes will be regraded and stabilised with retaining walls and the suitability or adequacy of the structures is not a matter which should be determined under this appeal. I am of the opinion that this is a matter best dealt with under the Building Regulations and should be properly certified by a suitably qualified engineer.

8.7 Other Matters

8.7.1 It was stated by a third party that the description of development refers to a retaining wall, whereas two are proposed. The description of development which was before the Planning Authority refers to the retention of a retaining wall and a proposed retaining wall. I refer to Section 3.4 of the DMGPA which states that the amount of detail in the public notice has increased continuously to the extent that notices frequently include every detail of the proposed development, rather than comprising a brief description of the proposed development. This level of detail is unnecessary and can cause confusion.

8.7.2 In my view the practice by some applicants to present detailed information has continued. In the instant case the reference to the retaining walls was to a large extent superfluous and I have to consider whether anyone was prejudiced by the description of development. The subject development abounds three residential properties, Nos; 8, 10 & 12 Ard Cullen all of which have objected to the application and have been given the opportunity to assess the detail and been afforded the

opportunity during the appeal process to put forward their views on the full suite of information provided. In my view, no prejudice to third parties has been caused and I have described the development succinctly as per the DMGPA as 'The retention and completion of groundworks to the rear garden'. This description removes any ambiguity as to the nature of the works which are the subject of this appeal.

- 8.7.3 A number of the third party representations referred to regulatory breaches by the Planning Authority during the processing of the planning application. I am not aware of any legal challenge to the decision of the Planning Authority and therefore it is presumptively valid. It is not the role of the Commission to adjudicate over how the planning application was processed by the Planning Authority, rather its role, in the case of this appeal is based on the merits of the decision.
- 8.7.4 I am of the view that all the information which was subject to the decision of the Planning Authority is now in the public domain and all parties have had an opportunity to provide comment upon that information for the purposes of this appeal. No new information has been submitted during the appeal which would require any new consultation or notification. I therefore do not consider that any prejudice has been caused to any party during the appeal.
- 8.7.5 It was stated by one of the third parties that a retention and completion application was an improper hybrid application, contrary to Section 34(12) of the Planning and Development Act (2000) as amended and contrary to case law set by O'Brien v's South Dublin County Council [2007] IEHC. I do not consider that Section 34(12) of the Planning and Development Act (2000) stipulates any embargo on an application which seeks to combine both the retention of works and the completion of works under one planning application. The matter of enforcement under Section 34(12) due to the carrying out of works without the benefit of planning permission is a matter for the Planning Authority to consider. Although the third party cites a legal case, I was not provided with a copy of this case law nor is it readily available to me to consider.
- 8.7.6 It was stated by one of the third parties during the course of the planning application that the applicant is planning to build a studio-type structure in the garden, including a kitchenette and toilet which is not mentioned. These elements do not form part of the current application and are not for consideration at this time. Should a planning application be submitted for these elements then the application will have to be considered on its merits at the time of submission.

9.0 AA Screening

- 9.1 I have considered the development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located at 11 Ard Cullen, Omeath, Co. Louth, with no relevant designated sites are close by.
- 9.2 The subject development comprises the retention and completion of groundworks to rear garden. Nature conservation concerns were raised in the planning appeal by a third party that contamination of the ground water would occur as a result of the development. Having considered the nature, scale, location of the project and the distance to the designated site of 0.35km, I am satisfied that the terracing of existing slopes would not adversely affect the ground water and the development can be eliminated from further assessment because there is no conceivable risk to any European Site.
- 9.3 The reason for this conclusion is as follows:
- Small scale and nature of the development;
 - Distance from nearest European site and lack of connections; and
 - The screening decision of the Planning Authority.
- 9.4 I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Water Framework Directive

- 10.1 The subject site is located at 11 Ard Cullen, Omeath, Co. Louth which is 322 metres southwest of the nearest water body.
- 10.2 The application seeks the retention and completion of groundworks to rear garden. No water deterioration concerns were raised in the planning appeal.
- 10.3 I have assessed the development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where

necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively. The reason for this conclusion is as follows:

- Nature of works e.g. small scale and nature of the development ; and
- Distance from nearest water bodies and/or lack of hydrological connections.

10.4 I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

11.0 Recommendation

That planning permission be granted for the reasons and considerations set out below and subject to the conditions set out below.

12.0 Reasons and Considerations

Having regard to the design, appearance, layout and drainage of the groundworks, it is the Commissions view that, subject to compliance with conditions below, the subject development would not seriously injure the visual amenities of the area or residential amenities of any property in the vicinity, it would not adversely impact on the character of the area and the surface water can be managed on site. The subject development, therefore, would be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the
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	<p>further plans and particulars received by the Planning Authority on the 20th day of May 2025, the 26th September 2025 and the 5th November 2025 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Surface water from the site shall be disposed of within the boundaries of the site and shall not discharge onto the access road or adjoining property. Surface water drainage design, attenuation and disposal shall be carried out in accordance with the Soakaway Design report received on the 5th November 2025 and accompanying site layout plan (Drawing No 12969(P)-001-FI2) prepared by ECC Design & Engineering Ltd</p> <p>Reason: In the interests of orderly development</p>
3.	<p>Boundary treatments shall be retained in accordance with the elevations (Drawing Number 12969) received by the Planning Authority on 26th September 2025.</p> <p>Reason: In the interest of visual amenity and in the interests of preserving the residential amenity of the area.</p>
4.	<p>The applicant shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road/footpath arising from the construction work and shall either make good any such damage forthwith to the satisfaction of the Planning Authority or pay to the Council the cost of making good any such damage on a demand thereof being issued by the Council.</p> <p>Reason: In the interest of traffic and pedestrian safety and orderly development</p>
5.	<p>All necessary measures, as may be determined by the Planning Authority, shall be taken by the developer/contractor/servants/agents to prevent the</p>

	<p>spillage or deposit of clay, rubble or other debris on adjoining public roads or footpaths during the course of the development works. The developer shall ensure that all vehicles leaving the development are free from any material that would be likely to deposit on the road and in the event of any such deposition; immediate steps shall be taken to remove the material from the road surface. The developer shall be responsible for the full cost of carrying out of road/footpath cleaning work. In the interest of orderly development.</p> <p>Reason: In the interest of traffic and pedestrian safety and orderly development.</p>
6.	<p>.Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays, inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Barry Diamond
Planning Inspector

5th March 2026

Appendix 1 - Form 1 EIA Pre-Screening

Case Reference	PL-500270-LH-25
Proposed Development Summary	Retention of groundworks and all other siteworks
Development Address	11 Ard Cullen, Omeath, Co. Louth
	In all cases check box /or leave blank
<p>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</p> <p>(For the purposes of the Directive, "Project" means:</p> <ul style="list-style-type: none"> - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources) 	<p><input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.</p> <p><input checked="" type="checkbox"/> No, No further action required.</p>
<p>2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</p>	
<p><input type="checkbox"/> Yes, it is a Class specified in Part 1.</p> <p>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</p>	
<p><input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3</p>	
<p>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</p>	
<p><input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under</p>	

<p>Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____

